

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Parts 555, 567, 568, and 571****Docket No. NHTSA–2006–24664****RIN 2127–AJ91****Vehicles Built in Two or More Stages**

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of the February 14, 2005 final rule under 49 U.S.C. Chapter 301 and its implementing regulations pertaining to vehicles built in two or more stages and, to a lesser degree, to altered vehicles. This document clarifies the recognition in that rule that under NHTSA's regulations, multistage vehicles may be treated as a separate type of vehicle, including, as appropriate, vehicles built on chassis-cab incomplete vehicles. This document also amends a provision of the temporary exemption procedures to allow, as appropriate, for exemption of multistage vehicles from standards based on dynamic testing. This document denies the remainder of the petition for reconsideration, which involved certification of multistage vehicles and responsibility for recalls of multistage vehicles.

DATES: The amendments made in this final rule are effective on September 1, 2006. This final rule amends the final rule published on February 14, 2005 (70 FR 7414), which is also effective on September 1, 2006.

Petitions: Petitions for reconsideration must be received by June 26, 2006 and should refer to this docket and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The agency will not entertain petitions for reconsideration on 49 CFR Parts 567 Certification, 568 Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final Stage Manufacturers of Vehicles Manufactured in Two or More Stages, or 573 Defect and Noncompliance Responsibility and Reports. Issues under these regulations have been addressed in rulemaking, including negotiated rulemaking, and in this document. Any further consideration of these provisions would be repetitive.

FOR FURTHER INFORMATION CONTACT:

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I. Background**A. Description of Issues Unique to Multistage and Altered Vehicles**

The petition at issue requests NHTSA to reconsider certain amendments adopted as part of a final rule published on February 14, 2005 (at 70 FR 7414) to address certification issues related to vehicles built in two or more stages, and to a lesser degree, to altered vehicles. Concepts and terminology relating to the certification of these vehicles are described below.

1. Multistage Vehicles

In the typical situation, a vehicle built in two or more stages is one in which an incomplete vehicle, such as a chassis-cab or cut-away chassis built by one manufacturer, is completed by another manufacturer who adds work-performing or cargo-carrying components to the vehicle. For example, the incomplete vehicle may 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. Like all

vehicles that are manufactured for sale in the United States, a multistage vehicle must be certified as complying with all applicable Federal motor vehicle safety standards (FMVSS) before the vehicle is introduced into interstate commerce.¹ Certification is provided in the form of a label permanently affixed to the vehicle in a prescribed location, which, among other things, identifies the vehicle's manufacturer and date of manufacture, and states that the vehicle conforms to all applicable FMVSS in effect on that date.

2. Multistage Vehicle Manufacturers

Manufacturers involved in the production of multistage vehicles can include, in addition to the incomplete vehicle manufacturer, one or more intermediate manufacturers, who perform manufacturing operations on the incomplete vehicle after it has left the incomplete vehicle manufacturer's hands, and a final-stage manufacturer who completes the vehicle so that it is capable of performing its intended function.

3. Pass-Through Certification

In some circumstances, a manufacturer at an earlier stage in the chain of production for a multistage vehicle can certify that the vehicle will comply with one or more FMVSS when completed, provided specified conditions are met. This allows what is commonly referred to as "pass-through certification." As long as a subsequent manufacturer meets the conditions of the prior certification, that manufacturer may rely on this certification and pass it through when certifying the completed vehicle.

4. Assumption of Certification and Recall Responsibility

Although the final-stage manufacturer normally certifies the completed vehicle's compliance with all applicable FMVSS, this responsibility can be assumed by any other manufacturer in the production chain. To take on this responsibility, the other manufacturer must ensure that it is identified as the vehicle manufacturer on the certification label that is permanently affixed to the vehicle. The identified manufacturer also has legal responsibility to provide NHTSA and vehicle owners with notification of any defect related to motor vehicle safety or noncompliance with an FMVSS that is found to exist in the vehicle, and to remedy any such defect or noncompliance without charge to the vehicle's owner.

5. Incomplete Vehicle Document

The agency's regulations governing vehicles manufactured in two or more stages at 49 CFR part 568 require incomplete vehicle manufacturers to provide with each incomplete vehicle an incomplete vehicle document (IVD). This document 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 FMVSS.

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, which is referred to as a "Type 1 statement," is most often made with respect to chassis-cabs, since a significant portion of the occupant compartment in incomplete vehicles of that type is already complete.

Second, the IVD may provide a statement of specific conditions of final manufacture under which the completed vehicle will conform to a particular standard or set of standards. This statement, which is referred to as a "Type 2 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. For example, the incomplete vehicle could be equipped with a brake system that would, in many instances, enable the vehicle to comply with the applicable brake standard once the vehicle was complete, but that would not enable it to comply if the completed vehicle's weight or center of gravity height were significantly altered from those specified in the IVD.

Third, the IVD may identify those standards for which no representation of conformity is made because conformity with the standard is not substantially affected by the design of the incomplete vehicle. This is referred to as a "Type 3 statement." A statement of this kind could be made, for example, by a manufacturer of a stripped chassis who may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment. When it issued

the original set of regulations regarding certification of vehicles built in two or more stages, the agency indicated that it believed final-stage manufacturers would be able to rely on the representations made in the IVDs when certifying the completed vehicle's compliance with all applicable FMVSS.

6. Altered Vehicles

An altered vehicle is one that is completed and certified in accordance with the agency's regulations and then altered, other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as painting, before the first retail sale of the vehicle, in such a manner as may affect the vehicle's compliance with one or more FMVSS or the validity of the vehicle's stated weight ratings or vehicle type classification. The person who performs such operations on a completed vehicle is referred to as a vehicle "alterer." An alterer must certify that the vehicle remains in compliance with all applicable FMVSS affected by the alteration.

B. The Underlying Rulemaking

Issues involving vehicles built in two or more stages have long been matters of contention within the affected industry and before the agency and the courts. Historically, NHTSA's regulations for certification of multistage vehicles contained provisions for certification statements by chassis-cab manufacturers.² In 1990, the United States Court of Appeals for the Sixth Circuit ruled in *National Truck and Equipment Ass'n v. NHTSA*, 919 F.2d 1148 (6th Cir. 1990), that the requirements of a particular FMVSS were impracticable for final-stage manufacturers using vehicles other than chassis-cabs for which the incomplete vehicle manufacturer was not required to provide "pass-through" certification. Thereafter, the agency published a notice of proposed rulemaking (NPRM) that proposed extending certification requirements for chassis-cab manufacturers to manufacturers of all incomplete vehicles.³ This would have permitted pass-through certification for all types of multistage vehicles.

The proposal was highly controversial. On December 12, 1995, the agency held a public meeting to solicit information from affected manufacturers and members of the public on the certification of vehicles built in two or more stages and

¹ 15 U.S.C. 30115.

² 49 CFR 567.5 (1977 and 1978).

³ 56 FR 61392 (December 3, 1991).

suggestions for the revision of agency regulations governing those activities. On May 20, 1999, NHTSA published a notice of intent to convene a negotiated rulemaking committee on the subject.⁴ In late 1999 and early 2000, NHTSA held public meetings. A chartered committee that included representatives from incomplete vehicle manufacturers, component manufacturers, final-stage manufacturers and alterers, vehicle end-users, and NHTSA held several meetings between March 2000 and February 2002 at which issues involving the certification and recall of vehicles built in two or more stages were discussed. The committee failed to reach a consensus on several key issues involving certification and recall responsibilities.

On June 28, 2004, the agency published a supplemental notice of proposed rulemaking (SNPRM) addressing five different parts of the agency's regulations related to vehicles built in two or more stages and, to a lesser degree, to altered vehicles.⁵

In the SNPRM, the agency addressed the issue of whether it possesses the legal authority to exclude multi-stage vehicles as a group from a standard.⁶ The agency tentatively concluded that it could do so in regulations establishing FMVSS.

The proposed amendments included adding a new subpart to 49 CFR part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards that would allow final-stage manufacturers and alterers to obtain temporary exemptions from those portions of safety standards for which the agency verifies compliance through dynamic crash testing. The agency also proposed to streamline the temporary exemption process by allowing an association or other party representing the interests of multiple manufacturers to bundle petitions for a single vehicle design, precluding the need for individual manufacturers to explain the potential safety impacts of the requested exemption and their good faith attempts to comply with the standard that is the subject of the exemption request. The agency also proposed amendments that would commit it to processing these temporary exemption requests in an expedited fashion.

The agency also proposed in the SNPRM to amend 49 CFR part 567, Certification, to extend to all incomplete vehicles, not just to chassis-cabs, requirements for the incomplete vehicle manufacturer to provide pass-through

certification and to furnish information labels or incomplete vehicle documents (IVDs) with the vehicle. The agency also proposed to amend 49 CFR part 568, Vehicles Manufactured in Two or More Stages, to reflect that an incomplete vehicle manufacturer may incorporate by reference body builder or other design and engineering guidance into the IVD. The agency also proposed to amend 49 CFR 571.8, Effective Date, by providing intermediate and final-stage manufacturers and alterers with an additional year or more of lead time to achieve conformity with certain amendments to the FMVSS. NHTSA also published, without the agency's endorsement, amendments to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports prepared by some parties in the negotiated rulemaking process. These would permit the agency to assign recall responsibility to the party it believes is in the best position to conduct a notification and remedy campaign in circumstances where accountability for the underlying defect or noncompliance is in dispute among the various manufacturers in the production chain. The agency solicited public comment on the amendments proposed in the SNPRM.

After considering comments on the SNPRM, NHTSA published a final rule, as previously noted, on February 14, 2005.⁷ The final rule contained considerable relief for final stage manufacturers. First, as a legal matter, the agency concluded that it possesses the legal authority to exclude multistage vehicles as a group from a standard.⁸ This means that NHTSA could promulgate FMVSS that applied to some types of vehicles such as trucks but that would not apply to multistage vehicles. NHTSA concluded that it is appropriate to consider incomplete vehicles, other than chassis-cabs, as a vehicle type subject to consideration in the establishment of a regulation.⁹

Second, the agency amended its regulations to establish a process under which intermediate and final-stage manufacturers and alterers can obtain temporary exemptions from dynamic performance requirements of certain standards, and accorded those entities an additional year of lead time to achieve compliance with new safety requirements, unless the agency determines that either a longer or a shorter period is appropriate. As stated in the final rule, under the new provisions, qualified manufacturers may

be granted temporary exemptions from FMVSS requirements that are based on dynamic crash testing.

The final rule revised 49 CFR Parts 567 Certification and 568 Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final Stage Manufacturers of Vehicles Manufactured in Two or More Stages. The final rule adopted much of the SNPRM as it pertained to the certification of vehicles manufactured in two or more stages. Unlike the earlier regulation, the certification provision for manufacturers of multistage vehicles is no longer largely limited to chassis-cabs. Under the February 2005 rule, the final-stage manufacturer certifies that the vehicle meets applicable FMVSS, but can rely on the prior manufacturers' IVD. The incomplete vehicle manufacturer and intermediate manufacturers have certification responsibilities 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 IVD. The incomplete vehicle manufacturer and intermediate manufacturers also have certification responsibilities for equipment subject to equipment standards that they supply and for other items and associated standards in the contract between them and the next stage manufacturer(s). The fact that some components were provided by an incomplete vehicle manufacturer, absent more, does not shift responsibility for certification to those manufacturers with respect to completed vehicle performance standards. The agency did not adopt in the final rule the recommendation of certain commenters that it require incomplete vehicle manufacturers to provide subsequent stage manufacturers with "reasonable compliance envelopes" in the IVD.

The final rule did not amend the agency's rules under which the final-stage manufacturer has the ultimate responsibility for conducting a notification and remedy (recall) campaign when a safety-related defect or noncompliance with a safety standard is found to exist in a vehicle built in two or more stages. The agency noted that under the existing rule, recalls are not delayed on account of disputes between manufacturers. We observed that leaving ultimate recall responsibility with the final-stage manufacturer avoids delays in removing unsafe vehicles from the road. The agency further decided not to assume a role of determining whether the incomplete vehicle manufacturer or final stage manufacturer should conduct the recall where that issue is in dispute.

⁴ 64 FR 27499.

⁵ 69 FR 36038.

⁶ 69 FR at.

⁷ 70 FR 7414.

⁸ 70 FR at 7420 *et seq.*

⁹ 70 FR at 7421.

In the comments there was considerable opposition to the proposal for the agency to assign recall responsibility. The agency also rejected, as moot, a companion proposal to make the decision assigning recall responsibility nonreviewable.

II. NTEA's Petition for Reconsideration and the Agency's Response

On March 31, 2005, the National Truck Equipment Association (NTEA) petitioned NHTSA for reconsideration of the final rule. In the petition, NTEA noted that it participated as a committee member in the negotiated rulemaking that preceded the issuance of the final rule. NTEA observed that in the negotiated rulemaking, it argued that dynamic test standards (which it identified as including FMVSS Nos. 105 Hydraulic and Electric Brake Systems, 121 Air Brake Systems, 201 Occupant Protection in Interior Impact, 203 Impact Protection for the Driver from the Steering Control System, 204 Steering Control Rearward Displacement, 206 Door Locks and Door Retention Components, 208 Occupant Crash Protection, 210 Seat Belt Assembly Anchorages, 212 Windshield Mounting, 214 Side Impact Protection, 219 Windshield Zone Intrusion, 223 Rear Impact Guards, 301 Fuel System Integrity, 303 Fuel System Integrity of Compressed Natural Gas Vehicles, and 305 Electric-Powered Vehicles; Electrolyte Spillage and Electrical Shock Protection) are impractical for intermediate manufacturers, final-stage manufacturers, and alterers who complete multistage vehicles because the tests that are incorporated into those standards cannot be rationally performed by small businesses that build custom-manufactured vehicles in production runs as small as one unit. NTEA contended that because small businesses that complete multistage vehicles cannot afford to conduct the tests that are the core of the dynamic test standards, those standards remain impractical as applied to intermediate and final-stage manufacturers and alterers. Citing the agency's recognition in the preamble of the final rule that multistage vehicles can be treated as a distinct vehicle type for the purpose of establishing applicability of the FMVSS, NTEA contended that the agency was no longer subject to any legal constraints in exempting such vehicles from compliance with the dynamic test standards.

Aside from these general observations, the NTEA petition focused on specific issues concerning the adoption of standards to which multistage vehicles are subject,

temporary exemptions, and certification and recall responsibilities of multistage vehicle manufacturers. The positions expressed by NTEA with respect to each of those issues, and the agency's response, are set forth below.

A. Multistage Vehicles Built on Chassis-Cabs are Treated the Same as Those Built on Other Types of Incomplete Vehicles

NTEA raised several arguments relating to the treatment of multistage vehicles built on chassis-cabs under NHTSA's regulations, including the new temporary exemption provisions that were added to 49 CFR part 555 Temporary Exemptions from Motor Vehicle Safety and Bumper Standards as subpart B Vehicles Built in Two or More Stages and Altered Vehicles. NTEA first argues that the procedures in subpart B should be available to all manufacturers of vehicles built in two or more stages, and should not exclude manufacturers of vehicles built on chassis-cabs.

The relevant regulatory text reads as follows:

"§ 555.11 Application. This subpart applies to alterers and manufacturers of motor vehicles built in two or more stages to which one or more standards are applicable. * * * Nothing in this subpart prohibits an alterer, an intermediate manufacturer, a manufacturer of incomplete vehicles other than chassis-cabs, or a final-stage manufacturer from applying for a temporary exemption under subpart A of this part."

"§ 555.12 Petition for exemption. An alterer, intermediate or final-stage manufacturer, or industry trade association representing a group of alterers, intermediate and/or final-stage manufacturers may seek, as to any vehicle configuration built in two or more stages, 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 * * *"

NTEA also took issue with the statement in the final rule that NHTSA had reconsidered its previous position with respect to the agency's authority to either exclude vehicles manufactured in two or more stages from certain FMVSS or to subject them to different standards. There we stated that it is appropriate to consider multistage vehicles built on incomplete vehicles "other than those incorporating chassis-cabs," as a vehicle type subject to consideration in the establishment of regulations.¹⁰ We explained that the agency could take multistage vehicles (other than those built on chassis-cabs) as a group and exclude them from FMVSS that are impracticable as they apply to these

vehicles, or could subject these vehicles to different requirements. In the final rule, we expressed anticipation that final-stage manufacturers using chassis-cabs to produce multistage vehicles would be in position to take advantage of "pass-through certification," and therefore concluded that these vehicles did not merit special consideration.

We now note that the regulatory text in sections 555.11 and 555.12, as quoted above, does not expressly preclude manufacturers of vehicles built on chassis-cabs from petitioning under the new procedures in subpart B. However, the last sentence of § 555.11 may be read to imply that a manufacturer of a chassis cab cannot petition for a temporary exemption under the pre-existing temporary exemption procedures in subpart A.

NTEA position: In its petition, NTEA argued that NHTSA should not distinguish between multistage vehicles built on chassis-cabs and other types of vehicles built in two or more stages. NTEA was especially concerned that the new temporary exemption procedures would not apply to multistage vehicles built on chassis-cabs. NTEA argued that the certification obstacles could be as significant for vehicles built on chassis-cabs as they are for other types of vehicles manufactured in two or more stages. NTEA noted that in the preamble to the final rule, NHTSA recognized that certain multistage vehicles—those other than chassis-cabs—are a vehicle type subject to consideration in the establishment of agency regulations (*i.e.*, that, in the future, the agency could subject multistage vehicles to different standards). NTEA agreed with NHTSA's resolution as far as it goes, but raised issues concerning certain language in the preamble that distinguished multistage vehicles built on chassis-cabs from those built on incomplete vehicles other than chassis-cabs. The specific language that is the subject of NTEA's concern is found in the agency's discussion of its authority to exclude multistage vehicles from the FMVSS. There the agency stated:

We are also concerned that we had overlooked the existence of relevant physical attributes of multistage vehicles. Many of the multistage vehicles in question have distinct physical features related to their end use. More important, all of them incorporate incomplete vehicles other than chassis-cabs. Especially in the context of the difficulties of serving niche markets, the physical limitations of the incomplete vehicles other than chassis-cabs can adversely affect the ability of multistage manufacturer[s] to design safety performance into their completed vehicles.

(70 FR 7421).

¹⁰ See 70 FR 7421.

According to NTEA, the distinction drawn in this paragraph between multistage vehicles built on chassis-cabs, and those built on other types of incomplete vehicles is an artificial one. NTEA observed that many types of completed vehicles can be built on more than one type of chassis. NTEA contended that vehicles built on chassis-cabs face certification obstacles that could be as significant as those for vehicles built on non-chassis cabs.

Agency Response

a. Distinction between vehicles built on chassis-cabs and those built on other types of incomplete vehicles.

In discussing our authority relating to multistage vehicles in the February 2005 final rule,¹¹ the agency drew a distinction between vehicles built on chassis-cabs and other vehicles manufactured in two or more stages with respect to consideration of future standards or revisions to existing FMVSS and exemptions from those standards. We stated that we would consider multistage vehicles other than those built on chassis-cabs in setting new standards and in revising existing ones. On further consideration, we want to make clear that the distinction between different types of multistage vehicles is not one of legal authority. That is, for the purposes of our authority to prescribe regulations affecting vehicles manufactured in two or more stages, there is no legal distinction between vehicles built on chassis-cabs and other vehicles manufactured in two or more stages. In those instances where it is deemed appropriate because of practicability concerns, and where it is consistent with our safety objectives, the agency can consider any multistage vehicle, including those built on a chassis-cab, as a vehicle type in establishing or amending our regulations. Accordingly, we grant NTEA's petition to the extent it sought this clarification and we are amending one section added under the final rule (49 CFR 555.12) to ensure that it is consistent with this clarification.

Notwithstanding this clarification of our authority, we continue to believe, in general, that there will be less need for the agency to establish different standards for multistage vehicles built on chassis-cabs, because their manufacturers should be able to take advantage of pass-through certification and are less likely to face the practicability concerns more readily

associated with other types of multistage vehicles. This practical distinction is discussed elsewhere in this document.¹²

b. Scope of the new temporary exemption provisions:

After carefully considering NTEA's petition, we wish to clarify the scope of the new temporary exemption provisions in subpart B of 49 CFR part 555. First, our discussion of our authority in the final rule, and the distinction we noted between multistage vehicles built on chassis-cabs and multistage vehicles built on other types of incomplete vehicles, related primarily to consideration of future FMVSS or revisions to existing standards. In those instances, the treatment of multistage vehicles would be based on the facts. The discussion was not intended to apply to subpart B, which, as the regulatory text correctly indicates, applies not only to manufacturers of all types of multistage vehicles, but also to alterers of completed vehicles. Therefore, the new procedures in subpart B do not preclude manufacturers of multistage vehicles built on chassis-cabs from petitioning for a temporary exemption from one or more standards.

With respect to the last sentence of section 555.11, we conclude that the sentence is unnecessary and confusing. The agency is making a technical correction to section 555.11 to remove that sentence. We observe that the scope of subpart A is unaffected by the availability of the new procedures in subpart B.

Second, we note that both the subpart A and B temporary exemption procedures are available only to manufacturers who assume legal responsibility for the vehicle and intend to certify the vehicle in accordance with 49 CFR part 567. In most instances, these parties are final-stage manufacturers. However, under 49 CFR 568.7, the incomplete vehicle manufacturer or an intermediate manufacturer can assume legal responsibility for the vehicle as finally manufactured. Therefore, these entities may petition the agency under either subpart A or B if they intend to affix a certification label required by 49 CFR 567.5(f) or (g), and if they meet other criteria specified in section 555.11. As a practical matter, most incomplete vehicle manufacturers and intermediate manufacturers would not qualify for financial hardship relief because of the size of their operations. It is clear that the new procedures in the final rule were not available to incomplete vehicle

manufacturers and intermediate manufacturers who do not certify the vehicle as finally manufactured under 49 CFR 567.5(f) or (g), and instead furnish IVDs and amendments to IVDs to final-stage manufacturers in accordance with 49 CFR 568.4 or 568.5. Nevertheless, we believe it is important to clarify the issue. Accordingly, the agency is making a technical correction to the text of section 555.12.

For the reasons discussed above, it is clear that the new temporary exemption procedures encompass manufacturers of all types of multistage vehicles, including vehicles built on chassis-cabs, but are also limited to manufacturers who assume legal responsibility for the vehicle and intend to certify the vehicle in accordance with 49 CFR part 567.

B. The New Temporary Exemption in Part 555 Is Sufficient

NTEA position: Though it acknowledged that the temporary exemption provisions adopted by the agency in the final rule may help a particular final-stage manufacturer to temporarily address a certification problem, NTEA contended that those provisions do not remedy the continuing inability of many final-stage manufacturers to certify compliance with dynamic test standards. NTEA took issue with language in sections 555.12 and 555.13, as added under the final rule, which expressly limits the newly established temporary exemptions for which alterers and manufacturers of motor vehicles built in two or more stages may apply under subpart B of part 555. Those sections characterize the temporary exemptions as being available from "dynamic crash test" requirements found in the FMVSS. NTEA observed that the agency has previously recognized that dynamic tests that do not involve crashes may also be beyond the financial capability of final-stage manufacturers. Accordingly, NTEA contended that the temporary exemption provisions should apply to all dynamic test standards, and not just those standards for which dynamic crash test requirements are prescribed.

Agency Response

In the final rule, the agency limited subpart B to FMVSS requirements that incorporate dynamic crash tests. As discussed above, NTEA argued that subpart B should apply to all standards that are based on dynamic testing and not just dynamic crash testing.

After carefully considering NTEA's petition, we have decided to expand the scope of subpart B so that manufacturers of multistage vehicles can petition the

¹¹ NHTSA also followed this approach in its August 2005 NPRM on roof crush resistance. See Docket No. NHTSA-2005-22143-5, August 23, 2005.

¹² See section II.C.5.

agency for a temporary exemption from requirements that incorporate various dynamic tests generally, and not exclusively dynamic crash tests. Therefore, we grant this aspect of NTEA's petition, and amend the final rule accordingly.

First, we observe that small volume manufacturers are currently able to petition the agency for temporary exemptions from all Federal motor vehicle safety and bumper standards under subpart A. Therefore our reconsideration of the scope of subpart B relates to the availability of the more streamlined procedures in that subpart rather than to the possibility of a manufacturer obtaining an exemption, in appropriate circumstances, at all.

Second, we note that under section 555.13(a) and (b) of subpart B, in order to petition for an exemption, the petitioner must show why the test requirements of a particular standard 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 must explain the inadequacy of IVD documents furnished by one or more incomplete vehicle manufacturers or by prior intermediate manufacturers pursuant to part 568. The petitioner must also show why generic or cooperative testing is impracticable. In addition, the petitioner must explain its difficulty in procuring goods and services necessary to conduct dynamic tests. We also note that in addition to showing hardship, each petitioner is required to explain under section 555.13(c) why the requested temporary exemption would not unreasonably degrade safety.

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 beyond the requirements for which the agency verifies compliance solely through crash testing. We note that a dynamic test is one that requires application of forces or energy to the vehicle and the FMVSS include a variety of dynamic tests in addition to those involving crash tests. As the negotiated rulemaking committee pointed out, and as we noted in the SNPRM,¹³ in some circumstances, there may be considerable costs associated with dynamic tests other than dynamic

crash tests, and there may be significant damage to vehicles from such tests.

While we have decided not to restrict the exemption provisions in subpart B to requirements incorporating dynamic crash tests, but instead to extend those provisions to requirements incorporating any kind of dynamic test, we note that the ability of multistage vehicle manufacturers to make the requisite showing of hardship will be related to the testing costs (or the cost of other means of obtaining an appropriate basis for certification) associated with each specific standard and requirement for which an exemption is sought, as well as the availability of alternatives (such as using a different incomplete vehicle) and potential safety consequences. Therefore, in view of the range of possible circumstances, we do not believe it is necessary for us to attempt, in this document, to specify the dynamic tests that may have high costs, as opposed to those for which the costs should be relatively low.

While we have expected the number of instances in which an exemption will be needed from requirements incorporating dynamic crash tests to be small, we expect the number to be even smaller for requirements incorporating other types of dynamic tests. This expectation reflects the nature of the tests at issue, the alternatives available to final-stage manufacturers, the information contained in incomplete vehicle documents, and the other relief that multistage manufacturers were provided in the February 2005 final rule.

In consideration of these issues, the agency is amending the scope of subpart B to include requirements that are based on dynamic testing generally, rather than those based on dynamic crash tests alone. We have revised the text of section 555.12 accordingly.

1. Clarification of What Information Petitioners Must Provide To Show Good Faith Efforts To Comply With Applicable Regulations

As indicated in the previous section, petitioners under subpart B are required to provide "a complete description of each manufacturer's good faith efforts to comply with the standards." See section 555.13(b).¹⁴ The ability of the manufacturers of vehicles built in two or more stages to take advantage of "pass-through" certification may be dependent on selection of an incomplete vehicle that is appropriate

for the intended application. That is, the availability of a sufficient "pass-through" to permit certification of compliance depends not only on information provided by incomplete vehicle manufacturers, but also on the intermediate and final-stage manufacturers using the appropriate incomplete vehicle for the intended application.

One aspect of the final-stage manufacturer's good faith efforts to comply with an FMVSS is determining whether an incomplete vehicle is available that will enable it to utilize "pass-through certification." We note that it is unlikely that the agency would find it in the public interest to grant petitions filed by a final-stage manufacturer that made no good-faith effort to determine whether an appropriate incomplete vehicle, which would allow effective pass-through certification, was available. The granting of a petition would exempt the vehicle from one or more safety standards and, as a general matter, we believe this would not be justified if there were an alternative that would comply with safety standards.

While the issue of appropriate selection of the incomplete vehicle is relevant to compliance with dynamic crash test standards, we believe the issue is likely to be more significant as we extend the scope of subpart B to include requirements including dynamic tests more generally. For example, in order to take advantage of pass-through certification for a braking standard, the final stage manufacturer needs to assess whether an incomplete vehicle is available that will enable it to stay within the envelopes for weight and center of gravity for the intended application. This may involve assessing incomplete vehicles of varying size, gross vehicle weight rating or "GVWR,"¹⁵ and number of axles that are available from different manufacturers.

While we believe that the current requirement that petitioners provide a complete description of each manufacturer's good faith efforts to comply with the standards may be read to encompass this in relevant situations, we believe it is appropriate to make it clear in the regulatory text. This is particularly important since the issue is likely to become more significant with the expanded scope of subpart B.

Accordingly, we are including in section 555.13 a provision requiring the petitioners to furnish the agency with information regarding the availability of

¹⁴ 49 U.S.C. 30113(b)(3)(B)(i) authorizes NHTSA to exempt only those manufacturers that have tried to comply with the standard in good faith.

¹⁵ GVWR means the value specified by the manufacturer as the loaded weight of a single vehicle. 49 CFR 571.3.

¹³ See 69 FR 36042.

alternative incomplete vehicles (including ones of different size, GVWR and number of axles), from the same and other incomplete vehicle manufacturers, that could allow the petitioner to rely on IVDs when certifying the completed vehicle, instead of petitioning under subpart B. This information will also help the agency make its decisions in the timeframe specified in subpart B.

C. The Current Multistage Vehicle Certification Scheme Is Workable

NTEA position: NTEA asserted that even though NHTSA recognized in the SNPRM that incomplete vehicle manufacturers must provide vehicle upfitters (as final-stage manufacturers are sometimes referred to in the trade) with reasonable conformity envelopes (referencing 69 FR 36044), the agency did not adopt as part of the final rule a reasonableness standard for conformity statements in an IVD. NTEA further observed that the agency relied on a market-based argument in concluding that “incomplete vehicle manufacturers have business reasons to provide workable IVDs” and that “[t]here is no market for incomplete vehicles that cannot be manufactured into completed vehicles that will meet the applicable FMVSS” (citing final rule at 70 FR 7425). NTEA contends that the market forces theory articulated by the agency is simply wrong. According to NTEA, incomplete vehicle manufacturers at present provide no meaningful compliance envelope, even on chassis-cabs, for numerous dynamic test standards.

NTEA also contends that NHTSA’s market-forces argument is premised on the erroneous assumption that the final-stage manufacturer is in a position to choose the brand chassis on which it will complete a vehicle. NTEA observed that in the vast majority of cases, the customer goes to a truck dealer, not a final-stage manufacturer, to purchase a multistage vehicle. The dealer then engages the final-stage manufacturer to install the body and related equipment per the customer’s specifications. Given this scenario, NTEA asserts that the final-stage manufacturer is not in a position to inform the dealer that he would prefer to work on a different chassis. As a consequence, NTEA concludes that the market does not exert any pressure on the incomplete vehicle manufacturer to provide reasonable compliance envelopes.

NTEA also surmised that the incomplete vehicle manufacturer will err on the side of not taking on liability, and does so by making its envelope as narrow as possible or nonexistent.

Reasoning that meaningful pass-through certification would require the incomplete vehicle manufacturer to expend resources on testing to determine the proper parameters of such certification, NTEA concludes that the elimination of meaningful pass-through certification therefore saves the incomplete vehicle manufacturer time and money.

NTEA also took issue with the agency’s observation in the preamble of the final rule that because of its subjectivity, the reasonableness standard recommended by NTEA for conformity statements in the IVD is not susceptible to effective enforcement (referencing 70 FR 7425). NTEA asserted that this is inconsistent with the fact that the agency uses a good faith standard for determining the application of civil penalties. NTEA faults the agency for failing to explain why it cannot fashion a reasonableness standard for IVDs, but can in a closely-related context.

Agency response: For the reasons set forth below, we deny this aspect of NTEA’s petition.

1. Overview of the Certification of Multistage Vehicles

The certification process is governed by 49 CFR part 567.¹⁶ 49 CFR 567.5¹⁷ sets forth the certification requirements for manufacturers of vehicles manufactured in two or more stages. With limited exceptions,¹⁸ each manufacturer of an incomplete vehicle and each intermediate manufacturer¹⁹ assumes legal responsibility for all certification-related duties under the Vehicle Safety Act²⁰ with respect to:

(i) Components and systems it installs or supplies for installation on the incomplete vehicle, unless changed by a subsequent manufacturer;

(ii) The vehicle as further manufactured or completed by an intermediate or final-stage manufacturer, to the extent that the vehicle is completed in accordance with the IVD [incomplete vehicle document]; and

(iii) The accuracy of the information contained in the IVD.²¹

Final-stage manufacturers have complementary duties. Pursuant to 49

CFR 567.5(d), final-stage manufacturers assume

legal responsibility for all certification-related duties and liabilities under the Vehicle Safety Act, except to the extent that the incomplete vehicle manufacturer or an intermediate manufacturer has provided equipment subject to a safety standard or 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 Federal motor vehicle safety standards fully addressed therein.²²

Final-stage manufacturers also have the duty to affix a certification label to each vehicle in a manner that does not obscure labels affixed by previous stage manufacturers and that, among other things, contains certification statements.²³

The final-stage manufacturer may make one of the following alternative certification statements: (1) The vehicle conforms to all applicable federal motor vehicle safety standards (FMVSS); (2) the vehicle was completed in accordance with the prior manufacturers’ IVD where applicable and conforms to all applicable FMVSS; or (3) the vehicle was completed in accordance with the prior manufacturers’ IVD where applicable except for certain listed exceptions by FMVSS and the vehicle conforms to all applicable FMVSS.²⁴

As reflected above, a number of certification provisions refer to incomplete vehicle documents or IVDs. The incomplete vehicle manufacturer furnishes an IVD for incomplete vehicles pursuant to 49 CFR 568.4. In the IVD, among other things, for each applicable FMVSS, the incomplete vehicle manufacturer makes one of three affirmative statements: (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 (*e.g.*, the vehicle when completed will meet the brake standard if it does not exceed gross axle weight ratings, the center of gravity at a specific vehicle weight rating is not above a certain height and no alterations are made to any brake system component on the incomplete vehicle.); or (3) a Type 3 statement that

¹⁶ See also 49 U.S.C. 30115.

¹⁷ In this part of the preamble, except as otherwise stated, the references to the regulations are to the regulations published on February 14, 2005 that will take effect September 1, 2006. See 70 FR 7414, 7428 (Feb. 14, 2005).

¹⁸ See 70 FR at 7432–33, 49 CFR 567.5 (b) and (c).

¹⁹ In the remainder of the preamble, NHTSA will not discuss intermediate manufacturers separately.

²⁰ The Vehicle Safety Act is officially 49 U.S.C. Chapter 301.

²¹ 49 CFR 567.5(b)(1).

²² 49 CFR 567.5(d)(1).

²³ 49 CFR 567.5(d)(2).

²⁴ 49 CFR 567.5(d)(2)(v)(A).

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 (e.g., when components and systems must be added by the final-stage manufacturer and compliance cannot be decided at the time the incomplete vehicle leaves the incomplete vehicle manufacturer).

When the IVD makes a Type 1 or Type 2 statement, there is "pass-through" certification unless obviated by a subsequent manufacturer. The final-stage manufacturer relies on the IVD to certify the vehicle to a particular standard.

2. Practical Aspects of the Multistage Vehicle Process

An incomplete vehicle, as long defined by NHTSA,²⁵ is not a vehicle. It is either

(1) 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; or (2) An incomplete trailer.²⁶

In the multistage vehicle process, the incomplete vehicle manufacturer builds a chassis that has sufficient attributes to meet the definition of incomplete vehicle. After the incomplete vehicle manufacturer completes its work, it ships the chassis. The chassis may range from being relatively close to completion (such as a chassis-cab²⁷) to being relatively far from completion (such as a stripped chassis²⁸). The

²⁵ Prior to the 2005 amendments, incomplete vehicle was similarly defined in 49 CFR 568.3 as: "* * * an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle."

²⁶ 49 CFR 567.3 (2006).

²⁷ 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 function. See 49 CFR 567.3 (2005). For illustration purposes, an example is a pickup truck without a standard pickup truck bed. These may be built into various trucks including a tradesman's utility service truck, a tow truck, a dump truck, a box truck or a specialized work truck.

²⁸ A stripped chassis may be viewed as meeting the definition of an incomplete vehicle without more. As shipped by the incomplete vehicle manufacturer, it would have steering control and braking systems (to meet the definition of incomplete vehicle). It ordinarily would not have

chassis may end up at a dealer, in a pool of incomplete vehicles that are readily available for completion, or at a final-stage manufacturer. Following the addition of a truck body or equipment, the chassis could be used for a flatbed truck, dump truck, tow truck (wrecker), box truck (dry freight van), service truck, utility truck or other specialized application.²⁹ Regardless of the state of completion of the chassis or where it goes after it leaves the incomplete vehicle manufacturer's plant, there is a fundamental fact: once the incomplete vehicle is out of the incomplete vehicle manufacturer's hands, the incomplete vehicle manufacturer does not have control over what is done with or added to the incomplete vehicle.

There can be problems with the vehicle once completed that may not be attributed to the incomplete vehicle manufacturer but that may fairly be attributed to the final-stage manufacturer. For example, assume that an incomplete vehicle manufacturer ships a chassis with brakes that under the IVD would meet the applicable brake systems FMVSS if the chassis were used for light duty applications but not for heavy duty applications. The chassis is then out of the control of the incomplete vehicle manufacturer.

Assume that the final-stage manufacturer adds a dump truck body so that the completed truck has a GVWR greater than that specified in the IVD. In a colloquial sense, the truck would be overloaded.³⁰ Alternatively, assume that the final-stage manufacturer mounts a top-heavy gasoline tank on the chassis. In such cases, the vehicle would not meet the FMVSS for brake systems, and ordinarily would be outside the IVD compliance envelope. As another example, the final-stage manufacturer may make modifications to the interior compartment of a chassis-cab, which could take the incomplete vehicle out of compliance with various FMVSS developed to protect occupants in crashes. Final-stage manufacturers could also add parts and equipment that make the vehicle noncompliant.

In recognition of the fact that incomplete vehicle manufacturers do

the windshield, roof, A-pillar (the pillar to which the windshield attaches), B pillar (the pillar behind the front doors) or body components. Ford's E-series incomplete vehicle manual refers to this as a basic chassis. These may not be particularly evident on the road and may underlie, for illustration purposes, school buses or large recreation vehicles.

²⁹ See NTEA Petition at 4.

³⁰ The term overloaded has a particular meaning in the context of some FMVSS, not as an issue here. In this preamble, NHTSA is using "overloaded" in a colloquial way, meaning too heavy or exceeding GVWR specifications.

not control work performed by final-stage manufacturers and can fairly anticipate only some things, but not everything, done by final-stage manufacturers, the regulatory system of "pass-through" certification is reasonable. The IVD, prepared by the incomplete vehicle manufacturer, provides the basis for the final-stage manufacturer's certification with enumerated FMVSS, on various conditions, including, for example, that the final-stage manufacturer does not exceed the GVWR of the chassis or introduce modifications to the incomplete vehicle that interfere with compliance. Usually, the IVD is a general document that accompanies the incomplete vehicle. IVDs are typically not limited to one application (one body or type of equipment), but contain limits and conditions in light of the nature and capacity of the chassis and potential problems resulting from completion of an incomplete vehicle. Final-stage manufacturers are informed, by the IVD, of components and systems that should not be altered, and, by following those instructions and other information from the incomplete vehicle manufacturer, they are able to certify.

The system of pass-through certification has existed for more than 25 years, and in that time many multistage vehicles have been built and certified by final-stage manufacturers. This indicates that the system is workable and operates as intended.

3. NTEA's Position

NTEA takes issue with the IVD and pass-through certification process. Assuming that FMVSS apply,³¹ NTEA maintains as a sweeping proposition that the IVDs currently provided are unworkable and insufficient.

NHTSA does not accept NTEA's position. The certification provisions are important. Under them, the final-stage manufacturer historically has provided, and under the regulations published in February of 2005 must provide, its certification that the vehicle complies with applicable Federal motor vehicle safety standards. For almost 40 years, these standards have been one of the most critical foundations for motor vehicle safety. Under 49 U.S.C. 30115, the manufacturer may not issue the certificate if, in exercising reasonable care, it has reason to know the

³¹ In NTEA's view, some FMVSS should not apply to multistage vehicles as a vehicle type, and even if they are applicable under the regulations establishing FMVSS (49 CFR part 571), there should be exemptions from FMVSS based on petitions from individual final-stage manufacturers or groups of such manufacturers. 49 CFR part 555.

certificate is false or misleading in a material respect.

NTEA's petition is conclusory. Overall, NTEA seeks to remove the certification responsibility from final-stage manufacturers and impose much of that responsibility on incomplete vehicle manufacturers. NTEA's petition ignores the fact that incomplete vehicle manufacturers do not control what final-stage manufacturers do with the incomplete vehicles. NTEA also complains generally without constructively delineating the contents of an alternative IVD that would be fair to incomplete vehicle manufacturers and would not require them to be involved in the design and testing of completed vehicle. Finally, NTEA fails to demonstrate that NHTSA has the authority to unilaterally rewrite the IVDs and impose them on incomplete vehicle manufacturers, and does not recognize the fact that the certification process is working and multistage vehicles are being built and certified.

4. The Availability of Multistage Vehicles Belies NTEA's Position

Overall, NTEA offers the view that it is not possible for a final-stage manufacturer to comply with an agency's multistage certification regulations and even if it were possible, such compliance would be economically ruinous. NTEA's position is inconsistent with the current state of the multistage vehicle industry. There are many multistage vehicles on the road that have been certified and the final-stage manufacturers are still in business. For example, most school buses are multistage vehicles. They are certified by final-stage manufacturers to a number of federal standards. The major final-stage manufacturers such as Winnebago, Thomas Built and Blue Bird are able to certify vehicles and are in business.³² There are also large numbers of other multistage vehicles, such as tanker trucks, work trucks, box trucks, flatbed and stake trucks, tow trucks and dump trucks on the road.

NTEA's position does not correspond to statements by final-stage manufacturers. In the trade, final-stage manufacturers are known as upfitters or as body builders. Many of these companies readily can be found on the web with searches for terms such as upfitter or as body builder or by type of completed truck such as flat bed truck, service truck, school bus or utility truck. They can also be found in the yellow pages under truck bodies. For example,

in the Washington, DC area in the Yellow pages there are companies such as Wilbar Truck Equipment Inc. and Fallsway Spring and Equipment Co. They have web sites that refer to their products including <http://www.wilbar.com/> and <http://www.fallswayspring.com/>. The common theme on these web sites is a "can do" approach. Their clear message is that they can make a variety of trucks. NHTSA has not found any that state the reservations, expressed by NTEA, that final-stage manufacturers cannot do so.

In addition, NTEA's position sounds a chord not expressed by organizations within NTEA's umbrella organization. NTEA has numerous affiliate divisions that operate "under the NTEA umbrella" and "represent specific product segments within the truck body and equipment industry."³³ These affiliate groups include the Ambulance Manufacturers Division, which promulgates standards with the General Services Administration to which all ambulances must conform,³⁴ and two bus divisions, the Manufacturers Council of Small School Buses and the Mid-Size Bus Manufacturers Association.³⁵ The members of these affiliate divisions have been building and certifying a number of models of multistage vehicles in their niche markets under the existing certification structure.

NTEA's petition does not mention a single final-stage manufacturer that has been unable to certify a vehicle under the existing framework. When NTEA's failure to include a single concrete example is viewed in light of the obvious numbers of multistage vehicles,³⁶ NTEA's position can not be accepted.

Certification serves an important safety function in the multistage vehicle business. Many multistage vehicles carry people and important cargo—from schoolchildren 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. Again, final-stage manufacturers regularly certify these and other types of multistage vehicles.

³³ <http://www.ntea.com/mr/divisions.asp>.

³⁴ <http://www.ntea.com/mr/divisions/amd/intro.asp>.

³⁵ <http://www.ntea.com/mr/divisions.asp>.

³⁶ In its 2004 Annual Report, NTEA characterized truck chassis as \$64.7 billion worth of a \$98.3 billion commercial truck and transportation equipment industry.

5. NTEA's Argument Is too Broad and Ignores Gradations in Types of Multistage Vehicles

NTEA's petition paints a broad picture of final-stage manufacturers that are subject to many FMVSS and that must engage in extensive engineering of the vehicle from the ground up to meet the FMVSS. There are at least two problems with this sweeping view. First, many multistage vehicles are heavy vehicles with a gross vehicle weight rating (GVWR) of over 10,000 lbs (4536 kilograms) and are not subject to a number of FMVSS.³⁷ For illustration purposes, as a rough gauge, most trucks with a GVWR of more than 10,000 lbs have at least four rear wheels (two on each side). Trucks with one rear wheel on each side ordinarily have a GVWR equal to or less than 10,000 lbs. As a general rule of thumb, medium duty and heavy duty trucks have a GVWR of over 10,000 lbs.

To certify a motor vehicle with a GVWR of more than 10,000 lbs requires consideration of fewer FMVSS than for a vehicle with a GVWR of 10,000 lbs or less. Among the FMVSS that do not apply to multistage vehicles, such as work-type and recreation vehicles with a GVWR greater than 10,000 lbs are the following:

FMVSS	Title
114	Theft protection.
118	Power-operated window, partition, and roof panel systems.
138	Tire pressure monitoring systems.
201	Occupant protection in interior impact.
202	Head restraints.
203	Impact protection for the driver from the steering control system.
204	Steering control rearward displacement.
212	Windshield retention.
214 ³⁸ ...	Side impact protection.
216 ³⁹ ...	Roof crush resistance
219	Windshield zone intrusion.
225 ⁴⁰ ...	Child restraint anchorage systems.
301 ⁴¹ ...	Fuel system integrity.
303	Fuel system integrity of compressed natural gas vehicles.
305	Electric-powered vehicles: electrolyte spillage and electrical shock protection.

Additionally, for some FMVSS, only some requirements apply. For example, pursuant to FMVSS 208 Occupant Crash Protection, trucks with a GVWR of 8,500 lbs or less or an unloaded vehicle weight of over 5,500 lbs are subject to seat belt and labeling requirements but

³⁷ 70 FR at 7420–21.

³⁸ Dynamic crash test requirements apply to MPVs, trucks and buses with a GVWR of 6,000 lbs and less.

³² They do face economic pressures, such as those associated with competitive bidding in the procurement of the buses.

are not required to be equipped with an inflatable restraint system (air bag) at each front outboard seating position.⁴² Also, crash tests are not required for heavier vehicles. NTEA does not address the limited applicability of the FMVSS.

Second, many of the lighter multistage vehicles, with a GVWR of 10,000 lbs or less, are often built on chassis-cabs. 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 function.⁴³ Multistage vehicles built on chassis-cabs resemble pickup trucks, except that behind the cab there is another structure instead of a pickup box.

NTEA recognizes that chassis-cabs are the most “evolved” of the incomplete vehicle types (followed, in descending order, by cutaways, chassis cowl and stripped chassis). Likewise, it is undoubtedly true that the conformity statements provided by incomplete vehicle manufacturers give final-stage manufacturers more pass-through opportunities⁴⁴ on chassis-cabs than on other types of incomplete vehicles.⁴⁵

Nevertheless, NTEA does not temper its sweeping assertions or make any allowance for the multistage vehicles that are built on chassis-cabs and thus have more complete IVDs with (to use NTEA’s words) more pass-through opportunities. It is easier for final-stage vehicle manufacturers to certify these vehicles in view of the scope of the IVDs.

6. The Existing IVDs Are Workable

One of the principal pillars on which the NTEA petition rests is the contention that incomplete vehicle manufacturers presently provide subsequent stage manufacturers with no meaningful compliance envelope, even on chassis-cabs, for numerous dynamic test standards. As previously noted, NTEA surmised that incomplete vehicle manufacturers have an incentive to make the compliance envelope as narrow as possible or nonexistent to

avoid taking on liability and the need to expend resources on testing to determine the proper parameters of such certification. NTEA appended a GM CK Chassis-Cab IVD to its petition, and cited the IVD in many instances as an example of purported deficiencies in IVDs generally. To assess the validity of these contentions, the agency carefully examined the certification statements in the GM IVD that NTEA identified as inadequate. Our findings are set forth below, individually addressing each standard that was the subject of this inquiry.⁴⁶

a. FMVSS 105 Hydraulic and Electric Brake Systems and FMVSS 135 Light Vehicle Brake Systems

NTEA contends that the GM IVD, as it pertains to FMVSS 105 Hydraulic and Electric Brake Systems and 135 Light Vehicle Brake Systems, provides no meaningful pass-through certification opportunities because the compliance envelopes are non-existent. FMVSS 105 and 135 specify performance requirements for hydraulic and electric brake systems. FMVSS 135 applies to vehicles with a GVWR of 3,500 kg/7,716 lbs and less; FMVSS 105 applies to vehicles with a GVWR greater than 3,500kg/7,716 lbs.⁴⁷ These standards include stopping distance requirements, as well as requirements for parking brakes and warning indicators.

Incomplete vehicles have functioning braking systems.⁴⁸ The GM IVD provides pass-through certification for both FMVSS 105 and 135 if the final-stage manufacturer adheres to certain requirements. Specifically, the GM IVD states that: (1) Alterations by the final-stage manufacturer may not affect the function, properties, location or vital special clearances of the brake system on the chassis installed by GM; (2) the completed vehicle must not exceed the GVWR and gross axle weight ratings (GAWR)⁴⁹ front and rear specified by

GM for the incomplete vehicle; and (3) the center of gravity of the final vehicle must fall within the bounds of the center of gravity chart in the IVD.⁵⁰

In addition to the IVD, GM’s Web site <http://www.gmupfitter.com>, contains publications including “Body Builder’s Manuals” and “Best Practices Manuals.” The Body Builder’s Manual for each model (e.g., CK full-size pickups) provides information and instructions about the incomplete vehicle that can be used by final-stage manufacturers to design the second body unit. As specified in the manual’s introduction, GM’s Best Practices Manuals are intended for use by RV, truck, and commercial upfitters in converting and completing incomplete vehicles. In general, the information in the Best Practices Manual describes how to install the body onto the incomplete vehicle, including clearances between the chassis and the body that must be assured.

The GM IVD is workable and final-stage manufacturers can construct a vehicle that adheres to the instructions in the IVD and therefore carries pass-through certification for FMVSS 105 and 135. To begin, GM’s requirement that the final-stage manufacturer not alter the incomplete vehicle in such a way that it changes the function, properties, location or vital spatial clearances of the brake system components⁵¹ is workable. It is common sense that GM would provide pass-through certification with limitations on the retention of the integrity of the brake system and that GM would not provide pass-through certification if a final-stage manufacturer made alterations to the brake system. Beyond not changing the brake system, a final-stage manufacturer also must not add equipment that impinges on vital spatial clearances of the system. In this regard, GM has provided guidance to upfitters. GM’s Best Practices Manual states: “provide at least 2 inches clearance between body- or chassis-mounted components and brake hoses.” GM’s Body Builder’s Manual reinforces the clearance check for brake hoses to include brake hose travel with the vehicle’s suspension. The Best Practices Manual includes requirements for a 0.7 inch minimum clearance between a brake line and moving components, and 0.5 inch minimum clearance between a brake line and vibrating components. These instructions by GM provide a final-stage manufacturer with ample information to

³⁹ Quasi-static test applies to MPVs, trucks, and buses other than school buses with a GVWR of 6,000 lbs and less.

⁴⁰ Requirements do not apply to MPVs and trucks with a GVWR greater than 8,500 lbs.

⁴¹ Dynamic crash test applies to school buses regardless of GVWR; same for FMVSS 303.

⁴² See 49 CFR 571.208 S 4.2.6.2.

⁴³ 49 CFR 567.3 (2005).

⁴⁴ NTEA’s footnote stated in pertinent part “Under existing regulations, there is no pass-through certification available for incomplete vehicles other than chassis-cabs.”

⁴⁵ Petition at 5.

⁴⁶ Our discussion of the FMVSS in this document is not intended to be comprehensive. The reader is referred to the standard itself and associated Federal Register documents for a full description of each standard discussed.

⁴⁷ Under NHTSA’s regulations at 49 CFR 567.4(g)(3), the manufacturer must specify on a vehicle’s certification label the vehicle’s “Gross Vehicle Weight Rating” or “GVWR.” The regulation provides that the value specified “shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle’s designated seating capacity [except that] for school buses the minimum occupant weight allowance shall be 120 pounds.” The requirement for stating the GVWR is intended to inform the operator of the extent to which the vehicle can be safely loaded.

⁴⁸ See 49 CFR 567.3 (definition of incomplete vehicle) (2006).

⁴⁹ GAWR means the value specified by the vehicle manufacturer as the load-carrying capacity of a single axle system.

⁵⁰ GM IVD, attached to Petition, at 8–12, 16–19.

⁵¹ GM IVD at 8.

work within the limits of the pass-through certification.

Second, GM's IVD contains a restriction on the completed vehicle's GVWR and GAWRs. The principle that brake systems are designed for limited weight ranges is basic and widely accepted. The GM IVD states that the GVWR and front and rear GAWRs identified on the incomplete vehicle label cannot be exceeded. If the final-stage manufacturer assigns a higher GVWR and changes or increases the GAWRs, or if the completed vehicle, when loaded according to the manufacturer's recommendations, exceeds its GVWR or a GAWR, the vehicle may not meet stopping distance requirements. Viewed in light of the IVD, the vehicle will be overloaded (in the colloquial sense of that term) and GM should not be held responsible.

The final-stage manufacturer can determine whether the GVWR or GAWRs assigned by the incomplete vehicle manufacturer have been exceeded either by weighing the vehicle when fully manufactured or by using engineering analysis and aggregating the weights of the components it adds to the vehicle, which often may be obtained from equipment suppliers, coupled with estimates of further loadings by the user. A key concern for the final-stage manufacturer in complying with this portion of the IVD is to use an appropriate incomplete vehicle (chassis) for the multistage vehicle it is producing, as is addressed more fully in other sections of this preamble. The final-stage manufacturer cannot fairly use a chassis designed for lighter duty than that intended for the ultimate application and then assert that the incomplete vehicle manufacturer is responsible for the completed vehicle's shortcomings. So long as the final-stage manufacturer uses an appropriate chassis, it will be able to comply with this aspect of the IVD.⁵²

Finally, the center of gravity of the vehicle must fall within the areas set forth in the GM IVD. The IVD contains a formula to calculate the approximate center of gravity location in a vehicle.⁵³ The IVD also contains a chart that lists the different vehicle types and the coordinates of allowable centers of gravity for the completed vehicle. There is no question that center of gravity is a fundamental concept, and that the

final-stage manufacturer could complete a vehicle in a way that has a problematic center of gravity. There are ample resources beyond the IVD itself to aid final-stage manufacturers in making the correct center of gravity calculations. In fact, NTEA's own Web site includes products for calculating the center of gravity, including off-the-shelf computer programs to perform the calculations.⁵⁴ NTEA also conducts workshops on performing the center of gravity calculations and selecting the right chassis.⁵⁵ NTEA has not shown that the centers of gravity for GM's vehicles are unreasonable.

In light of the foregoing, the GM IVD is reasonable with regard to FMVSS 105 and 135. It would be manifestly unreasonable to expect an incomplete vehicle manufacturer to provide a "blank check" pass-through certification on FMVSS 105 or 135 without providing limitations on the final-stage manufacturer to protect the integrity of the brake system and to ensure that the vehicles are not overloaded in the colloquial sense and have an appropriate center of gravity height. NTEA did not provide any information to support a contrary conclusion.

b. FMVSS 204 Impact Protection for the Driver From the Steering Control System

NTEA also complains about the pass-through certification in the GM IVD pertaining to FMVSS 204 Impact Protection for the Driver from the Steering Control System. FMVSS 204 regulates the rearward displacement of the steering control to reduce the likelihood of chest, neck, or head injury to the driver in the event of a front impact. The standard has limited application in the multistage vehicle context because it does not apply to vehicles with an unloaded vehicle weight greater than 2495 kg (5,500 lbs) or a GVWR of more than 4536 kg (10,000 lbs) and most multistage vehicles exceed one or both of these weights. FMVSS 204 establishes a maximum displacement of the steering column and shaft in a 48 km/hr (30 mph) crash test into a fixed concrete barrier.

The GM IVD provides pass-through certification for FMVSS 204 for vehicles with a GVWR of 10,000 lbs or less and an unloaded vehicle weight of 5,500 lbs or less, which corresponds to the applicable weights in FMVSS 204, provided that the maximum unloaded

vehicle weight is not exceeded and no alterations are made to affect the properties, location, or vital spatial clearances of the steering control system and the frontal systems such as the frame, hood and powertrain, which often bear the brunt of a frontal crash. The IVD provides no pass-through certification for incomplete vehicles purchased with any bumper delete option.

The weight restrictions in the IVD are logical and consistent with the realities of a crash. In a crash, the energy of the moving vehicle(s) is dissipated and the metal in the vehicle is displaced and crumples. The energy that is dissipated is a function of the mass of the vehicle and its speed. The incomplete vehicle manufacturer can design a vehicle that will withstand a frontal crash of a certain intensity such that the steering wheel is not displaced beyond allowances in FMVSS 204. If the vehicle, as completed and loaded, exceeds the maximum weight for which the incomplete vehicle manufacturer provided pass-through certification (usually based on a crash test the incomplete vehicle manufacturer performed), it would not be reasonable to expect the certification to apply because in a crash the excess vehicle weight could cause greater front-end displacement than contemplated in the design of the incomplete vehicle and the steering control mechanisms would therefore be displaced further into the passenger compartment. The final-stage manufacturer can readily work within weight requirements by taking care to purchase the appropriate incomplete vehicle chassis for the use to which the vehicle will be put.

Similarly, the restrictions in the GM IVD on alterations that interfere with the integrity of the frontal vehicle systems and steering system are logical and consistent with the realities of a crash. In a crash, the energy of the vehicle is, in lay terms, absorbed by various vehicle systems, including the bumper, front sheet metal, hood and fenders, and drive train. Because the incomplete vehicle manufacturer designs vehicle parts to be displaced and crumple in order to absorb the energy of the crash, actions by the final-stage manufacturer that modify the incomplete vehicle manufacturers' frontal design could reduce vehicle's crashworthiness such that the steering wheel is displaced beyond allowances in FMVSS 204. The final-stage manufacturer could readily satisfy the conditions of the IVD by not modifying the front or engine compartment of the chassis-cab.

Finally, the absence of pass-through certification on incomplete vehicles

⁵² NTEA's own documents recognize this. An NTEA handout from the 2006 Design Show states: "Before ordering a chassis, make sure it can be upfitted as intended." See Johnson, Robert, *Design and Specifications for Vocational Vehicles; a Functional Approach*, in NHTSA Docket No. NHTSA-99-5673.

⁵³ GM IVD at 9.

⁵⁴ See, e.g., http://www.ntea.com/tr/techtalk_detail.asp?DOC_ID=101120; http://www.ntea.com/im/prod_detail.asp?prod_id=1.

⁵⁵ http://www.trailer-bodybuilders.com/mag/trucks_back_basicshow_match/index.html.

purchased with the "bumper delete" option is logical. If a final-stage manufacturer purchases a chassis without a front bumper, it is reasonable to expect that there will not be a pass-through certification for FMVSS 204 because the bumper is an integral component of the front end. In all likelihood, GM based the IVD's pass-through certification on a vehicle with a bumper. Moreover, to satisfy State inspection requirements for bumpers, it is likely that a bumper of some form will be added, which further alters the vehicle's crash performance. GM cannot be expected to provide any certification of front impact crash test standards in such a circumstance because it does not know what, if any, bumper the final-stage manufacturer will install. If the final-stage manufacturer seeks front impact crash test standard compliance, it can purchase an incomplete vehicle with a front bumper, and obtain the workable pass-through certification described above.

c. FMVSS 201 Occupant Protection in Interior Impact

NTEA contends that the GM IVD does not provide a compliance envelope for compliance with FMVSS 201 Occupant Protection in Interior Impact. In general, FMVSS 201 is concerned with head impacts on interior surfaces of the vehicle. FMVSS 201 includes standards for lower areas, such as the instrument panel, and for upper areas, such as the headliner and upper trim. Testing is done with headforms that impact various interior areas when the vehicle is stationary. Single stage vehicle manufacturers routinely comply with FMVSS 201 by installing padding and energy absorbing trim on instrument panels and other areas of the vehicle. The standard has limited application in the multistage vehicle context because it does not apply, among others, to vehicles with a GVWR of more than 4536 kg (10,000 lbs).

The GM IVD provides vehicles with a GVWR of 10,000 lbs or less with pass-through certification for FMVSS 201, which corresponds to the FMVSS, provided that no alterations are made that affect the function, properties, location or vital spatial clearances of various interior components including the air bag system, armrests, headliner, instrument panel, interior compartment doors, seats, seat backs and head restraints, sun visors and upper interior trim. The IVD provides no pass-through certification for incomplete vehicles purchased with any seat delete option.

The restrictions in the IVD are logical and consistent with Standard 201. In essence, if the final-stage manufacturer

does not modify the interior of the chassis-cab, it obtains pass-through certification. If it modifies the vehicle, such as by removing padding or by adding its own protruding equipment with sharp edges, it does not obtain the benefit of pass-through certification. This is reasonable. Modifications to the interior of the vehicle may affect the intensity of the impact as measured by the regulatory headform.

Second, with regard to the seat delete option, under FMVSS 201, tests are performed from various reference points. One is the seating reference point.⁵⁶ In all likelihood, GM based the IVD's pass-through certification on a vehicle with a standard GM seat and reference points associated with its seat. If a seat other than one supplied by GM with the vehicle were used (seat delete option) those reference points would no longer apply, and it would at the very least be questionable whether the certification would be valid. It would not be reasonable to expect GM to provide pass-through certification for vehicles with different seats and associated reference points from which to gauge regulatory compliance.

Final-stage manufacturers can readily work within the GM IVD by purchasing a vehicle with the GM seat and by not modifying the interior of the vehicle.⁵⁷ NTEA did not provide data showing otherwise.

d. FMVSS 212 Windshield Mounting

NTEA levels similar criticisms at the GM IVD's treatment of FMVSS 212

⁵⁶ See 49 CFR 571.201 S8.12.

⁵⁷ It also is readily possible to add some controls. The final-stage manufacturer can use equipment switches from GM that come with GM packages, install controls in an area essentially not regulated by FMVSS 201, or use umbilical cable controls so that mounting controls inside the vehicle is avoided altogether. For example, the GM Body Builder's Manual, Special Applications section for snow plow prep, explains how to install a roof-mounted emergency light and switch. On pages 3, 5, and 7 of the manual, option code TRW Provision for Roof-Mounted Emergency Light is identified and on pages 15–17 the installation is explained. A final-stage manufacturer would be able to install a roof-mounted light using factory-installed components (with the purchase of the optional equipment package from GM), without the need to conduct headform tests for FMVSS 201 compliance. The GM Best Practices and the Special Applications manuals describe how final-stage manufacturers can add driver convenience optional equipment, such as switches and controls for equipment mounted on the vehicle, including snow plows. Further, installation of other controls can be accomplished by mounting the controls beneath the instrument panel, so that they fall outside of the target areas in the regulation. The agency also reviewed control systems available from a snow plow supplier, Myer. That company offers plow controls attached to an umbilical cord so that the driver may operate the plow using a hand-held controller. This type of arrangement eliminates the need to install the controls on or near the instrument panel.

Windshield Mounting. The standard provides for windshield retention in the event of a crash, thus enabling occupants to take advantage of the penetration-resistance and injury-avoidance properties of the windshield materials and preventing ejection of occupants from the vehicle. The standard requires the retention of a minimum portion of the windshield periphery in a front-impact crash test using dummies with the vehicle restraint systems engaged. The portion of the windshield periphery that must be retained varies depending on whether the vehicle is equipped with passive restraints. The standard has limited application in the multistage vehicle context because it does not apply, among others, to vehicles with a GVWR of more than 4536 kg (10,000 lbs).

The GM IVD states that all vehicles with a GVWR of 10,000 lbs or less will conform to FMVSS 212 if (1) no alterations are made that affect the function, properties, location or vital spatial clearances of the components, assemblies or systems of various vehicle parts, including the air bag system, seats, seat belts (including anchorages), frame, hood, powertrain, front impact bar assembly, steering control system, sun visor assemblies, and the windshield system; (2) the completed vehicle does not exceed a specified weight, center of gravity height, and vehicle height (See Table A, p.28); (3) the clearance between the rear-most part of the cab and the added body does not exceed the minimum distance specified (3 inches); (4) the vertical clearance between the cab roof and any added body parts or accessories extending over the roof is not less than 8 inches; and (5) during a frontal barrier impact test, no component installed moves forward from its permanently mounted position.

The GM IVD does not provide pass-through certification if the final-stage manufacturer modifies various parts of the vehicle, including the front of the vehicle, that may be impacted and absorb some of the crash energy, as well as the seat belts and the air bags. As NHTSA has noted in a crashworthiness context, a vehicle is a system comprised of various parts. In a crash, the items of equipment identified in the IVD individually and collectively may prevent the occupants, as represented by crash dummies, from making contact with the windshield or may affect the intensity of their impact. The windshield and associated attachment mechanisms would affect the retention of the windshield periphery. It is understandable that the IVD's pass-through certification for a standard

involving windshields would not apply if the final-stage manufacturer makes alterations that could increase the likelihood that occupants would contact the windshield, increase the force with which they would impact the windshield, or affect the windshield itself. NTEA provided no data or other specific information on why final-stage manufacturers are not able to meet these provisions of the IVD in order to obtain pass-through certification when upfitting a chassis-cab.

GM's IVD also contains weight, center of gravity height, and vehicle height limitations relating to the body or equipment installed. These parameters affect the vehicle's performance in a crash. This in turn affects windshield retention. The IVD also includes clearance requirements (3 inches) between the rear part of the cab and the body added by the final-stage manufacturer, and minimum vertical clearances between the cab roof and any portion of the installed body that extends over the cab roof. These take into account flexing and movement of the body in a crash. These clearance requirements preserve the integrity of the cab, which in turn supports the windshield. Final-stage manufacturers can refer to GM's Best Practices Manual for additional information regarding mounting a service body to a chassis-cab. The manual includes a section entitled "NTEA Recommended Body-Mounting Practices."

In addition, the IVD provides that no component installed by the final-stage manufacturer shall move forward from its permanently mounted position in a 30 mph crash. The rational relationship between this requirement and pass-through certification for FMVSS 212 is plain—the body added by the final-stage manufacturer must be well secured to the chassis. Movement poses a direct threat to the integrity of the cab and, in turn, the windshield, and could lead to separation of more than the allowed portion of the windshield in a crash. There is considerable available information on securing bodies from both GM and NTEA. NTEA's assertion that GM's requirement can only be verified by the performance of a completed vehicle in a dynamic test is incorrect. Engineering judgments may be used. For example, if the final-stage manufacturer mounted a body on the chassis (within weight, center of gravity, and height limitations) and followed the detailed instructions provided in the GM Best Practices Manual for mounting bodies, the final-stage manufacturer could reasonably judge that the body would not move forward.

The GM IVD is workable insofar as it concerns FMVSS 212. NTEA members can take full advantage of its statement if they do not modify the front of the vehicle or the cab, they meet weight, center of gravity height, body height and clearance requirements, and they properly secure the body to the chassis. If based on the final-stage manufacturer's modifications and additions to the chassis, the completed vehicle does not conform to the IVD, there would be an increased likelihood that FMVSS 212 would not be met. That risk properly rests on the final-stage manufacturer.

e. FMVSS 219 Windshield Zone Intrusion

FMVSS 219 Windshield Zone Intrusion sets forth limits for the displacement of motor vehicle components into the windshield area during a crash. In general, the standard requires that in a forward crash up to and including 48 km/hr (30 mph), no part of the vehicle outside the occupant compartment, with the exception of windshield molding or other materials already in contact with the windshield, may penetrate the delineated protective zone by more than 6 mm or penetrate the inner surface of the windshield within that zone at all. The standard has limited application within the multistage vehicle arena because it does not apply to vehicles with a GVWR of more than 4536 kg (10,000 lbs). It also does not apply to certain types of vehicles such as walk-in vans.

The GM IVD states that the vehicle will have pass-through certification for FMVSS 219 provided that (1) no alterations are made to the properties, location or vital spatial clearances of various components, including antennae, body roof, sheet metal and structural components, hood mounts and assemblies, motor compartment structure, and windshield wipers; (2) the vehicle does not exceed a specified unloaded weight; and (3) during a 30 mph test, no component installed by the final-stage manufacturer prevents the hood from folding in its designed folding pattern or penetrates the windshield or protected zone.

The limitation in the IVD on alterations of certain components is logical and based on the reality that in a frontal crash, sheet metal is pushed backward. The IVD basically prohibits final-stage manufacturers from altering the components of the incomplete vehicle that could penetrate or contribute to the penetration of the windshield in a frontal crash, including the hood and windshield wipers. The incomplete vehicle manufacturer

engineers these components to comply with FMVSS 219. It would be unreasonable to expect an incomplete vehicle manufacturer to provide pass-through certification to this standard that allows the final-stage manufacturer to override the incomplete vehicle manufacturer's engineering. The final-stage manufacturer could easily work within these limitations by not altering the completed portion of the vehicle.

As discussed elsewhere in this document, the mass of a completed vehicle affects its performance in a crash. It is not unreasonable for GM to include a weight limitation in the IVD. A final-stage manufacturer can take advantage of pass-through certification with respect to this provision of the IVD by installing equipment such that the weight of the vehicle does not exceed GM's limitations.

The final portion of the limitations in the IVD specifies that components added by the final-stage manufacturer cannot make the hood crumple differently in a crash test or penetrate the protected zone in a crash test. NTEA contends that this necessitates the final-stage manufacturers' conducting a crash test. This is not true. Final-stage manufacturers can make reasonable judgments without performing a crash test. For example, in many instances such as in assembly of a work truck, final-stage manufacturers do not install anything in front of a clearance zone behind the rear wall of the cab.⁵⁸ They could make objective good-faith judgments that if they do not install anything there, the hood will fold properly and will not penetrate the windshield in a frontal crash test. Also, if they wish to install equipment, they could install an equipment package designed for the vehicle, such as a GM snow plow package, in front of the front bumper.

NTEA expresses concerns about provisions in the IVD on the folding pattern of the hood. To comply with FMVSS 219, the hoods on vehicles fold so that in a crash they do not slice through the windshield. NTEA observes that final-stage manufacturers do not have any information regarding the hood folding pattern for GM C/K platform trucks. Ordinarily, they do not need such information because they can use their judgment when building trucks with nothing added forward of the rear wall of the cab. In any event, GM's 2006 Light Duty Manual for C/K Full Size Trucks, Pickups and Chassis-Cabs, found on the GM Upfitter Web

⁵⁸ See GM Best Practices Manual at 21–31 of the GM Best Practices manual for body mounting guidance.

site, contains a drawing of the hood inner panel that shows the folding points of the hood.⁵⁹ These are the points provided in the hood inner panel that result in the hood folding pattern. As is discussed elsewhere, if a final-stage manufacturer has additional questions after consulting the manual, GM provides a telephone number for contacting its engineering staff. These numbers are found throughout all of the final-stage manufacturer body builder manuals available from the GM Upfitters website, and throughout the CK IVD.

The agency also tests vehicles and makes information from those tests available. NHTSA's Safer Car Web site contains photograph of a 4-door Chevrolet Silverado pickup truck (that is in the GM CK vehicle line to which the IVD under discussion belongs)⁶⁰ during a New Car Assessment Program (NCAP) frontal barrier test. This photograph shows that the hood folds upwards from the engine compartment with the fold line at the transverse midpoint of the hood. The photograph also shows that the hood remains attached to the hinges and cowl structure, which are areas that are not to be modified per the IVD for pass-through certification.

The statements in GM's IVD pertaining to FMVSS 219 are workable. It is not reasonable to expect GM to provide pass-through certification for equipment added by the final-stage manufacturer that could go through the windshield or impair the folding pattern of the hood.

f. FMVSS 214 Side Impact Protection

NTEA also contends there is no meaningful pass-through opportunity for FMVSS 214 Side Impact Protection. FMVSS 214 sets forth performance requirements for the protection of vehicle occupants in a side impact crash. In general, FMVSS 214 contains two sets of requirements. In one, vehicles must satisfy crush resistance requirements that apply in the area of the door(s) in a static test. These requirements are applicable to trucks, multipurpose passenger vehicles and buses with a GVWR of 10,000 lbs or less except for walk-in vans. In the other, vehicles must meet dynamic performance requirements when impacted by a moving deformable barrier. Performance is measured on test dummies seated in the vehicle. The dynamic performance requirements

have limited application in the multistage vehicle context. Specifically, they do not apply to multipurpose passenger vehicles, trucks and buses with a GVWR of more than 6,000 lbs or to walk-in vans, motor homes, tow trucks, dump trucks, ambulances, fire trucks, vehicles equipped with wheelchair lifts, and other specified vehicles.

The GM IVD provides pass-through certification to vehicles with a GVWR of 4536 kg (10,000 lbs) or less for requirements based on the static test and 2722 kg (6,000 lbs) or less for dynamic requirements. The IVD states the vehicle will comply with the requirements of FMVSS 214 as long as no alterations are made that affect the properties, environment, or vital spatial clearances of various components and systems in the vehicle, including the air bag system, the door assemblies, hinges, and latches, the door pillars, and the seat and seat belt anchorages and assemblies.

The GM IVD is workable insofar as it concerns FMVSS 214. GM has designed vehicles, including the doors and associated structural members, such as pillars, to withstand various forces applied to the side of the vehicle. Ordinarily, GM would have tested the side of a single stage pickup truck. Vehicles completed from a chassis-cab incomplete vehicle have door support structures and doors that are identical to a single stage pickup truck. Unless the final-stage manufacturer makes alterations to the door-related structures and parts enumerated in the IVD, pass-through certification should be available.

It would be unreasonable to expect GM or any other incomplete vehicle manufacturer to provide pass-through certification with FMVSS 214, which is directly contingent on the engineering and performance of the systems set forth in the IVD, without a limitation on alteration of those systems. Moreover, if a final-stage manufacturer replaces the seats in the incomplete vehicle, the new seats may be in a different location or result in different acceleration measurements on the test dummy. A final-stage manufacturer can readily mount a body onto an incomplete GM vehicle without making modifications that would place it outside the pass-through certification provisions of GM's IVD.

g. FMVSS 208 Occupant Crash Protection

NTEA also complains about the pass-through certification in the GM IVD pertaining to FMVSS 208, Occupant Crash Protection. FMVSS 208 specifies

vehicle crashworthiness requirements in terms of forces and accelerations measured on dummies in test crashes and by specifying equipment requirements for active and passive restraints, such as seat belts and air bags. There are more substantial requirements related to the front seating positions than the rear seating positions of covered vehicles. The standard has limited application in the multistage vehicle context because various requirements such as those involving air bags do not apply to heavier vehicles.⁶¹

The GM IVD provides pass-through certification for FMVSS 208 for vehicles with a GVWR of 3,588 kg (8,500 lbs) or less provided that the maximum unloaded vehicle weight specified by GM is not exceeded and no alterations are made that affect the properties, location, or vital spatial clearances of various components, including the number, location and configuration of designated seating positions and seat belt assemblies, the instrument panel, steering wheel, air bag modules and coverings, the Sensor Diagnostic Module (which is involved in triggering air bag deployment) and associated wiring, air bag labels, the vehicle frame and structural members, sheet metal, and the engine compartment, that would result in a difference in the modified vehicle's deceleration if it were subject to barrier impact tests under FMVSS 208.

FMVSS 208 is a complicated crashworthiness standard, and a summary of the standard is beyond the scope of this notice. As NHTSA has pointed out in the FMVSS 208 rulemaking context, a vehicle is a system. That system provides protection with respect to two crashes, the crash of the vehicle into another vehicle or object, and the ensuing crash of the occupants or their surrogate test dummies into one or more parts of the vehicle. In the course of the crash, various parts of the vehicle and its restraint systems (seat belts and air bags) mitigate forces and accelerations on the occupants. In crash tests, dummies are placed in seated positions, the vehicle impacts a barrier and decelerates from a test speed (e.g., 30 mph) to largely a stop in considerably less than a second, and the test dummies move forward following the impact of the vehicle with the barrier. The dummies are used to measure the impacts. The person

⁵⁹ This is located about midway along the longitudinal centerline of the hood. See GM Light Duty Manual at 86.

⁶⁰ See <http://www.safercar.gov/NCAP/Cars/3451.html>

⁶¹ For FMVSS 208, the requirements related to dummy performance in a frontal impact do not apply to vehicles with a GVWR greater than 8,500 lbs or an unloaded vehicle weight greater than 5,500 lbs. In an informal review, NGTSA staff noted that the majority of the multistage vehicles observed at dealerships had a GVWR of 8,600 lbs and greater.

conducting the tests compares the test results to requirements in the NHTSA standard.

The restrictions in GM's Type 1 IVD are logical and consistent with a systematic approach to occupant crash protection employed by manufacturers. GM's first restriction is on unloaded vehicle weight and GVWR. As discussed in the context of other standards, vehicle weight is an essential component of crashworthiness standard certification. If the vehicle, as completed and loaded, exceeds the maximum weight for which the incomplete vehicle manufacturer provided pass-through certification (usually based on a crash test the incomplete vehicle manufacturer performed), it would not be reasonable to expect the certification to apply because the excess vehicle weight could cause different and excessive forces and accelerations on crash dummies. The final-stage manufacturer can readily work within weight requirements by taking care to purchase the appropriate incomplete vehicle chassis for the use to which the vehicle will be put.

The restrictions in the GM IVD on alterations that interfere with the seating positions, seat belts, instrument panel and air bags, SDM, and vehicle frame and body in a way that would result in a difference from the modified vehicle's deceleration if it were subjected to a FMVSS 208 barrier test are not unreasonable. To begin, in all likelihood, GM provided pass-through certification based on tests performed on a pickup truck with stock GM seats and dummies in seating positions specified by FMVSS 208. If the seating positions were different, the test results as recorded on dummies likely would be different. GM could not be held to anticipate performance, as measured on dummies, in these circumstances.

Next, some tests are conducted with dummies restrained by GM seat belts. GM would not provide pass-through certification for other, unknown belts. Other requirements relate to the air bags and their control unit. GM could not be expected to provide pass-through certification if the final-stage manufacturer modified these items.

Finally, the IVD provides that various structural and sheet metal components cannot be modified if the modifications would result in a difference in the modified vehicle's deceleration in a barrier test under FMVSS 208. A basic concept in designing vehicles is to design vehicle structures that minimize the amount of injury-causing crash energy that reaches the occupants. To accomplish this, in part, manufacturers design into the vehicle structural zones

that collapse and absorb crash energy. A crashworthy vehicle is designed to deform according to a deceleration-time response, or crash pulse. These vary among vehicles. The frontal structure largely controls the deceleration pulse. Ultimately, the deceleration response of the vehicle affects the response experienced by the test dummies, as gauged by regulatory injury criteria such as the thoracic acceleration of a test dummy. Modifications by a final-stage manufacturer to the frame, sheet metal and other components identified in GM's IVD may change the vehicle's deceleration and its performance in a crash test, including measurements on test dummies. GM could not reasonably be expected to assume certification responsibility in these circumstances. But the final-stage manufacturer could readily satisfy the conditions of the IVD by not modifying the identified components of the incomplete vehicle when it adds equipment to the chassis of the vehicle.

GM's IVD also addresses rear seating positions. It states, in essence, that for pass-through certification, there shall be no changes to the designated seating positions or seat belt assemblies. FMVSS 208 requires seat belts at designated seating positions and the belts must meet specified standards. A change in the vehicle or its seat belts could render the vehicle noncompliant. Most multistage vehicles do not have rear seats, but those that do, such as those having rear seats for crews, can readily meet IVD requirements by retaining original equipment such as rear seats and seat belts.

The GM IVD provides pass-through certification for FMVSS 208 for vehicles with a GVWR of greater than 8,500 lbs or an unloaded vehicle weight of greater than 5,500 lbs. FMVSS 208 has fewer requirements for these heavier vehicles than for lighter vehicles. GM fairly provides pass-through certification for vehicles with complete seats and seat belt anchorages, assemblies and warning systems that the final-stage manufacturer does not modify. A modification by the final-stage manufacturer could result in a noncompliance. The final-stage manufacturer can readily meet these requirements for pass-through certification.

h. FMVSS 216 Roof Crush Resistance

NTEA also contends that the GM IVD provides no meaningful pass-through certification for FMVSS 216 Roof Crush Resistance. FMVSS 216 establishes strength requirements for the passenger compartment roof. Vehicles subject to the standard must pass a static test in

which a test device applies a force, based on the vehicle's unloaded vehicle weight, to either side of the forward edge of a vehicle's roof. The lower surface of the test device must not move more than a specified distance. The standard has limited applicability in the multistage context; it applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kg (6,000 lbs) or less, a weight that is exceeded by many multistage vehicles. Additionally, the standard does not apply to school buses, which are subject to different standards.

The GM IVD provides pass-through certification for incomplete vehicles with a GVWR of 2,722 kg (6,000 lbs) or less. The certification is conditioned on the final-stage manufacturer's making no alterations which affect the function, properties, or vital spatial clearances of various components and systems, including antennae, body roof structure, body sheet metal and structural components, windshield wipers, structural components and door assemblies.

The alteration limitations on pass-through certification in the IVD are reasonable and logical in light of the function that the various components serve and the effect that their alteration would have on the roof crush capacity of the vehicle. Roof strength is dependent on structural members such as the vehicle's A pillars and B pillars and the roof itself. GM could not be expected to provide pass-through certification if the vehicle components that are related to roof crush resistance are modified. A final-stage manufacturer could readily complete a vehicle without breaching the limitations established in the IVD. As such, a final-stage manufacturer could complete a vehicle without having to conduct any tests of the roof.

i. FMVSS 301 Fuel System Integrity

NTEA also contends that the GM IVD provides no meaningful pass-through opportunity with regard to FMVSS 301 Fuel System Integrity. FMVSS 301 specifies requirements for the integrity of motor vehicle fuel systems. Its purpose is to reduce injuries from fires resulting from fuel spillage during and after motor vehicle crashes and injuries from ingestion of fuels during siphoning. The standard includes barrier testing. Tests under FMVSS 208 cover frontal barrier requirements under FMVSS 301. In addition, there are tests in which moving barriers impact the vehicle from the side and from the rear. These tests are followed by a static roll-over test to determine whether any fuel leaks from the vehicle. The standard

contains various fuel spillage rates for different periods of time after the crash test. It also contains an anti-siphoning requirement. The standard has limited application in the multistage vehicle context because it applies only to vehicles with a GVWR of 4,536 kg (10,000 lbs) or less and to school buses.

The GM IVD provides that the incomplete vehicle, when completed, will comply with FMVSS 301 if (1) no alterations are made that affect the properties, environment or vital spatial clearance of certain components or systems, including the fuel system, the fuel tank assembly, the fuel tank filler neck/pipe assembly, and the fuel tank shields; (2) no alterations are made to the fuel system and attaching or protective structure, the body structure, the chassis structure, the tires and wheels; (3) the unloaded weight of the vehicle does not exceed the specified limits; (4) the final-stage manufacturer completes the fuel filler neck where applicable in accordance with provided instructions; and (5) during all barrier impact tests (a) no component installed by the final-stage manufacturer impinges or causes distortion to the fuel system in such a way that it punctures or separates the fuel system; (b) no vehicle modification results in any portion of the vehicle impinging upon or causing distortion to the fuel system in such a way that the system is punctured or separates; and (c) any body installed is mounted securely to absorb loads and prevent movement relative to the frame which would cause any fuel system component to be punctured, separated or damaged when tested to FMVSS 301.

The GM IVD as it relates to FMVSS 301 is workable. The alteration limitations on pass-through certification in the IVD are reasonable and logical in light of the fact that the systems and components are part of the fuel system. Because the standard regulates the integrity of the fuel system, it is logical that GM would provide pass-through certification for FMVSS 301 only so long as the fuel system is not altered. The GM IVD further limits pass-through certification if alterations are made to the attaching or protective structure, the body or chassis structure of the incomplete vehicle, or to the tires and wheels on the incomplete vehicle. These provisions are logical as well. Many fuel system parts are located inside structural components of the vehicle. If the structure is altered, in a crash, the resulting structure might no longer adequately protect the fuel system or the alterations themselves could impact the fuel system components. The tires and wheels are

important to clearances that preserve the integrity of the fuel system.

GM's weight limitation, as discussed in the context of other standards, has a bearing on how the vehicle will withstand the effects of a crash. A final-stage manufacturer can ensure satisfaction of this portion of the IVD by assuring that the chassis to which it adds equipment is appropriate.

The requirements regarding the installation of the fuel filler neck are likewise completely workable. Fuel filler necks need to be installed by final-stage manufacturers because they are not located in the cab. For illustration, in pickup trucks, they are located on the side of the vehicle, outside of the box. GM provides instructions with the fuel filler neck on how to install it, and provides pass-through certification only if the neck is installed in accordance with those instructions. Because the fuel filler neck is an essential component with respect to compliance with portions of FMVSS 301, it would be unreasonable to expect GM to provide pass-through certification for FMVSS 301 when a fuel filler neck is installed in a manner inconsistent with GM's instructions.

The section of the IVD pertaining to the performance of components added by final-stage manufacturers in barrier impact tests is likewise reasonable. The IVD basically provides no pass-through certification for FMVSS 301 if components added by, or a body installed by the final-stage manufacturer will puncture or separate the fuel system in a barrier impact test. It would be unreasonable to expect GM to provide pass-through certification in these circumstances, given the uncertainties about what the final-stage manufacturer may add to the chassis. Moreover, these provisions of the IVD do not require final-stage manufacturers to conduct a barrier impact test. Instead, those manufacturers may exercise their own judgment.

As professionals in their field and sometimes as specialists (such as school bus manufacturers), final-stage manufacturers should be familiar with various types of vehicle bodies that can be fitted to incomplete vehicles. The GM Chassis Upfitter guide provides clear guidance for final-stage manufacturers working around fuel system components and fuel lines. Among other things, the guide instructs final-stage manufacturers to provide a minimum clearance around the exhaust system or to install a protective metal shield around added components. The Upfitter guide also instructs final-stage manufacturers to avoid routing fuel

lines around sharp objects and edges and to use metal clips with plastic lining to avoid damaging the fuel lines. The guide advises those manufacturers to leave a minimum clearance between the fuel tank and the body or supports and to direct bolts, screws and other potentially damaging objects away from the fuel tank.⁶² In addition, final-stage manufacturers can obtain further information from suppliers. Some equipment manufacturers market equipment as complying with FMVSS 301. For example, Knapheide specifies the use of body installation brackets, called "Quick Mount brackets," that are designed to comply with FMVSS 301.⁶³

7. Additional Resources Available to Final-Stage Manufacturers

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

The instructions and limitations in the IVDs themselves provide information to final-stage manufacturers. For example, in order to provide instructions to final-stage manufacturers, incomplete vehicle manufacturers sometimes limit the types of vehicles into which the incomplete vehicle may be completed. Some incomplete vehicles may be completed as buses but not as school buses. School buses are required to meet some FMVSS that apply only to them (e.g., FMVSS 131, 220, 221); other FMVSS have additional school bus requirements.

Additionally, a number of incomplete vehicle manufacturers provide guides known as upfitter guides or body builder guides, which include information that facilitates the completion of the vehicle. Some incomplete vehicle manufacturers, such as General Motors, also have hotlines staffed with engineers who can answer final-stage manufacturers' questions. These resources are discussed elsewhere in this notice.

Final-stage manufacturers can also use their judgment, including engineering judgment, to certify vehicles. Testing, as provided in the FMVSS, is not required as a matter of

⁶² See GM Best Practices Guide, available at http://www.gmupfitter.com/publicat/Best_Practices.pdf

⁶³ See <http://www.knapheide.com/pdfpages/pricepages/servicebody/UBPP8.pdf>

law to certify a vehicle.⁶⁴ Instead, sound engineering judgment may be used.⁶⁵ 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.

Some final-stage vehicle manufacturers have a wealth of experience in various product lines. This includes buses, school buses and ambulances. They make a variety of models that have evolved over the years. The yellow school buses that one sees on the road are not novel, one-of-a-kind items.

Other final-stage vehicles often are built on chassis-cabs or cutaways⁶⁶ using equipment sold by specialized providers. The majority of work-type trucks with a GVWR of 10,000 lbs or less at new vehicle dealers are chassis-cabs with service bodies mounted to the chassis behind the cab, chassis-cabs with stake or dump bodies mounted to the frame behind the cab, and van cutaways with both service and cargo storage bodies mounted to the frame behind the van-body portion of the cutaway. The truck bodies have been manufactured by companies such as America's Body Company, Crysteel, Forest River, Knapheide, Monroe, Morgan, Stahl, Supreme and Unicell (collectively referred to as truck body manufacturers). In some cases, the truck body manufacturer completes the vehicle as a final-stage manufacturer. In other cases, the truck bodies are sold to a distributor who installs the body on the incomplete vehicle as a final-stage manufacturer. The availability of prefabricated vehicle body parts to complete chassis-cab and cutaway vehicles facilitates certification. NTEA is aware of these equipment companies and their products because NTEA annually runs the largest work truck

show and many of these companies have booths at the NTEA show.⁶⁷

Many incomplete vehicles are completed as work-type vehicles by the addition of cargo-carrying, work-performing, or load-bearing components. For example, a typical beverage delivery truck is a vehicle completed with a cargo-carrying component, and a dump truck is an example of a vehicle completed with a load-bearing component. These types of vehicles are generally produced by making the same kinds of additions to the incomplete vehicles, thus reducing the variation in the completion work the final-stage manufacturer must perform. The relatively routine nature of these types of variations creates a body of knowledge from which final-stage manufacturers can work. Manufacturer changes to work-truck vehicles are either infrequent or they represent product improvements.

In addition, some of the equipment installed by final-stage manufacturers has been certified as complying with relevant FMVSS. Many final-stage manufacturers rely on that certification. The following components and systems are typically found on work-type vehicles manufactured in two or more stages (the associated FMVSS is stated in parenthesis): Brake hoses (FMVSS 106), lamps, reflective devices and associated equipment (108), brake fluid (116), tires for vehicles other than passenger cars (119), glazing materials (205), door locks and door retention components (206), seat belt assemblies (209), and rear impact guards (223). Recreational vehicles have all of the above except rear impact guards. They also may have platform lifts systems (403) for people who are disabled or who are in wheelchairs. Some of the above-noted FMVSS have additional requirements that must be satisfied by a vehicle manufacturer, including ranges of locations for lamps and reflective devices (108), the track and slide or other supporting means for a sliding door under transverse loading (206), and the installation of rear impact guards (223 and 224) and platform lift systems (403 and 404).

The work of final-stage manufacturers is facilitated by the fact that incomplete vehicle manufacturers do not change the chassis that they offer every year or even every several years. When the vehicle or chassis is not significantly changed from the previous model year, it is referred to as a carryover vehicle.

In many cases, the vehicle components and systems that affect compliance with FMVSS requirements are unchanged. Unless other components or systems will influence how the vehicle performs relative to the FMVSS, the work needed to support the final-stage manufacturers' certification to FMVSS requirements will be limited.

Therefore, NTEA's underlying premise that the IVDs currently supplied by incomplete vehicle manufacturers, such as the IVD attached to NTEA's petition, cannot be used to construct compliant vehicles, is invalid.

D. NHTSA's Market Forces Argument Is Justified and Consistent With the Multistage Vehicle Market

In the final rule, NHTSA rejected NTEA's suggestion that the rule specifically require IVDs to be reasonable or be prepared in good faith.⁶⁸ Part of the agency's justification for this decision was that "[t]here is no market for incomplete vehicles that cannot be manufactured into completed vehicles that will meet the applicable FMVSS."⁶⁹ NHTSA also noted that incomplete vehicle manufacturers have business reasons to provide workable IVDs.⁷⁰

NTEA disputes NHTSA's market force statements.⁷¹ NTEA first contends that NHTSA's position is incorrect because incomplete vehicle manufacturers have been required to provide conformity statements in IVDs for almost 30 years and market forces have not caused reasonable compliance envelopes to exist today. NTEA's argument is extraordinarily general, conclusory and unsupported. From a macro standpoint, NTEA's market force argument ignores the fact that many types of multistage vehicles 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.⁷² The fact that vehicles such as these are being made indicates that the IVDs are workable. Moreover, as discussed above, we do not agree that the IVDs supplied by incomplete vehicle manufacturers are insufficient to permit final-stage manufacturers to construct compliant vehicles and certify their compliance with federal motor vehicle safety standards.

NTEA next contends that final-stage manufacturers do not have sufficient

⁶⁴ This has been recognized in interpretations by NHTSA's Chief Counsel.

⁶⁵ Manufacturers of passenger cars and multipurpose passenger vehicles, among others, routinely conduct one or more tests to assure that a representative vehicle is compliant based on the test procedure in the FMVSS. For carryover vehicles, they may not conduct tests.

⁶⁶ A cutaway is similar to a chassis cab in that it contains the cab and ordinarily the seat supplied by the incomplete vehicle manufacturer. For illustration purposes, it may be viewed as a van without any body structure rearward of the vehicle's B pillar (located slightly rearward of its front seating positions). There is no rear wall. Thus, the occupant compartment is essentially complete, surrounding the front seating positions but open to the rear.

⁶⁷ NTEA also holds educational sessions at the Work Truck Show. For example, at the March, 2006 Work Truck Show there was a session on Designs and Specifications for Vocational Vehicles—A Functional Approach.

⁶⁸ 70 FR 7414, 7425 (Feb. 14, 2005).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Petition at 9.

⁷² See, e.g., <http://www.ntea.com/mr/divisions.asp>

market presence to choose the brand of the chassis on which they will complete a vehicle. NTEA offers the hypothetical of a customer who goes to a Ford truck dealer that assists the customer in developing the specification for the vehicle. In this example, the final-stage manufacturer has no say but is willing to complete the vehicle. NTEA observes that if the final-stage manufacturer were to decline the business, "another final-stage manufacturer undoubtedly would be glad to take it."⁷³

NTEA's hypothetical of a customer simply going to a Ford dealer is unduly narrow. It assumes that there are no communications with the final-stage manufacturer with regard to the truck body to be chosen. It implies that the final-stage manufacturer faces substantial difficulties in completing the vehicle but does not identify what those difficulties are. Even that implication is contradicted by NTEA's hypothetical. NTEA's point that another final-stage manufacturer undoubtedly would be glad to finish the vehicle strongly indicates that such a manufacturer can do so within the confines of the current rule while maintaining its business. We assume NTEA did not mean to suggest that the final stage manufacturer that would accept the work would do so with an intention to ignore its certification responsibilities.

Moreover, a customer ordinarily is not limited to the franchised truck dealer of one brand of truck. For example, many of the chassis for multistage vehicles in the service truck category are known, based on payload, as $\frac{3}{4}$ ton trucks and 1 ton trucks. A number of manufacturers make these chassis, including DaimlerChrysler (Dodge), Ford and General Motors. These manufacturers compete in the sale of chassis. As such, they must be, and are, sensitive to the concerns of the marketplace.

As important, customers purchasing trucks can and do go directly to final-stage manufacturers to purchase trucks. Many of the final-stage manufacturers use chassis built by more than one incomplete vehicle manufacturer. Thus, final-stage manufacturers do have choices with regard to the incomplete vehicles on which they work. The incomplete vehicle manufacturers are marketing to, and working with, the truck purchasers and final-stage manufacturers. For example, in NTEA's 2004 and 2006 Work Truck Shows, at least 12 of the world's leading chassis manufacturers displayed product, and many of those manufacturers hosted

chassis update sessions.⁷⁴ This is another reflection of a competitive marketplace in which the chassis manufacturers are sensitive to the marketplace.

In addition, NTEA ignores the cooperative relationships between incomplete and final-stage manufacturers. For example, GM has relationships with final-stage manufacturers it refers to as Special Vehicle Manufacturers (SVMs). SVMs "are contractual partners who must provide a quality upfit product that will enhance GM chassis and van vehicles. SVMs are selected on the merit of their upfit/conversion, financial stability, and adherence to governmental and trade association requirements."⁷⁵ Of 108 distinct companies listed as SVMs on GM's Web site, 20 are NTEA members. Thus, 18.5 percent, or nearly one fifth, of the SVMs are NTEA members, illustrating that NTEA is well aware of this cooperative relationship between incomplete and final-stage manufacturers. These partnerships between final-stage and incomplete vehicle manufacturers demonstrate that both groups play a large role in the market for multistage vehicles.

NTEA also focuses too narrowly on the IVD itself and ignores other resources available to final-stage vehicle manufacturers. A number of incomplete vehicle manufacturers provide substantial resources to assist final-stage manufacturers in the completion of multistage vehicles. For example, GM has extensive Web sites geared toward both selecting the proper incomplete vehicle⁷⁶ and completing the incomplete vehicle once it is purchased.⁷⁷ The purpose of the extensive Web site is "to improve the quality of Chevrolet and GMC second stage manufactured vehicles by assisting the Upfitter, Body Builder and Aftermarket Accessory communities."⁷⁸ The Web site goes on to say that GM accomplishes this goal through various avenues, including:

a "Hotline" assistance program, which provides engineering support and technical information; publications including Body Builders Manuals and Technical Bulletins; and New Product Preview; meetings, to name a few. We also represent General Motors at

upfitter association tradeshows and committee meetings, which enables us to be your "Voice of Customer" within the GM Vehicle Engineering organization.⁷⁹

The Hotline, which provides technical assistance, can be accessed both via phone and via online submissions.⁸⁰ GM also publishes a Best Practices Guidelines Manual, which includes examples of how to complete incomplete vehicles and comply with Federal standards.⁸¹

GM's Fleet Division⁸² assists consumers or final-stage manufacturers in selecting the correct GM incomplete vehicle for the intended use of the truck. The GM Fleet advisors are either dealers or advisors who can be reached through another help line. GM also publishes a Light Commercial Vehicle Body Application Guide, which contains the specifications and possible uses of the GM incomplete vehicles.

As another example, Ford offers other contact information for choosing the correct incomplete vehicle.⁸³ Additionally, Ford offers the *Ford Truck Body Builders' Layout Book*, which provides additional engineering information and is referenced in the IVDs for Ford incomplete vehicles.

These examples of additional resources for final-stage manufacturers indicate that the incomplete vehicle manufacturers devote substantial resources that facilitate the work of final-stage manufacturers. The incomplete vehicle manufacturers' allocation of resources to the needs of final-stage manufacturers demonstrates the market power possessed by final-stage manufacturers.

NTEA does not address the fact that the multistage vehicle industry is a multi-billion dollar industry in which the incomplete vehicle manufacturer and the final-stage manufacturer have complementary interests. NTEA's arguments, which are not supported by evidence, are inconsistent with the reality that final-stage manufacturers are doing business and certifying vehicles within the existing IVD framework. NTEA submitted no data demonstrating that final-stage manufacturers are going out of business, NTEA's prediction for what will happen to final-stage manufacturers who either complete vehicles with unworkable IVDs or refuse to complete vehicles with unworkable IVDs. Thus, the foundation for NTEA's argument lacks support.

⁷⁴ NTEA Annual Report, 2004. At NTEA's 2006 Work Truck Show, the following Truck Manufacturers had major displays: International, Work Horse, Toyota, Hino Trucks, Mitsubishi Fuso, Sterling Trucks, General Motors, Isuzu, Ford, Kenworth, Dodge, Freightliner, Peterbilt and Nissan Diesel.

⁷⁵ <http://www.gmfleet.com/gmfleetjsp/svm/administration/locator/index.jsp>.

⁷⁶ <http://www.gmfleet.com>

⁷⁷ <http://www.gmupfitter.com>

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ <http://www.gmupfitter.com/wwedo/wwwd.htm>.

⁸¹ *Id.*

⁸² <http://www.gmfleet.com>

⁸³ See generally <http://www.fleet.ford.com>.

⁷³ Petition at 9–10.

E. NHTSA's Decision Not To Include a Reasonableness Requirement Is Consistent With Other NHTSA Regulations

In the final rule, NHTSA rejected NTEA's proposal that NHTSA require that incomplete vehicle manufacturers use "good faith" efforts to provide "reasonable" conformity statements that are susceptible to being passed through to final-stage manufacturers.⁸⁴ NHTSA stated it would not adopt the suggested language because "due to its subjectivity, the suggested language is not susceptible to effective enforcement."⁸⁵ NTEA contends that this is inconsistent with the "good faith" standard for determining the application of civil penalties in the context of certification and the final rule's provision that applications for temporary exemptions contain complete descriptions of each manufacturer's good faith efforts to comply with the standards.⁸⁶

NTEA states that the agency does not explain why it is unable to fashion a workable reasonableness standard.⁸⁷ However, it is NTEA that has not met its burden. Although NTEA did submit comments in response to the SNPRM recommending an alternative approach to multistage certification, it did not provide a workable means for incorporating a reasonableness standard under the Safety Act. If such a means exists, NTEA has had more than an ample opportunity to suggest a workable approach, in response to an NPRM, in a regulatory negotiation, and in a response to a supplemental notice of proposed rulemaking. It is not the agency's obligation to take a vague concept from a commenter, make it workable, flesh it out, and include it in a rule. NTEA has not offered any basis by which the agency could determine whether an incomplete vehicle manufacturer exercised good faith in producing an IVD that might be usable by a final-stage manufacturer, since it is the particular final-stage manufacturer's actions that largely control its usability. As shown above, the typical IVDs are usable on their face.

The two provisions that NTEA cites are not analogous. First, the imposition of civil penalties is based on a statutory provision, 49 U.S.C. 30165, which authorizes the agency to impose and compromise civil penalties. This provision does not provide for consideration of "good faith," but does provide for consideration of other

matters—the size of the business and the gravity of the violation. The statutory certification provision states that a person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.⁸⁸ Second, the good faith requirement in the final rule's provisions for temporary exemptions requires a manufacturer to make a good faith effort to comply with FMVSS prior to seeking exemptions from those standards, and the petition for an exemption must include a discussion of these good faith efforts.⁸⁹

Unlike civil penalties, which are considered in an enforcement context between the government and a regulated entity and on a case-by-case basis, or petitions for exemptions from FMVSS, which are addressed in an administrative proceeding involving the agency and a regulated entity on a case-by-case basis, IVDs are documents of general application that are passed from one private entity—incomplete vehicle manufacturers—to another private entity—final-stage manufacturers—when a multistage vehicle is manufactured. The agency does not have a statutory role in this private process to rewrite IVDs and impose a rewritten IVD on the manufacturers involved in making a multistage vehicle. Moreover, the agency does not have the resources to do so.

The agency cannot police or enforce a nebulous "reasonableness" standard for IVDs particularly given that, for all of the reasons discussed above, NTEA has demonstrated that it cannot agree with NHTSA as to what a workable IVD contains. The agency would thus be left policing a relationship between companies that have sometimes competing interests and concerns regarding IVDs, and NHTSA would have to do so with its only norm being the one of "reasonableness" in the context of particular upfits of trucks.

F. Impracticability Should Be Decided in Context of Rulemaking for Each FMVSS or on a Petition for a Temporary Exemption

NTEA contends that it is impracticable for final-stage manufacturers to comply with standards that require dynamic tests. To the extent that impracticability is a legitimate concern, it is properly addressed in the context of an individual FMVSS itself. In the final multistage rule, NHTSA recognized that multistage vehicles are a type of vehicle. As a result, within a

particular FMVSS, separate requirements may be established for multistage vehicles. NHTSA is following this approach on a standard-by-standard basis. For example, in the August 2005 NPRM⁹⁰ on roof crush standards, NHTSA proposed the designation of incomplete vehicles "as a vehicle type subject to different regulatory requirements."⁹¹ The NPRM proposed allowing final-stage manufacturers to certify "non-chassis-cab vehicles to the roof crush requirements of FMVSS 220, as an alternative to the requirements of FMVSS 216."⁹² Alternatively, the final-stage manufacturer should apply for a temporary exemption as provided by the final rule and amended in this document.

G. The Current Certification Scheme Is Not an Unlawful Delegation of Agency Authority

NTEA position: NTEA observed that under the final rule, the incomplete vehicle manufacturer creates the IVD and the IVD controls the assignment of certification responsibility. NTEA further asserts that narrow compliance envelopes shift responsibility for certifying compliance to the final-stage manufacturer. Based on these observations, NTEA contends that the agency has, in effect, delegated to a private, self-interested party (i.e., the incomplete vehicle manufacturer) the authority to determine, as between itself and the final-stage manufacturer, which entity bears certification responsibility. NTEA contends that the determination of certification responsibility by this private, self-interested party is essentially non-reviewable, as the agency declined to impose a reasonableness standard for conformity statements in the IVD. Noting that courts disfavor delegation of agency responsibility to outside entities, particularly private entities whose objectivity may be questioned on grounds of conflict of interest, NTEA argues that the agency's delegation to incomplete vehicle manufacturers of unfettered authority to determine certification responsibility should be subject to careful review.

Agency's response: NTEA relies on a case involving an unlawful delegation of an agency's authority to a private entity.⁹³ However, NTEA ignores the

⁸⁴ 70 FR at 7425.

⁸⁵ *Id.*

⁸⁶ Petition at 10–11.

⁸⁷ Petition at 11.

⁸⁸ 49 U.S.C. 30115.

⁸⁹ 49 CFR 555.13(b).

⁹⁰ 70 FR 49223 (Aug. 23, 2005).

⁹¹ *Id.* at 49235.

⁹² *Id.* FMVSS 216 regulates standard roof crush resistance for passenger compartments, while FMVSS 220 regulates school bus rollover protection.

⁹³ *Nat'l Park and Conservation Ass'n v. Stanton*, 54 F.Supp. 2d 7 (D.D.C. 1999).

central premise of the case, namely, that the relevant inquiry on a private delegation issue is to assess Congressional intent, based on the pertinent statute(s) and its legislative history. Moreover, NTEA does not refer at all to the statutory certification provisions in the Vehicle Safety Act. Specifically, NTEA does not cite to any statutory provision assigning to NHTSA any duty to regulate the allocation of certification responsibility for any particular vehicle between the incomplete vehicle manufacturer and final-stage manufacturers.

In the National Traffic and Motor Vehicle Safety Act, Congress imposed the responsibility to certify compliance on manufacturers and distributors.⁹⁴ The Safety Act created a self-certification scheme. Under this statutory framework, the agency promulgates the FMVSS, and it is then the manufacturer's or distributor's responsibility to comply with these standards and to furnish a certification to the distributor or dealer that the vehicle or equipment conforms to all applicable FMVSS. The statute, as originally enacted, did not provide for agency review and approval of the manufacturer's certification or for agency allocation of responsibility of certification in the multistage vehicle context.

In the 1970s, NHTSA promulgated regulations specifying certification requirements for manufacturers of vehicles manufactured in two or more stages and prescribing the method by which manufacturers of vehicles manufactured in two or more stages shall ensure conformity of those vehicles with FMVSS.⁹⁵ Under these regulations, certification responsibility may rest with incomplete vehicle manufacturers, or with intermediate or final-stage manufacturers. NHTSA's regulations do not provide for the agency to allocate certification responsibility between incomplete vehicle manufacturers and final-stage manufacturers.

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.⁹⁶ Section 9 of the Act amended 49 U.S.C. 30115 to address certification labels.⁹⁷ In general, the amendments required an intermediate or final-stage manufacturer to certify with respect to each FMVSS either that it has followed the compliance

documents provided by the incomplete vehicle manufacturer or that it has chosen to assume responsibility for compliance with that standard.⁹⁸ The amendments further provided that if an intermediate or final-stage manufacturer assumes responsibility for compliance with a standard covered by the documentation, it must notify the incomplete vehicle manufacturer within a reasonable time.⁹⁹ Significantly, the TREAD Act amendments did not alter the regulatory approach in 49 CFR 567.5 and 49 CFR part 568. They did not require NHTSA to allocate certification responsibilities between the various manufacturers in the chain of production of multistage vehicles.

In contrast to this regulatory approach, Congress has enacted other regulatory schemes that require agency review and approval of manufacturers' certifications. For example, the Clean Air Act requires the Administrator of the Environmental Protection Agency (EPA) to test or require testing of motor vehicles or engines to determine whether they comply with the emissions requirements and, if they conform, to issue a certificate of conformity.¹⁰⁰ In that context, EPA has a significant administrative role. In contrast, in the Vehicle Safety Act, Congress did not provide for agency review or approval of a manufacturer's certification. Moreover, the TREAD Act amendments specifically addressed certification in the multistage vehicle context and did not assign the agency an arbiter role in the certification process.

In view of the foregoing, NHTSA does not accept NTEA's argument that the certification scheme in the final rule delegates too much power to the final-stage vehicle manufacturers. Accordingly, NHTSA will not modify the final rule on this ground and denies this aspect of NTEA's petition.¹⁰¹

H. The Agency's Decision Not To Change Default Recall Responsibility, Which Historically Has Been Assigned to Final-Stage Manufacturers, Was Reasonable

NTEA position: NTEA notes that in the SNPRM, NHTSA sought to change its practice of allocating recall responsibility to the final-stage manufacturer in the case of a dispute

between manufacturers, and proposed instead to allocate recall responsibility to the party it believed to be best able to conduct the recall (referencing 69 FR 36047). NTEA further notes that the agency did not carry this through in the final rule. NTEA contends that the correct approach is the one proposed in the SNPRM—the elimination of any default allocation of recall responsibility and the assignment of such responsibility to the party responsible for the defect. NTEA observes that if the agency does not wish to resolve disputes, then the default responsibility should be on the incomplete vehicle manufacturer. Alternately, the agency could hold all manufacturers responsible.

NTEA further observes that in the SNPRM, the agency recognized that final-stage manufacturers may lack the financial resources to conduct recall campaigns (referencing 69 FR 36047). NTEA contends that the agency downplayed this in the final rule by noting that “historically, incomplete and final-stage manufacturers have been able to resolve issues of determination of responsibility” (referencing 70 FR 7427). According to NTEA, these disputes are typically resolved by the final-stage manufacturer “agreeing” to conduct the recall because it can ill afford to do otherwise. NTEA contends that NHTSA's treatment of the final-stage manufacturer as the default party gives extraordinary leverage to the incomplete vehicle manufacturer, because in case of a disagreement, the incomplete vehicle manufacturer can report the defect to NHTSA, causing the final-stage manufacturer to take on the recall to avoid a costly legal challenge. NTEA characterizes NHTSA's policy as ignoring the final-stage manufacturer's lack of bargaining power with the incomplete vehicle manufacturer. According to NTEA, the final-stage manufacturer values its relationship with the incomplete vehicle manufacturer more than the incomplete vehicle manufacturer values its relationship with the final-stage manufacturer.

NTEA also contends that safety will be enhanced if incomplete vehicle manufacturers have default recall responsibility. Noting that most incomplete vehicle manufacturers are large multi-national companies that have dealerships in most counties in the United States, NTEA postulates that the campaigns will be more efficiently conducted, particularly where vehicles are sold over a wide geographic area. In this circumstance, NTEA observes that disruption to customers will be minimized.

⁹⁴ See Section 114 of the Act, Pub. L. 89–563, 80 Stat. 726 (recodified at 49 U.S.C. 30115).

⁹⁵ See 49 CFR 567.5 and 49 CFR part 568 (1977).

⁹⁶ Pub. L. 106–414.

⁹⁷ 114 Stat. 1805.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 42 U.S.C. 7525(a).

¹⁰¹ The agency also notes that NTEA has not addressed the practical implications of its assertions. The imposition of responsibilities on NHTSA to arbitrate certification issues would delay the introduction of vehicles into the market. NHTSA does not have staff to undertake these activities.

NTEA further notes that the incomplete vehicle manufacturer makes or supplies most of the complex components on the vehicle that are likely to be involved in recall campaigns, and the final-stage manufacturer may lack technical expertise with regard to these components. Disputing the agency's expressed (70 FR 7427) presumption that the present recall scheme "provides an incentive for a final-stage manufacturer to deal with a solid and reputable incomplete vehicle manufacturer," NTEA reiterates its contention that the final-stage manufacturer cannot choose which incomplete vehicle supplier to use. NTEA further observes that most final-stage manufacturers cannot identify owners from sales and warranty records because they have no interaction with the end user, and the incomplete vehicle manufacturer is in a better position to obtain this information through the dealer.

Agency response: For the reasons set forth below, we deny this aspect of NTEA's petition.

1. Background

NHTSA's basic approach to, and regulation of, recall responsibility has been in effect for several decades. The regulations on recall responsibility were adopted in 1978 and codified in 49 CFR part 579. In essence, the regulations provided that each manufacturer of a motor vehicle shall be responsible for any safety-related defect determined to exist in the vehicle or in any item of original equipment.¹⁰² Under the agency's interpretations, an incomplete vehicle is classified as an original equipment item for which the final-stage manufacturer has recall responsibility. Separately, the rules on certification of multistage vehicles were adopted in 1971 and codified in 49 CFR part 568.¹⁰³

In 1988, NTEA petitioned NHTSA to institute a rulemaking to amend 49 CFR

part 579 to clarify and equitably apportion between incomplete vehicle manufacturers and final-stage manufacturers the responsibility for conducting recalls.¹⁰⁴ NHTSA granted the petition to institute a rulemaking proceeding.¹⁰⁵ The decision to grant the petition was influenced by a conflict between an incomplete vehicle manufacturer and final-stage vehicle manufacturers that produced ambulances. The defect at issue, which caused the contents of the vehicle's fuel tank to boil and seep through the gas cap, posed a grave risk of vehicle fires. The parties to the dispute denied their own fault and attributed the defect to the others' actions. This dispute delayed the recall. Ultimately, the incomplete vehicle manufacturer agreed to conduct the recall.¹⁰⁶

In 1993, NHTSA terminated the rulemaking on the grounds that there was no need for the requested rule. NHTSA pointed out that the conflicts between incomplete vehicle manufacturers and final-stage manufacturers that the agency had witnessed in the ambulance recall had not been evident in subsequent enforcement actions involving multistage vehicles.¹⁰⁷ The agency further explained that its regulations do not mandate that responsibility for defects be borne exclusively by final-stage manufacturers. Instead, the recall could be conducted by either the incomplete vehicle manufacturer or the final-stage manufacturer. NHTSA emphasized that its objective was to ensure that a manufacturer in the production chain assumes responsibility for the recall.¹⁰⁸

In 1991, NHTSA issued an NPRM that proposed to extend the certification requirements then being exercised by chassis-cab manufacturers to all incomplete vehicle manufacturers.¹⁰⁹ This would have permitted pass-through certification for multistage vehicles built on all types of incomplete vehicles. The proposal generated a great deal of controversy.¹¹⁰ Following a public meeting in 1995¹¹¹ and the creation of an ad hoc advisory committee on the subject of multistage vehicle certification,¹¹² in 1999, NHTSA initiated a negotiated rulemaking in an effort to resolve the assignment of

certification responsibilities among multistage vehicle manufacturers.¹¹³

Although, historically, the agency has addressed certification and recall responsibility for multistage vehicles separately, in the negotiated rulemaking the interests representing final-stage manufacturers added issues related to recall responsibility. In the negotiated rulemaking, the final-stage and incomplete vehicle manufacturers largely maintained opposing positions. The final-stage manufacturers contended that the incomplete vehicle manufacturers should be responsible at least for recalls involving incomplete vehicles. The incomplete vehicle manufacturers asserted that final-stage vehicle manufacturers should be held responsible for the vehicles. The incomplete vehicle manufacturers pointed out that the final-stage manufacturer is free to add to or modify the incomplete vehicle in any way, as the vehicle is no longer under the control of the incomplete vehicle manufacturer. These additions and modifications may introduce defects or affect the conformity of the vehicle to federal standards. These diametrically opposed positions could not be harmonized without substantial compromise, which led in part to the failure of the negotiated rulemaking. After several years of meetings that did not culminate in an agreed-upon rule, in 2004 NHTSA published an SNPRM.¹¹⁴

In the SNPRM, NHTSA, although not legally bound to do so, honored a commitment made in the course of the negotiated rulemaking to propose a regulation that mirrored a report produced, but not agreed upon, in the negotiated rulemaking process. NHTSA made clear in the SNPRM that it was proposing "the applicable regulations as drafted by the committee,"¹¹⁵ not as proposals NHTSA itself supported. In this vein, NHTSA proposed for the first time to amend its recall responsibility regulation, which had been recodified at 49 CFR 573.5 from 49 CFR part 579.¹¹⁶ The proposal provided that when there is a determination of a safety-related defect and the incomplete vehicle manufacturer and final-stage manufacturer can not agree as to which manufacturer is responsible for the defect, NHTSA would determine which manufacturer is in the best position to conduct the recall.¹¹⁷ NHTSA's decision would not be reviewable.

¹⁰² 49 CFR 579.5 (1978).

¹⁰³ The regulations defined an "incomplete vehicle" as "an *assemblage* consisting, as a minimum, of frame and chassis structure, power train * * *." In contrast, a "complete vehicle" was defined as "a *vehicle* that requires no further manufacturing operations." 49 CFR 568.3 (emphasis added). The Act defined a motor vehicle as "any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails." 15 U.S.C. 1391(3) (1985), recodified at 49 U.S.C. 30102(a)(6) (1994). Because it requires further manufacturing operations to perform its intended function, an incomplete vehicle cannot be regarded as having been primarily manufactured for use on public streets, roads, and highways, and therefore does not qualify as a "motor vehicle" under the above definition.

¹⁰⁴ 58 FR 40402, 40403 (July 28, 1993).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ 58 FR at 40404.

¹⁰⁹ 56 FR 61392 (December 3, 1991).

¹¹⁰ 60 FR 57694 (November 17, 1995).

¹¹¹ 64 FR 57499, 27500 (May 20, 1999).

¹¹² *Id.*

¹¹³ 64 FR 66447, 66447 (Nov. 26, 1999).

¹¹⁴ 69 FR 36038 (June 28, 2004).

¹¹⁵ 69 FR at 36041; *see id.* at 36048.

¹¹⁶ In 2002, the regulations on recall responsibility were moved to 49 CFR 573.5 and the early warning rules were added to 49 CFR part 579.

¹¹⁷ 69 FR at 36047.

As noted in the preamble to the SNPRM, this proposal was the subject of vociferous objection by many of the incomplete vehicle manufacturers.¹¹⁸ Their primary concern was that NHTSA's determination would not be reviewable. One incomplete vehicle manufacturer offered alternative language that did not provide a dispute resolution mechanism.¹¹⁹ As NHTSA further noted in the preamble, the alternative language also did not assure that in the event of a dispute that is not easily resolvable, a recall campaign is conducted in a timely manner. The agency observed that "[h]istorically, NHTSA has maintained that while any stage manufacturer may assume responsibility for a recall campaign, the final-stage manufacturer is responsible for any campaign that a previous stage manufacturer has not agreed to conduct."¹²⁰

In the SNPRM, NHTSA further noted that the allocation of recall responsibility was a "difficult issue."¹²¹ The agency observed that final-stage manufacturers often may not have the resources to conduct a recall for a safety problem they did not cause. On the other hand, NHTSA maintained that allocating recall responsibility to a specific party in the event of a dispute as to legal responsibility allows the agency to achieve the result it believes is essential to its safety-based mission: getting defective systems or equipment remedied as soon as possible so as to reduce the likelihood of motor vehicle-related injury or death.¹²² In the absence of a default allocation of recall responsibility, recalls would be delayed by disputes.

NHTSA also voiced concerns in the SNPRM that the non-reviewability provision in the proposed rule may "ultimately be determined impermissible."¹²³ In connection with our concerns about the non-reviewability provision's chances of withstanding judicial review, we asked commenters to "provide arguments and analysis as to which manufacturer should be deemed responsible for a recall campaign in the event that NHTSA and the various-stage manufacturers could not determine in a timely manner which party should bear responsibility for the recall."¹²⁴

In February 2005, NHTSA issued the final rule that is the subject of the NTEA

petition.¹²⁵ In the final rule, NHTSA decided not to amend the rules on allocation of recall responsibility. Thus, the final-stage manufacturer continued to have default responsibility for recalls in the event of a dispute with the incomplete vehicle manufacturer. NHTSA recognized that the majority of commenters opposed the proposal for NHTSA to allocate recall responsibility.¹²⁶ The agency stated:

NHTSA's primary concern is safety; NHTSA is also concerned that the rule be workable. The most compelling fact is that under existing § 573.5, in general, recalls are not delayed by disputes between manufacturers. In fact, practical disputes rarely occur * * * It is clear from this fact that the private parties are able to resolve and in fact are successfully resolving the issues regarding the conducting of recalls * * * In addition, the proposal was not well received.¹²⁷

The agency concluded that "the existing rule meets the fundamental safety need for prompt recalls."¹²⁸

2. Summary of NTEA's Position

In its petition, NTEA asserts that NHTSA should adopt the proposal published in the SNPRM and rejected in the final rule—that should the manufacturers in the production chain of a multistage vehicle or NHTSA be unable to determine or agree which manufacturer is responsible for a safety-related defect, NHTSA shall make a nonreviewable determination as to which manufacturer is to conduct the recall campaign.¹²⁹ This would eliminate the default responsibility of final-stage manufacturers that has long existed under NHTSA's regulations. In its petition, the NTEA further proposed that if the agency does not wish to resolve recalls in this manner, default recall responsibility should rest with the incomplete vehicle manufacturer instead of the final-stage manufacturer. Alternatively, NTEA proposed that default recall responsibility be placed on all manufacturers of a defective or noncompliant multistage vehicle.¹³⁰ NTEA does not explain how the latter alternative would work.

In support of its request, NTEA asserts, first, that final-stage manufacturers lack the financial resources needed to have default recall responsibility.¹³¹ Second, NTEA contends that safety will be enhanced if incomplete vehicle manufacturers have

default recall responsibility.¹³² NTEA's arguments why NHTSA should reconsider its position on this issue basically mirror these concerns.

3. NTEA Has Not Demonstrated That, Based on Size, Default Responsibility Should Be Shifted From Final-Stage Manufacturers

In its petition, NTEA notes that in the preamble to the SNPRM, NHTSA recognized that final-stage manufacturers often "may" not have the resources to conduct a recall for a safety problem they did not cause.¹³³ NTEA offers that the cost of a recall campaign could easily bankrupt a final-stage manufacturer.¹³⁴ In its view, the final rule downplays the adverse consequences the assignment of disputed recalls can have on final-stage manufacturers by asserting that "historically, incomplete and final-stage manufacturers have been able to resolve issues of determination of responsibility."¹³⁵ In NTEA's view, disputes typically are resolved by the final-stage manufacturer agreeing to conduct the recall because it can not afford to do otherwise.¹³⁶ NTEA provides no factual support for its assertions.¹³⁷

NTEA's argument is based in part on the assertion that incomplete vehicle manufacturers are in a better financial position to conduct recalls. This disregards the fact that the Vehicle Safety Act (49 U.S.C. Chapter 301) does not identify financial means as a criterion for exercising recall responsibility. The Safety Act states that the vehicle's manufacturer shall conduct the recall.¹³⁸ In the multistage vehicle context, NHTSA has interpreted that to be the final-stage manufacturer, because the incomplete vehicle is an original equipment item, and not a vehicle.¹³⁹ Further, assuming that recall responsibility could be allocated between incomplete and final stage manufacturers, NTEA has not addressed the issue of whether the Federal courts would be likely to accept the view that under the Safety Act, NHTSA may make decisions allocating recall responsibility that would be unreviewable by the courts, as discussed in the SNPRM.¹⁴⁰ NTEA has also not addressed the resource demands for NHTSA involvement in the allocation of recall

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 36047–48.

¹²³ *Id.* at 36048.

¹²⁴ *Id.*

¹²⁵ 70 FR 7414 (February 14, 2005).

¹²⁶ 70 FR at 7425.

¹²⁷ *Id.* at 7427.

¹²⁸ *Id.*

¹²⁹ Petition at 12.

¹³⁰ *Id.*

¹³¹ Petition at 12–14.

¹³² Petition at 14–15.

¹³³ Petition at 12.

¹³⁴ *Id.* at 13.

¹³⁵ *Id.*, quoting 70 FR at 7427.

¹³⁶ Petition at 13.

¹³⁷ Petition at 13.

¹³⁸ See 49 U.S.C. 30118.

¹³⁹ See 58 FR 40402, 40403 (July 28, 1993).

¹⁴⁰ See 69 FR 36047–48.

responsibility and NHTSA's corresponding lack of resources to be so engaged. In any event, on the question of finances, it is a matter of public record that a number of incomplete vehicle manufacturers are financially strained.

NTEA's arguments regarding default recall responsibility rest in general on NTEA's premise that final-stage manufacturers are left with the responsibility for recalling vehicles to remedy problems that were not of their own making. NTEA goes on to argue that final-stage manufacturers left with the responsibility for these recalls will be put out of business by the crippling costs of these recalls.¹⁴¹

In an effort to evaluate these assertions, NHTSA assessed recalls of multistage vehicles over a three model-year period.¹⁴² As detailed below, the review revealed that incomplete vehicle manufacturers conducted the recalls in 98 percent (193 of 197) of the instances in which the underlying cause could be attributed to them. Additionally, final-stage manufacturers conducted recalls for which the underlying cause could be attributed to incomplete vehicle manufacturers in only 2 percent (4 of 197) of the recalls conducted for which the incomplete vehicle manufacturer was most likely responsible.

To conduct the assessment, the agency reviewed about three years of recall data covering model year 2003 and more recent vehicles.¹⁴³ Based on our experience with recalls, this would provide sufficient relevant information upon which to make an assessment. We searched Artemis, NHTSA's central repository of vehicle data on, among other things, vehicle complaints, investigations and recalls. More particularly, Artemis contains summaries of safety recalls of motor vehicles and motor vehicle equipment, as well as Defect and Noncompliance Information Reports submitted by manufacturers under 49 CFR 573.6 and copies of notification letters from manufacturers to vehicle owners under 49 CFR part 577 and 49 CFR 573.6(c)(11).¹⁴⁴

Artemis does not include a separate code for multistage vehicles. Agency staff screened the vehicle recalls in Artemis to identify those involving multistage vehicles. The search

produced three hundred seventy-nine (379) recalls of MY 2003 and more recent vintage multistage vehicles. Next, agency staff made an assessment of the nature of the safety-related defect, the manufacturer likely to be responsible for the defect and the manufacturer that conducted the recall. The assignment of responsibility was made by engineers based on the information about the problem and the remedy based on summary information from part 573 and 577 reports and the reports in Artemis.

Based on this review, a substantial portion of the recalls of multistage vehicles were conducted by incomplete vehicle manufacturers. Of the 379 recalls of multistage vehicles, 193 (51%) were conducted by the incomplete vehicle manufacturer. This is illustrated by the following examples:

- On September 14, 2005, Ford notified ODI (05V-415)¹⁴⁵ about F-650/750 medium duty trucks built with a defective park brake anchor bolt, which upon failure could allow the truck to roll away from a parked position.

- On September 2, 2005, Freightliner notified ODI (05V-408) of a defect on its motor home chassis in which the steering shaft was pushing through the lower yoke, resulting in a loss of steering.

- On November 10, 2005, International Truck and Engine notified ODI (05V-523) of a defect concerning a cab entry step failure, possibly resulting in personal injury.

- On October 11, 2005, Hino Motors Sales USA Inc. notified ODI (05V-492) of a defect in which the battery box was not properly torqued in place on certain cabs and chassis. This could result in the battery and box becoming dislodged from the vehicle.

- On July 7, 2005, Mack Trucks notified ODI (05V-312) of a defect concerning non-conforming transverse beam castings on the AD Series suspensions. If a part were to fail, it could drop to the ground and become a projectile or cause sparks and ignite a fire.

- On June 29, 2005, Four Winds International, a final-stage manufacturer, notified ODI of a defect in certain RV chassis-cab vehicles built by Ford (05V-306). Ford notified Four Winds of a fuel line which could disconnect resulting in a stall. Ford, the incomplete vehicle manufacturer, conducted the recall (05V-266).

- On June 23, 2005, International notified ODI (05V-297) of a defect on model year 2006, model 4200 and 4300 trucks. The defect involved the rub

through of a front brake hose resulting in diminished brake performance.

- On June 16, 2005, General Motors notified ODI of a defect (05V-288) in which a power steering hose was chafing on the intermediate steering shaft. The trucks involved were model year 2003-2005 4500/5500 Kodiak school bus chassis and the GMC Top Kick. The defect is loss of power steering fluid, which could result in an increased steering and braking effort, increasing the risk of a crash.

- On June 15, 2005, Spartan Chassis Inc. notified ODI of a defect (05V-283) in the steering system on certain model Spartan chassis. Due to a defect in the linkage between the steering wheel and steering gear, the connection could be lost, resulting in a loss of steering.

Of the 193 recalls conducted by incomplete vehicle manufacturers for problems that can be attributed to the incomplete vehicle manufacturer, 18 warrant a comment. These 18 recalls, using NHTSA's nomenclature, are: 03V-040, 03V-041, 03V-047, 0V-048, 03V-059, 03V-060, 03V-064, 03V-066, 03V-068, 03V-069, 03V-080, 03V-092, 03V-116, 03V-119, 03V-148, 03V-149, 03V-152, and 03V-347. These 18 recalls stemmed from a notification letter sent by Ford Motor Company (02V-327) in January 2003 pertaining to model years 2000-2003 F53 chassis built at the IMMSA and Detroit chassis plant and assembled at the final stage manufacturer's facility. Ford's letter states "The instrument panel, as shipped by Ford[,] may not be wired correctly to illuminate the brake warning indicator and/or low brake fluid light as required by FMVSS 105 S5.3."

In reviewing the owner notifications for these recalls, ODI found examples where the remedy was apparently conducted by the final stage manufacturer, with such language as "Damon Corporation will notify owners and dealers of the affected vehicles to return them to a dealer to have the remedy performed at no charge to them." We found other statements which indicated that Ford, the incomplete vehicle manufacturer, would conduct the recall. For example, "Winnebago Industries will assist Ford to correct the situation by sending them a list containing the names and addresses of the owners and dealers who have the defective panel installed in their motor homes." During this review, NHTSA discussed the matter with Ford and was informed that any final stage manufacturer that conducted the recall was notified to submit a form for each remedied vehicle and Ford would reimburse the final stage

¹⁴¹ See generally Petition at 12-14.

¹⁴² See report, in administrative record. NHTSA Docket No. 99-5673.

¹⁴³ The agency began its assessment in November of 2005, based on data that was available as of that date. The data do not include recalls in November and December of 2005.

¹⁴⁴ Artemis contains no information not contained in 573 reports and 577 reports.

¹⁴⁵ The numbers in parentheses are the identifying Recall Numbers assigned by NHTSA.

manufacturer \$110.00 dollars per vehicle in an attempt to reduce or eliminate the financial burden associated with this recall. The \$110 reimbursement appeared to be sufficient. For example, in one recall NHTSA found that .7 hours of labor were allowed by the final stage manufacturer for an inspection and repair. Therefore, even though some of these recalls could technically be classified as being performed by the final stage manufacturer, NHTSA has decided that all recalls related to this matter will be binned into the group where the incomplete manufacturer is listed as conducting the recall, since they either did conduct the recall or they reimbursed the final stage manufacturers when appropriate paperwork was submitted for reimbursement.

Forty-one (41) percent of the recalls of multistage vehicles (157 of 379) were conducted by the final-stage manufacturer. In 80 percent of these recalls (126 of 157), the underlying problem appeared to have been created by the final-stage manufacturer. In these recalls, there were problems in or with parts or equipment installed by the final stage manufacturer. For example, some problems stemmed from parts and equipment that themselves were flawed or noncompliant (including rendering a vehicle noncompliant). Others were the result of the final stage manufacturer's improper installation of parts and equipment by (e.g., improper attachment of parts and equipment, installation of equipment that was missing parts such as bolts, and improper routing of parts). Some problems originated from the installation by the final stage manufacturer of parts and equipment that were not proper for the application. Still others involved parts and equipment installed by the final stage manufacturer that could interfere with the functioning of parts or equipment on the chassis or the vehicle as a whole, such as parts that were too close to or could rub chassis components such as fuel lines and brake lines. Also, some recalls were based on improper labels added by final stage manufacturers (e.g., labels stating GVWR, tire pressure). For example:

- On October 7, 2005, Winnebago Industries notified the agency (05V-475) of a safety-related defect in 3,613 Winnebago recreational vehicles built on a Ford chassis. Winnebago discovered that the fasteners holding the fuel tank mounting straps may not have been properly tightened, allowing the possibility for the fuel tank to loosen

and fall, which has the potential to ignite.

- On September 22, 2005, Gulf Stream Coach, Inc. notified ODI (05V-446) of a safety defect in 306 Class "B" motor homes built on the Sprinter chassis. The steel bracket securing the holding tank was installed in a location that pressed against the OEM brake line. This created points of possible wear due to vibration during vehicle operation, which, over time, could cause the brake lines to leak brake fluid, thus causing deterioration in braking performance. Winnebago was made aware of this matter by an owner.

- On September 23, 2005, the agency was notified (05V-440) of a safety defect by Collin Bus Corporation. The company identified 150 school buses built on the Chevrolet and Ford "cutaway" van chassis as having a safety defect. On the vehicles in question, the fasteners securing the seats and barriers to the wall tack may not have been adequately tightened. This could allow the seat or barrier to move relative to the vehicle wall in a crash and compromise passenger crash protection.

- On August 11, 2005, Monaco Coach Corporation notified the agency of a defect (05V-366) on 114 Class "A" motorhomes built on a Roadmaster chassis. Monaco determined that the headlight switch was overloading, possibly causing the headlights to stop functioning without warning.

- On July 3, 2005, McNeilus Truck and Manufacturing Company notified the agency (05V-357) of a safety defect on 107 trucks. McNeilus discovered a potential overload on the front axle that was rated at 10,000 lbs. The wheels were rated at 9,000 lbs. and the tires were rated at 8,270 lbs. Thus, both the tires and wheels would be overloaded in a maximum (10,000 lbs) front axle load condition.

- On April 28, 2005, ElDorado National notified the agency (05V-194) of a safety defect on 39 low-floor conversions built on the Chrysler minivan chassis. The defect involved a rubber fuel line that could come in close proximity to the van's exhaust system, thus resulting in a fire.

- On August 19, 2005, Girardin Minibus notified the agency (05V-365) of a non-compliance with Federal Motor Vehicle Safety Standard 221, on certain school buses built on Ford and General Motors chassis. Compliance testing showed that the company had built 10 buses with inadequate body joint strength. This could lead to a compromise of the passenger compartment in the event of a crash.

Twenty-seven (27) of the recalls conducted by the final-stage manufacturers were attributed to components manufactured by an equipment supplier and added to the incomplete vehicle by the final-stage manufacturer. For example, safety recalls 05V-429, (Les Entreprises Michel Corbel Inc.), 05V-490 (Mid Bus Inc.), 05V-352 (Girardin Minibus, Inc.), 05V-347 (Thomas Built Buses), 05V-345 (Collins Bus Corporation), 05V-336 (U.S. Bus Corporation), and 05V-308 (Van-Con Inc.) were all conducted by the final-stage manufacturers as the result of notification from an equipment supplier, Specialty Manufacturing Company (05E-032) advising of a safety defect in school bus stop arms. The stop arms had a micro switch that could malfunction in extremely cold and wet weather, causing the arm to not open or close. Other examples of recalls based on faulty equipment manufactured by an equipment supplier and added to the incomplete vehicle by the final-stage manufacturer involved water heaters on recreational vehicles. Safety recalls were conducted by Featherlite Inc. on motor coach conversions (05V-280), Tiffin Motorhomes, Inc. (05V-268), and Gulf Stream Coach Inc. (05V-258) after they were advised by Aqua-Hot heaters of a problem (05E-015) that could result in the ignition of combustible materials in and around the vehicle.

Four (4) safety recalls were conducted by final-stage manufacturers for problems that appeared to be attributable to an incomplete vehicle manufacturer.¹⁴⁶ These include the following:

- On November 1, 2005, Winnebago Industries, Inc. notified the agency (05V-496) of a defect in certain motor homes in which the cinch bolt in the steering column that connects to the intermediate shaft was improperly tightened, resulting in the possibility of bolt threads being stripped. This could cause a loss of steering control.

- On February 20, 2003, Jayco Inc. notified the agency (03V-057) of a defect in motor homes which involved a change made by the chassis manufacturer that increased pressure in the fuel return line. Jayco was not aware of the change. On account of the change, when connecting the RV's generator system into the chassis fuel system, fuel could overflow from the generator's carburetor, resulting in fuel spillage. This creates a fire hazard.

- On July 25, 2003, Monaco notified the agency of a defect (03V-268) in

¹⁴⁶ Nothing herein constitutes a finding of fact as would be the case after a hearing or trial, or a final agency action.

which the parking brake bracket was improperly secured to the chassis by the chassis manufacturer. This could allow the coach to roll away.

- On May 5, 2003, Fleetwood notified the agency of a defect (03V-169) in which drive shaft carrier bolts were not properly torqued. This could lead to carrier bearing failure and resulting drive shaft failure.

The remaining 29 recalls were conducted by equipment manufacturers for problems attributed to the equipment supplied by the equipment manufacturer. For example:

- On May 4, 2005, Country Coach, Inc. submitted a 573 report (05V-209) notifying NHTSA of a recall that would be conducted by Vehicle Systems, Inc. Vehicle Systems, Inc. had informed Country Coach that certain coolant heaters supplied to Country Coach by Vehicle Systems, Inc., had a burner tube that may have been made out of material that is not within specification and could fail prematurely and cause a fire. Vehicle Systems, Inc. conducted the recall (05E-015).

- On September 14, 2004, Glaval Bus informed NHTSA (04V-458) that Sure-Lok would be conducting a recall on wheelchair securement retractor assemblies installed in Glaval's buses (04E-058).

- On September 30, 2004, Daimler Chrysler notified NHTSA of a recall (04V-505) Sure-Lok was conducting on a seatbelt retractor assembly installed in certain Daimler Chrysler commercial buses (04E-058).

- On January 15, 2003, Georgie Boy Manufacturing, LLC (Georgie Boy), filed a 573 Report (03V-012) alerting NHTSA to a recall being conducted by Caterpillar on certain engine models sold in the 2000 model year and which were installed in ten Georgie Boy vehicles. The engines experienced a fuel system problem that could result in a stall. Caterpillar conducted the recall (03V-012.001).

Thus, only 8 percent of the recalls (31 of 379) conducted on multistage vehicles were conducted by final-stage manufacturers for problems that appeared to have been created by others. This indicates that, contrary to NTEA's assertion, incomplete vehicle manufacturers are not exploiting the final-stage-manufacturers' default recall responsibility, but are, instead, in the overwhelming majority of cases assuming responsibility for the recalls for which they were the source of the defect. Indeed, of the 197 recalls for which NHTSA staff informally determined that incomplete vehicle manufacturers were the source of the precipitating problem, the incomplete

vehicle manufacturers conducted the recalls in 98 percent of the cases (193 of 197).

The remaining 2 percent (the 4 safety recalls conducted by final-stage manufacturers for problems attributable to incomplete vehicle manufacturers addressed above) demonstrate the need to maintain the default rule. Those recalls involved significant safety concerns, including brakes, steering, fires, and motive power. It is very important that problems such as these be corrected promptly. In the absence of a default rule, there would be delays while the various manufacturers pointed fingers at each other, ramped up their legal teams and engaged in a dispute. Meanwhile, the safety problem would go unresolved. To make matters worse, NHTSA might not know about the safety-related defect. The first notification that NHTSA receives is the manufacturer's Defect and Noncompliance Information Report under 49 CFR 573.6 (part 573 Report). Section 573.6(b) requires the report to be filed with NHTSA not later than five days after the manufacturer determines the existence of the defect or noncompliance. In the case of a dispute between manufacturers, it is likely that neither manufacturer would file a part 573 Report in order to avoid taking responsibility for the recall. If default responsibility were placed on the incomplete vehicle manufacturer, those manufacturers would face responsibility in many circumstances to remedy defects or noncompliances that they had no hand in creating.

We also considered NTEA's assertion that final-stage manufacturers that conducted recalls for problems caused by incomplete vehicle manufacturers were being driven out of business. NTEA did not support its assertion. We researched multistage vehicle manufacturers whose products have been the subject of recall campaigns or compliance tests. A review of the available financial information on multistage vehicle manufacturers (both intermediate and final-stage) involved in the recalls, concluded that these companies are not being run out of business.¹⁴⁷ No business failures have been identified among multistage vehicle manufacturers that can be specifically traced to any Federal safety recall campaigns. Moreover, in the small number of cases in which final-stage manufacturers conducted recalls for problems attributable to incomplete vehicle manufacturers, we have no

information on whether the final-stage manufacturers obtained any reimbursement for some or all of their expenses.

NHTSA's review of the recalls, set forth above, does not support NTEA's contention that disputes between final-stage and incomplete vehicle manufacturers over recall responsibility "typically are resolved by the final-stage manufacturer 'agreeing' to conduct the recall because it cannot afford to do otherwise." Contrary to NTEA's unsubstantiated assertion, incomplete vehicle manufacturers in practice took responsibility for the defects and noncompliances they created and conducted recalls to remedy those problems 96 percent of the time.

NTEA has failed to demonstrate any actual harm to any final-stage manufacturers, and instead relies on unsubstantiated allegations regarding the theoretical impact of default recall responsibility. NHTSA's own review of three years of multistage vehicle recalls demonstrates that NTEA's general assertions about the harm likely to befall final-stage manufacturers due to the retention of default recall responsibility are not valid.

4. NTEA Has Not Demonstrated That Safety Will Be Enhanced by Assigning Default Recall Responsibility to the Incomplete Vehicle Manufacturers

NTEA offers several rationales for shifting recall responsibility to incomplete vehicle manufacturers. Before turning to those reasons, we note that NTEA ignores the fact that the system that has been in place for over twenty-five years is working. That is reflected, in part, by the analysis of recalls explained above.

NTEA advances two arguments as to why safety would be enhanced if default recall responsibility were assigned to the incomplete vehicle manufacturer. These are premised on the contention that final-stage manufacturers are often confined to a single geographic location while incomplete vehicle manufacturers are large international organizations with a much greater geographic range. NTEA argues that the incomplete vehicle manufacturers' geographic diversity would allow recalls to be more efficiently conducted, because more outlets would be available to perform remedies. NTEA also argued that recalls conducted by incomplete vehicles manufacturers are likely to be more effective because owners are more likely to respond to recall notices when the remedy is available at multiple locations.¹⁴⁸

¹⁴⁷ See Report on Business Failures Resulting from Recall Campaigns, NHTSA Docket No. 99-5673.

¹⁴⁸ Petition at 14.

NTEA submits no information or data that suggests that final-stage manufacturers' products are dispersed over a geographically wide area that would make recalls difficult. Additionally, NTEA has not submitted evidence of situations in which a final-stage manufacturer could not conduct a recall effectively. Also, as discussed more thoroughly above, NHTSA's analysis of multistage vehicle recalls reveals that in nearly all of the cases in which an incomplete vehicle manufacturer was responsible for the problem necessitating a recall, that manufacturer conducted the recall campaign. Thus, final-stage manufacturers are most often conducting recalls only to remedy problems they created. The fact that incomplete vehicle manufacturers often have a more widespread network of locations and service centers provides no rationale for requiring them to shoulder responsibility for problems caused by final-stage manufacturers. Finally, NTEA has not demonstrated that incomplete vehicle manufacturers' dealers have the knowledge and wherewithal to address many of the defects and noncompliances that final-stage manufacturers introduce into a vehicle, such as those inherent in the equipment (including such items as hot water heaters in recreational vehicles) a final-stage manufacturers may install.

NTEA also argues that because the incomplete vehicle manufacturer supplies the most complicated components of the vehicle, a recall campaign is more likely to involve components installed by the incomplete vehicle manufacturer.¹⁴⁹ NTEA cites this as another reason why default recall responsibility should be assigned to the incomplete vehicle manufacturer. NTEA's argument relies on, and assumes the truth of, its underlying assertion that incomplete vehicle manufacturers do not conduct recalls when they are responsible for the underlying defect or noncompliance. As discussed at great length above, this contention is inconsistent with the facts and utterly groundless.

NTEA contends that NHTSA's position that default recall responsibility should remain with the final-stage manufacturer rests on a faulty interpretation of the market power of incomplete vehicle manufacturers. Specifically, NTEA takes issue with the agency's position that the default recall responsibility scheme "provides an incentive for a final-stage manufacturer to deal with a solid and reputable incomplete vehicle

manufacturer."¹⁵⁰ The agency has addressed the weakness of NTEA's market forces argument in the section of this notice pertaining to the reasonableness of IVDs. NHTSA relies on that analysis in rejecting NTEA's argument on this issue as well. As reflected in that analysis, final-stage manufacturers have been shown to be a considerable market force in a multi-billion dollar industry.

NTEA also takes issue with a statement in a 1993 **Federal Register** notice published by NHTSA.¹⁵¹ In that notice, NHTSA announced that it was terminating a rulemaking proceeding, initiated in response to an NTEA petition, that sought to allocate recall responsibility for vehicles built in two or more stages to the various manufacturers in the chain of production for those vehicles.¹⁵² Among the reasons stated for NHTSA's termination of the rulemaking was that "the final-stage manufacturer is most likely to be able to identify owners from sales and warranty records, as well as State registration records, which may not be available to incomplete or intermediate stage vehicle manufacturers."¹⁵³ NTEA contends that this justification is not true.

NTEA considerably overreaches in asserting that:

The incomplete vehicle manufacturer is in a much better position to obtain information about the current owner of a vehicle subject to a recall. The incomplete vehicle manufacturer is likely to have the longer and more lucrative relationship with the dealer, and, consequently, more leverage to obtain the dealer's prompt cooperation in compiling the necessary information.¹⁵⁴

NTEA overlooks the fact that there are many different kinds of incomplete vehicles, and incomplete vehicles are sold in various stages of completion. Similarly, for some types of multistage vehicles (e.g., school buses, recreational vehicles and ambulances), the customer often purchases the vehicle from a final-stage manufacturer or one of its dealers rather than from a dealer franchised by the incomplete vehicle manufacturer. Moreover, NTEA ignores the fact that mailing lists for many recalls, particularly those for vehicles in service for some time, are obtained from companies such as R.L. Polk, which cull the names and addresses of vehicle owners from State motor vehicle registries. NTEA provides no information or support for its statements

regarding the relationships between incomplete vehicle manufacturers and dealers or its contention that "the incomplete vehicle manufacturer is in a much better position to obtain information" about owners to conduct a recall.

NTEA's position also contradicts the manner in which NHTSA has historically treated multistage and incomplete vehicles. As discussed above, NHTSA has traditionally regarded an incomplete vehicle as an item of original equipment installed on the vehicle, as finally assembled, at the time it is delivered to its first purchaser.¹⁵⁵ Under provisions of the Safety Act now codified at 49 U.S.C. 30102(b)(G) and (b)(F), a defect or noncompliance in original equipment "is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery of the first purchaser," and "the manufacturer of a motor vehicle in or on which original equipment was installed at the time of delivery to the first purchaser is deemed to be the manufacturer of the equipment." As such, the final-stage manufacturer properly holds default recall responsibility.

5. Additional Points in Support of NHTSA's Decision

NTEA's alternative argument is that default responsibility should rest with incomplete vehicle manufacturers. Apart from the legal issues and practices noted above, this ignores the fact that there are considerable fairness issues associated with assigning default recall responsibility to a class of manufacturers that has no say in what happens to an incomplete vehicle once it leaves their hands. The incomplete vehicle manufacturer transfers the incomplete vehicle to a subsequent manufacturer over which the incomplete vehicle manufacturer has no control, and the subsequent manufacturer builds on the incomplete vehicle a completed vehicle about which the incomplete vehicle manufacturer may have no knowledge. Given these circumstances, to require the incomplete vehicle manufacturer to have default recall responsibility over the vehicle as finally assembled would be to impose a regulatory scheme without logical support, which NHTSA declines to do.

6. Conclusion

Because NTEA's arguments regarding default recall responsibility are

¹⁵⁰ *Id.* (quoting 70 FR at 7427).

¹⁵¹ Petition at 14.

¹⁵² 58 FR at 40402.

¹⁵³ *Id.* at 40404.

¹⁵⁴ Petition at 14.

¹⁵⁵ See Interp. letter to B.H. Smith, Nabors Trailers, Inc. (Oct. 3, 1969).

¹⁴⁹ Petition at 14.

founded, in large part, on a factual premise (*i.e.*, that final-stage manufacturers often unfairly assume the burden of recalls for problems they did not cause) expressly controverted by NHTSA's review of multistage vehicle recalls, many of NTEA's arguments cannot be accepted. Moreover, the logic and policy behind assigning default recall responsibility to final-stage manufacturers are supported by both the agency's historical treatment of multistage vehicles and the documented practice of incomplete vehicle manufacturers taking responsibility for recalls for which their actions are the precipitating cause. Therefore, NHTSA must deny NTEA's petition as it pertains to recall responsibility.

I. There Is No Need for NHTSA To Require IVDs for Completed Vehicles That Are Commonly Altered, or To Allow Alterers To Rely on Pass-Through Certification Opportunities Presented in IVDs

Noting that IVDs and the related pass-through opportunities are available only for incomplete vehicles, but that some IVDs include conformity statements for completed vehicles as well as for incomplete vehicles, NTEA asked that alterers be allowed to rely on such conformity statements in performing their own certification responsibilities. NTEA further requested the agency to require IVDs for completed vehicle configurations commonly altered prior to first retail sale.

Agency response: Unlike incomplete vehicles, completed vehicles that are altered prior to first retail sale have already been certified by their original manufacturer as complying with all applicable FMVSS. By affixing the appropriate label, as required under 49 CFR 567.4, the original manufacturer discharges its certification responsibilities with respect to the vehicle. It would be unreasonable to expect the original manufacturer to be able to anticipate that a vehicle it has fully manufactured and certified will be altered prior to first retail sale, and even more unreasonable to expect the manufacturer to anticipate the myriad kinds of alterations that could be performed on such a vehicle. The agency is therefore unwilling to require manufacturers to supply IVDs with completed vehicles. Accordingly, we deny this aspect of NTEA's petition.

Nevertheless, the agency is aware that IVDs for some incomplete vehicle models are readily available on their manufacturers' websites and elsewhere. To the extent that a vehicle to be altered is similar to one produced in an incomplete vehicle configuration, the

alterer is able to rely on appropriate compliance statements made in the relevant IVD, if any, in certifying that the vehicle remains in compliance with all applicable FMVSS affected by the alteration.

The agency notes that unlike a final-stage manufacturer, which must certify a vehicle's compliance with all applicable standards, an alterer need only "ascertain that the vehicle as altered conforms to the standards which are affected by the alteration," and must certify that the vehicle, as altered, "conforms to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards affected by the alteration."¹⁵⁶ Given the more circumscribed nature of this certification, the agency does not recognize alterers as needing the same opportunities for pass-through certification that are needed by final-stage manufacturers.

J. Technical Amendment

NTEA noted that section 568.4(a)(5), as amended under the final rule, provides that the IVD should include the "[g]ross axle weight rating (GAWR) for each axle of the completed vehicle * * *" (Emphasis added.) NTEA suggested that "incomplete vehicle" be substituted for the highlighted phrase. The agency agrees that the existing language in paragraph (a)(5) is unclear, and has reworded the first sentence of that paragraph to correspond to the language of paragraph (a)(4), pertaining to the gross vehicle weight rating specification in the IVD. By doing so, the agency grants this aspect of NTEA's petition.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

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

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

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

We have considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures, and for the following reasons have determined that it is not a "significant regulatory action" within the meaning of section 3 of E.O. 12866 and is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. There are only two non-technical amendments adopted in this rulemaking. The first permits manufacturers of multistage vehicles to petition the agency for temporary exemptions from "dynamic test requirements" in the FMVSS, as opposed to "dynamic crash test requirements," which was specified in the February 2005 Final Rule. This amendment places no additional requirements on multistage vehicle manufacturers for the purpose of obtaining temporary exemptions, and can have no adverse consequence, financial or otherwise, for any party that stands to be affected by the rule.

The second non-technical amendment requires multistage vehicle manufacturers who petition the agency for a temporary exemption under the expedited procedures in subpart B of 49 CFR part 555 to discuss in the petition the availability of alternate incomplete vehicles that could allow the petitioner to rely on IVDs when certifying a completed vehicle, instead of petitioning under that subpart. This amendment does not preclude multistage vehicles manufacturers who fail to discuss the availability of alternate incomplete vehicles from petitioning for a temporary exemption, as the temporary exemption procedures set forth in subpart A of 49 CFR part 555 could still be used in that circumstance. However, given the critical time limitations that the agency faces in processing a petition under subpart B, obvious means to avoid the need for filing such a petition must be addressed. This document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review."

For the following reasons, NHTSA concludes that this final rule will not

¹⁵⁶ See 49 CFR 567.7 and 568.8.

have any quantifiable cost effect on motor vehicle manufacturers or motor vehicle equipment manufacturers. Even though multistage vehicle manufacturers stand to be affected by the two non-technical amendments adopted in this final rule, one of those amendments confers a benefit on those manufacturers by broadening the range of requirements in the FMVSS from which multistage manufacturers may obtain temporary exemptions. The other non-technical amendment merely adds a requirement for a fuller discussion of the need for a multistage manufacturer to obtain a temporary exemption on an expedited basis, but does not preclude those manufacturers from obtaining temporary exemptions under other procedures.

Because the economic effects of this final rule are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Deputy Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that this final rule, formulated in response to a petition for reconsideration, makes two non-technical amendments to the agency's regulations. The first allows multistage vehicle manufacturers, many of which

qualify as small businesses, to obtain temporary exemptions on an expedited basis from a broader range of requirements in the FMVSS than were previously permitted under the regulation in question. The second non-technical amendment requires a petitioner to provide a fuller discussion of the need to obtain a temporary exemption on an expedited basis, but does not preclude a petitioner unwilling to provide this discussion from seeking an exemption under other applicable procedures. As such, the amendments impose no adverse economic impact on any party.

For these reasons, and for the reasons described in our discussion on Executive Order 12866 and DOT Regulatory Policies and Procedures, NHTSA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

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

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order

13132. The agency has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Thus, the requirements of section 6 of the Executive Order do not apply.

E. Unfunded Mandates Reform Act

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

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

F. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," this agency has considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Judicial review of the rule may be obtainable under 5 U.S.C. 702. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new information collection requirements for which a 5 CFR part 1320 clearance must be obtained.

H. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant and does not involve any environmental, health, or safety risks that disproportionately affect children.

I. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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>.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rulemaking only addresses the allocation of legal responsibilities among regulated parties. As such, the issues involved here are not amenable to the development of voluntary standards.

K. 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.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

List of Subjects in 49 CFR Parts 555, 567, 568, and 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

■ 1. The authority citation for part 555 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30113, 32502, Pub. L. 105–277; delegation of authority at 49 CFR 1.50.

■ 2. Part 555 subpart B is amended by revising §§ 555.11, 555.12, and 555.13 to read as follows:

§ 555.11 Application.

This subpart applies to alterers and manufacturers of motor vehicles built in two or more stages to which one or more standards are applicable. No manufacturer or alterer that produces or alters a total exceeding 10,000 motor vehicles annually shall be eligible for a temporary exemption under this subpart. Any exemption granted under this subpart shall be limited, per manufacturer, to 2,500 vehicles to be sold in the United States in any 12 consecutive month period. Incomplete vehicle manufacturers and intermediate manufacturers that do not intend to certify the vehicles in accordance with 49 CFR 567.5(f) or (g), and instead furnish Incomplete Vehicle Documents to final-stage manufacturers in accordance with 49 CFR 568.4 or 49 CFR 568.5, are not eligible for temporary exemptions under this subpart.

§ 555.12 Petition for exemption.

An alterer; an incomplete vehicle manufacturer intending to certify the vehicle in accordance with 49 CFR

567.5(f); an intermediate manufacturer intending to certify the vehicle in accordance with 49 CFR 567.5(g); a final-stage manufacturer; or an industry trade association representing a group of alterers, incomplete vehicle manufacturers, intermediate manufacturers and/or final-stage manufacturers may seek, as to any vehicle configuration altered and/or built in two or more stages, 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 test procedure to determine compliance. Each petition for an exemption under this section must be submitted to NHTSA and must:

(a) Be written in the English language;
(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590;

(c) State the full name and address of the applicant, the nature of its organization (e.g., individual, partnership, corporation, or trade association), the name of the State or country under the laws of which it is organized, and the name of each alterer, incomplete vehicle manufacturer, intermediate manufacturer and/or final-stage manufacturer for which the exemption is sought;

(d) State the number, title, paragraph designation, and the text or substance of the portion(s) of the standard(s) from which the exemption is sought;

(e) Describe by type and use each vehicle configuration (or range of vehicle configurations) for which the exemption is sought;

(f) State the estimated number of units of each vehicle configuration to be produced annually by each of the manufacturer(s) for whom the exemption is sought;

(g) Specify any part of the information and data submitted that the petitioner requests be withheld from public disclosure in accordance with part 512 of this chapter, as provided by § 555.5(b)(6).

(1) The information and data which petitioner requests be withheld from public disclosure must be submitted in accordance with § 512.4 of this chapter.

(2) The petitioner’s request for withholding from public disclosure must be accompanied by a certification in support as set forth in appendix A to part 512 of this chapter.

§ 555.13 Basis for petition.

The petition shall:

(a) Discuss any factors (e.g., demand for the vehicle configuration, loss of

market, difficulty in procuring goods and services necessary to conduct dynamic tests) that the applicant desires NHTSA to consider in deciding whether to grant the application based on economic hardship.

(b) Explain the grounds on which the applicant asserts that the application of the dynamic test requirements of the standard(s) in question to the vehicles covered by the application would cause substantial economic hardship to each of the manufacturers on whose behalf the application is filed, providing a complete financial statement for each manufacturer and a complete description of each manufacturer's good faith efforts to comply with the standards, including a discussion of:

(1) The extent that no Type (1) or Type (2) statement with respect to such standard is available in the incomplete vehicle document furnished, per part 568 of this chapter, by the incomplete vehicle manufacturer or by a prior intermediate-stage manufacturer or why, if one is available, it cannot be followed;

(2) A description of the incomplete vehicle to be used to manufacture the vehicle(s) subject to the petition. This description must identify the manufacturer of the incomplete vehicle, state the incomplete vehicle's GVWR, and provide other available specifications;

(3) The availability of alternative incomplete vehicles, including incomplete vehicles of different size, GVWR, and number of axles, from the same and other incomplete vehicle manufacturers, that could allow the petitioner to rely on Incomplete Vehicle Documents when certifying the completed vehicle, instead of petitioning under this subpart;

(4) The existence, or lack thereof, of generic or cooperative testing that would provide a basis for demonstrating compliance with the standard(s); and

(c) Explain why the requested temporary exemption would not unreasonably degrade safety.

PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

■ 1. The authority citation for part 568 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30111, 30115, 30117, 30116; delegation of authority at 49 CFR 1.50.

■ 2. Part 568 is amended by revising the first sentence of paragraph (a)(5) of § 568.4 to read as follows:

§ 568.4 Requirements for incomplete vehicle manufacturers.

(a) * * *

(5) Gross axle weight rating (GAWR) for each axle of the completed vehicle for which the incomplete vehicle is intended, listed and identified in order from front to rear (*e.g.*, front, first intermediate, second intermediate, rear).
* * *

* * * * *

Jacqueline Glassman,

Deputy Administrator.

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