

Marie or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sault Ste Marie or his on-scene representative.

Dated: June 25, 2007.

**L.W. Hewett,**

*Commander, U.S. Coast Guard, Alternate Captain of the Port Sault Ste Marie.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2007-28694, Notice 1]

RIN 2127-AJ90

### Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems

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

**ACTION:** Final rule; partial response to petitions for reconsideration.

**SUMMARY:** This document responds in part to petitions for reconsideration of our statutorily-mandated rulemaking establishing a new Federal motor vehicle safety standard (FMVSS) requiring installation in new light vehicles of a tire pressure monitoring system (TPMS) capable of detecting when one or more of a vehicle's tires is significantly under-inflated. We established the standard in a final rule published in April 2005. We responded to petitions for reconsideration of that final rule in a final rule published in September 2005. This final rule responds to the petition for reconsideration of our September 2005 final rule submitted by the Alliance of Automobile Manufacturers, which raised a number of technical issues pertaining to the combined low tire pressure/TPMS malfunction indicator lamp. (The agency will respond subsequently in a separate notice to a second petition for reconsideration submitted by ETV Corporation Pty Limited.) We are granting the Alliance's petition, and through this document, we are amending the standard accordingly. We anticipate that today's amendments, which are of a minor technical nature, will not necessitate redesign of current TPMSs nor appreciably change the costs of compliance with the safety standard.

**DATES:** *Effective Date:* The amendments made in this final rule are effective August 13, 2007. Voluntary compliance is permitted immediately.

*Petitions for Reconsideration:* If you wish to submit a petition for reconsideration for this rule, your petition must be received by August 27, 2007. The agency will not consider redundant petitions.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, 4th Floor, Washington, DC 20590.

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

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. George Soodoo or Mr. Samuel Daniel, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Ms. Rebecca Schade, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, 4th Floor, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

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#### I. Summary of Decision

This document responds to a petition for reconsideration submitted by the Alliance of Automobile Manufacturers (Alliance) related to our rulemaking establishing FMVSS No. 138, *Tire Pressure Monitoring Systems*, which was adopted in a final rule published in the **Federal Register** on April 8, 2005.<sup>1</sup>

The petitioner sought further amendments to the standard pertaining to matters that it deemed either to be insufficiently addressed by or newly arising from our September 2005 final rule<sup>2</sup> responding to petitions for reconsideration of the April 2005 final rule. Specifically, the petitioner requested changes to the specifications for the TPMS malfunction warning provided by a combined low tire pressure/TPMS malfunction warning telltale (see section IV of this document for a complete discussion of issues raised in the petition and their resolution). We have decided to grant the petition for the reasons below. (We further note that a second petition for reconsideration was submitted by ETV Corporation Pty Limited (ETV), in response to which the agency is currently analyzing additional data. In order to prevent unnecessary delay in responding to the separate and distinct requests for amendment set forth in the Alliance's petition, we have decided to bifurcate our response to this latest round of petitions for reconsideration of the TPMS rulemaking. Accordingly, we have decided to respond to the ETV petition subsequently, as part of a separate document.)

After careful consideration of the Alliance's request and available data, the agency has decided to amend FMVSS No. 138 in response to one technical matter raised in this latest round of petitions for reconsideration, which involves the standard's requirements and test procedures related to operation of the combined low tire pressure/TPMS malfunction indicator lamp (MIL) telltale. Specifically, we have decided to retain the requirement for the system to detect a system malfunction and to initiate a 60-90 second flashing sequence by the combined TPMS telltale (followed by continuous illumination) within 20 minutes of occurrence of that malfunction. However, we are amending the standard to provide that if the TPMS subsequently encounters additional, separate malfunctions, the TPMS may (but is not required to) initiate another flashing sequence for each distinct malfunction condition.

As a related matter, we are amending the standard's test procedures to provide that only one malfunction will be simulated during each malfunction detection test (*i.e.*, one per ignition cycle). Under the standard, the agency may still test for more than one malfunction, although each additional malfunction would be simulated in a

<sup>1</sup> 70 FR 18136 (April 8, 2005) (Docket No. NHTSA-2005-20586-1).

<sup>2</sup> 70 FR 53079 (Sept. 7, 2005) (Docket No. NHTSA-2005-22251-1).

separate test during a different ignition cycle, rather than simulating multiple TPMS malfunctions simultaneously during the same ignition cycle.

#### *Effective Date*

In light of the fact that the phase-in for FMVSS No. 138 commenced on October 5, 2005, we find that there is good cause to make these amendments effective 30 days after publication. The changes resulting from this final rule responding to the Alliance's petition for reconsideration generally involve requested technical modifications and clarifications to the standard. We believe that vehicle manufacturers and other interested stakeholders would benefit from rapid implementation of these amendments. We note, however, that vehicle manufacturers may voluntarily comply with the requirements of this final rule immediately.

## II. Background

### A. The TREAD Act

Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000<sup>3</sup> on November 1, 2000. Section 13 of that Act<sup>4</sup> required the Secretary of Transportation, within one year of the statute's enactment, to complete a rulemaking "to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated." Section 13 also required the regulation to take effect within two years of the completion of the rulemaking. Responsibility for this rulemaking was delegated to NHTSA.

### B. Rulemaking History Prior to the April 2005 Final Rule

Since passage of the TREAD Act, FMVSS No. 138 has had a protracted regulatory history. In summary, the agency published a notice of proposed rulemaking (NPRM)<sup>5</sup> on July 26, 2001, which was followed by a final rule<sup>6</sup> published on June 5, 2002.

After issuance of the June 2002 final rule, Public Citizen, Inc., New York Public Interest Research Group, and the Center for Auto Safety filed a lawsuit challenging certain aspects of the TPMS regulation. The Court of Appeals for the Second Circuit (Second Circuit) issued its opinion in *Public Citizen, Inc. v.*

*Mineta*<sup>7</sup> on August 6, 2003, holding that the TREAD Act unambiguously mandates TPMSs capable of monitoring each tire up to a total of four tires. The Court's decision effectively precluded the one-tire, 30-percent under-inflation detection option in the June 5, 2002 final rule, or any similar option for a system that cannot detect under-inflation in any combination of tires up to four tires.

We note, however, that the Second Circuit was presented with a final rule that did not specify a requirement for TPMS operability with a spare tire, but the Court did not find fault with that aspect of the safety standard. Moreover, the petitioners in *Public Citizen, Inc. v. Mineta* did not object to that aspect of the TPMS final rule in their litigation filings.<sup>8</sup> Instead, the Court's opinion explicitly sanctioned the agency's four-tire, 25 percent under-inflation detection option (without any provision requiring TPMS operability with spare tires), stating, "We conclude that the agency's adoption of a one-tire, 30 percent option was both contrary to law and arbitrary and capricious, and that the agency's adoption of the phase-in period and the four-tire, 25 percent option were not."<sup>9</sup>

Ultimately, the Court vacated the standard in its entirety and directed the agency to conduct further rulemaking. NHTSA published a final rule in the **Federal Register** on November 20, 2003, vacating FMVSS No. 138.<sup>10</sup>

The agency commenced rulemaking efforts to re-establish FMVSS No. 138 in a manner consistent with the Court's opinion and responsive to issues raised in earlier petitions for reconsideration, the majority of which remained relevant. To this end, the agency published a new NPRM<sup>11</sup> on September 16, 2004, obtained and considered public comments, and published a final rule<sup>12</sup> in the **Federal Register** on April 8, 2005. (For a more complete discussion of the regulatory history of the TPMS rulemaking, readers should consult the June 5, 2002 final rule, the September 16, 2004 NPRM, and the April 2005 final rule.)

### C. The April 2005 Final Rule

In re-establishing FMVSS No. 138, the April 2005 final rule required passenger cars, multi-purpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to all four of its tires, is significantly under-inflated.<sup>13</sup> Subject to the phase-in schedule and the exceptions below, the final rule mandated compliance with the requirements of the standard, commencing with covered vehicles manufactured on or after October 5, 2005 (*i.e.*, model year (MY) 2006). The standard is intended to be technology-neutral, so as to permit compliance with any available TPMS technology that meets the standard's performance requirements.

The following points highlight the key provisions of the April 2005 final rule.

- The TPMS is required to detect and to provide a warning to the driver within 20 minutes of when the pressure of one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. These minimum activation pressures are included in Table 1 of FMVSS No. 138.

- The TPMS is not required to monitor the spare tire (if provided), either when it is stowed or when it is installed on the vehicle.

- The TPMS must include a low tire pressure warning telltale<sup>14</sup> (yellow) that must detect (within 20 minutes) and remain illuminated as long as any of the vehicle's tires remain under-inflated (*i.e.*, at a level below the standard's detection level for low tire pressure) and

<sup>13</sup> There are two types of TPMSs currently available, direct TPMSs and indirect TPMSs. Direct TPMSs have a pressure sensor in each wheel that transmits pressure information to a receiver. In contrast, indirect TPMSs do not have tire pressure sensors, but instead rely on the wheel speed sensors, typically a component of an anti-lock braking system, to detect and compare differences in the rotational speed of a vehicle's wheels, which correlate to differences in tire pressure.

We anticipate that new types of TPMS technology may be developed in the future that will be capable of meeting the standard's requirements. For example, such systems might incorporate aspects of both direct and indirect TPMSs (*i.e.*, hybrid systems). In concert with TPMS suppliers, tire manufacturers might be able to incorporate TPMS sensors directly into the tires themselves. In issuing a performance standard, NHTSA is cognizant of and seeks to encourage technological innovation.

<sup>14</sup> As part of the final rule, we added two versions of the TPMS low tire pressure telltale and a TPMS malfunction telltale to Table 2 of FMVSS No. 101, *Controls and Displays* (since changed to Table 1).

<sup>7</sup> 340 F.3d 39 (2d Cir. 2003).

<sup>8</sup> The only reference to TPMS operability with spare tires was provided at page 7 of the petitioners' brief, which, in a description of different types of TPMSs, merely stated, "Direct systems can also work with a spare tire."

<sup>9</sup> *Id.* at 62.

<sup>10</sup> 68 FR 65404 (Nov. 20, 2003) (Docket No. NHTSA-2003-16524-1).

<sup>11</sup> 69 FR 55896 (Sept. 16, 2004) (Docket No. NHTSA-2004-19054-1).

<sup>12</sup> 70 FR 18136 (April 5, 2005) (Docket No. NHTSA-2005-20586-1).

<sup>3</sup> Pub. L. 106-414, 114 Stat. 1800 (2000).

<sup>4</sup> See 49 U.S.C. 30123 note (2003).

<sup>5</sup> 66 FR 38982 (July 26, 2001) (Docket No. NHTSA-2000-8572-30).

<sup>6</sup> 67 FR 38704 (June 5, 2002) (Docket No. NHTSA-2000-8572-219).

the vehicle's ignition locking system is in the "On" ("Run") position.<sup>15</sup> The TPMS's low tire pressure warning telltale must perform a bulb-check at vehicle start-up.

- The TPMS is required to be certified as meeting the standard's performance requirements with the tires originally installed on the vehicle at the time of initial vehicle sale. This requirement reflects a change from the June 2002 final rule, which required vehicle manufacturers to certify compliance with any optional or replacement tires of the size(s) recommended by the vehicle manufacturer. This modification to the standard was because of new information demonstrating that a small number of aftermarket and replacement tires have construction characteristics that may prevent the continued proper functioning of the TPMS when original equipment tires are replaced and because of the difficulty in identifying those problematic tires.<sup>16</sup>

<sup>15</sup> We note that if a vehicle manufacturer elects to install a low tire pressure telltale that indicates which tire is under-inflated, the telltale must correctly identify the under-inflated tire. (See S4.3.2, as contained in the April 2005 final rule.)

<sup>16</sup> Available information at the time of the April 2005 final rule showed that a very small number of replacement tires (estimated at less than 0.5 percent of production) may have characteristics and material content that cause the vehicle's TPMS to exhibit functional problems. Specifically, the Rubber Manufacturers Association submitted information on the prevalence of tires with characteristics identified as potentially being incompatible with proper TPMS functioning, at least in some cases. These problems are primarily related to the tires' construction (e.g., high carbon content in low aspect-ratio tires, thicker sidewall, or steel body ply sidewall). According to the RMA, in 2002, light vehicle tires having either steel body ply cords (steel casing tires) or run-flat capability accounted for less than 0.5 percent of tires distributed in the United States. (See letter from Steven Butcher, Vice President, Rubber Manufacturers Association, to NHTSA (October 31, 2003) (Docket No. NHTSA-2000-8572-282)).

At that time, the agency also noted information showing that there were over four million TPMS-equipped vehicles. (See letter from Robert Strassburger, Vice President, Alliance of Automobile Manufacturers, to NHTSA (October 20, 2003) (Docket No. NHTSA-2000-8572-277)). As discussed in the April 2005 final rule, neither the agency nor vehicle manufacturers had received reports indicating any significant performance problems with those TPMSs when replacement tires are installed on the vehicle (see 70 FR 18136, 18159 (April 8, 2005)), and the agency is similarly unaware of any significant compatibility problems between aftermarket TPMSs and replacement tires (see 67 FR 38704, 38731 (June 5, 2002)). This information was generally consistent with the information above suggesting that the magnitude of the compatibility problem between TPMSs and replacement tires is likely to be a small one.

However, neither the agency nor the commenters were able to identify a clear design solution for this problem, one which would pose an insurmountable certification challenge for vehicle manufacturers if the agency were to require ongoing TPMS operability with all replacement tires. However, in

The agency acknowledged the practicability concerns associated with vehicle manufacturers' trying to identify existing and future replacement tires which could negatively impact the performance of TPMSs, particularly given that tire production is outside the vehicle manufacturers' control. Although we agreed that this situation could pose substantial difficulties in terms of compliance certification, we also stated our continued belief that a typical vehicle will outlast its original set of tires and that drivers should continue to have the opportunity to receive the benefits of the TPMS after the vehicle's original tires are replaced. Accordingly, the agency decided on a new approach intended to accommodate both concerns, specifically through a requirement for a TPMS malfunction indicator (discussed immediately below) that can detect when tires installed on the vehicle are incompatible with the TPMS.

- The TPMS must also include a TPMS malfunction indicator to alert the driver when the system is non-operational, and thus unable to provide the required low tire pressure warning.<sup>17</sup> The TPMS malfunction indicator must detect a malfunction within 20 minutes of occurrence of a system malfunction and provide a warning to the driver. This final rule provided two options by which vehicle manufacturers may indicate a TPMS malfunction:

- (1) Installation of a separate, dedicated telltale (yellow) that illuminates upon detection of the malfunction and remains continuously illuminated as long as the ignition locking system is in the "On" ("Run") position and the situation causing the malfunction remains uncorrected, or
- (2) Designing the low tire pressure telltale so that it flashes for a period of at least 60 seconds and no longer than 90 seconds when a malfunction is detected, after which the telltale must remain continuously illuminated as long as the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated upon each subsequent vehicle start-up until the situation

light of the agency's concern that TPMSs should continue to provide safety benefits in the foreseeable event of replacement tires subsequently being installed on the vehicle, the agency adopted its present approach requiring a TPMS malfunction indicator lamp, which can also detect the presence of replacement tires that are not compatible with the TPMS.

<sup>17</sup> We note that the TPMS telltale(s) may be incorporated as part of a reconfigurable display, provided that all requirements of the standard are met.

causing the malfunction has been corrected.

If the option for a separate telltale is selected, the TPMS malfunction telltale must perform a bulb-check at vehicle start-up.

In implementing FMVSS No. 138, NHTSA adopted a two-year phase-in as part of the April 2005 final rule, with a schedule as follows: 20 percent of a vehicle manufacturer's light vehicles are required to comply with the standard during the period from October 5, 2005 to August 31, 2006; 70 percent during the period from September 1, 2006 to August 31, 2007, and all light vehicles thereafter. The final rule also included provisions for carry-forward and carry-backward credits at the manufacturer's option, as well as special timing provisions for small volume manufacturers, final-stage manufacturers, and alterers.

Vehicle manufacturers are not required to comply with the requirements related to the TPMS malfunction indicator (including associated owner's manual requirements) until September 1, 2007; however, at that point, all covered vehicles must meet all relevant requirements of the standard (*i.e.*, no additional phase-in for MIL requirements). The final rule also included phase-in reporting requirements consistent with the phase-in schedule discussed above.

#### *D. The September 2005 Final Rule; Response to Petitions for Reconsideration*

NHTSA received a total of 17 petitions for reconsideration of the April 2005 final rule (two of which were subsequently withdrawn prior to issuance of the agency's decision). All of these petitions may be found in Docket No. NHTSA-2005-20586.

The petitioners requested further amendments to the TPMS standard, most of which involved technical matters. These issues related to certain requirements of the April 2005 final rule, including: (1) The under-inflation detection level; (2) the under-inflation and malfunction detection times; (3) functioning of the TPMS with spare tires; (4) tire reserve load; (5) compliance testing conditions and procedures; (6) system disablement and reprogrammability; (7) telltale issues; (8) breadth of the malfunction detection requirement; (9) minimum activation pressure; (10) owner's manual requirements; (11) sharing of TPMS servicing information, and (12) phase-in calculations.

In response to this first set of petitions, the agency published a final

rule in the **Federal Register** on September 7, 2005 that made a number of technical amendments to Standard No. 138, of which the following are relevant to the current petitions:

- While retaining the final rule's requirement for the TPMS malfunction indicator lamp to illuminate whenever there is a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system, the agency decided to amend the standard's test procedures to clarify that telltale lamps will not be disconnected because such malfunctions will be indicated during the bulb check(s) required under the standard.

- The rule amended the regulatory text in FMVSS No. 138 to clarify that for a combined low tire pressure/TPMS malfunction indicator telltale, the same flashing/continuous illumination sequence is required for one or more malfunctions that may affect the system simultaneously (*i.e.*, no more than one flashing sequence per ignition cycle).

### III. New Petitions for Reconsideration

NHTSA received two petitions for reconsideration submitted in response to the September 2005 final rule for TPMS from ETV Corporation<sup>18</sup> and the Alliance of Automobile Manufacturers.<sup>19</sup> These petitions may be found in Docket No. NHTSA-2005-22251. (As explained above, the agency will respond in a separate rulemaking document to the petition submitted by ETV Corporation; the amendments requested in the ETV petition will be discussed and addressed in that document. Accordingly, the balance of the discussion in this document will focus on the matters raised in the Alliance's petition for reconsideration.)

As noted above, the Alliance's petition requested further amendments to FMVSS No. 138, primarily related to the specifications for the TPMS malfunction warning provided by a combined low tire pressure/TPMS malfunction telltale. All of the issues raised in the Alliance's petition for reconsideration presently before us are addressed in the Discussion and Analysis section immediately below.

### IV. Discussion and Analysis

#### *TPMS Malfunction Indicator Lamp Telltale Requirements*

FMVSS No. 138 requires each TPMS to include a low tire pressure warning telltale that is mounted inside the occupant compartment in front of and in clear view of the driver and which is

identified by one of the symbols for the "Low Tire Pressure Telltale" in Table 1 of FMVSS No. 101, *Controls and Displays*. The low tire pressure warning telltale is required to illuminate under the conditions specified in S4.2 of FMVSS No. 138, and it must also perform a check of lamp function when the ignition locking system is activated to the "On" ("Run") position or a position between "On" ("Run") and "Start" that is designated by the manufacturer as a check position. (See S4.3, as contained in the April 2005 final rule.)

Under the final rule, the TPMS-equipped vehicle is also required to be equipped with a TPMS malfunction indicator (beginning September 1, 2007). This malfunction indicator may be provided either through a separate, dedicated telltale or through a combined low tire pressure/TPMS malfunction telltale. For the separate TPMS MIL, the telltale must be mounted inside the occupant compartment in front of and in clear view of the driver and be identified by the word "TPMS," as described under "TPMS Malfunction Telltale" in Table 1 of FMVSS No. 101. The dedicated TPMS malfunction telltale is required to illuminate under the conditions specified in S4.4 of FMVSS No. 138 for as long as the malfunction exists, and it must also perform a check of lamp function when the ignition locking system is activated to the "On" ("Run") position or a position between "On" ("Run") and "Start" that is designated by the manufacturer as a check position. (See S4.4(b), as contained in the April 2005 final rule.)

If the vehicle manufacturer elects to provide a combination telltale, it must meet the requirements of S4.2 and S4.3, as discussed above, and paragraph S4.4(c)(2) of the standard in the April 2005 final rule, which required a TPMS malfunction to be indicated as follows:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the "On" ("Run") position. After this period of prescribed flashing, the telltale must remain continuously illuminated as long as the malfunction exists and the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the "On" ("Run") position until the situation causing the malfunction has been corrected.

As discussed below, the Alliance's initial petition for rulemaking requested amendments related to the operation of the TPMS related telltale(s), one of which involved seeking clarification

regarding how a combined TPMS telltale should operate when multiple malfunctions occur. The Alliance identified the following potential approaches: (1) Have one flashing sequence cover all TPMS malfunctions; (2) Have each malfunction trigger a separate warning, or (3) Extend the length of the flashing sequence to indicate more than one malfunction. The recommendation of the Alliance was to leave the choice among these approaches to vehicle manufacturer discretion.

Regarding the issue of multiple malfunctions, we decided, in the September 2005 final rule, that for vehicles with a combined low tire pressure/TPMS malfunction warning indicator, the telltale must flash for a single period of at least 60 seconds, but no longer than 90 seconds and then remain continuously illuminated. In that rule, we expressed our concern that permitting multiple flashing sequences could lead to consumer confusion and would undermine the consistency of the message provided across the vehicle fleet. We further stated that this flashing sequence is intended to alert the driver to any and all TPMS malfunctions detected by the system, and we expressed our belief that once a consumer is warned that a TPMS malfunction exists, that person would be expected to take the vehicle to a service professional to diagnose and correct the problem(s). This reaction is not likely to change depending upon the number of malfunctions, and we further stated that we anticipate that all conditions impairing operation of the TPMS would be resolved at that time. Accordingly, we amended the regulatory text of the standard to specify how multiple malfunctions would be indicated.

Thus, in the September 2005 final rule, we made minor technical changes to S4.4(c)(2) of the standard to clarify this matter, which reads as follows:

(2) When the ignition locking system is activated to the "On" ("Run") position, flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition(s) specified in S4.4(a). After this period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the "On" ("Run") position until the situation(s) causing the malfunction(s) has (have) been corrected.

<sup>18</sup> Docket No. NHTSA-2005-22251-2.

<sup>19</sup> Docket No. NHTSA-2005-22251-3.

In its second petition for reconsideration,<sup>20</sup> the Alliance asked the agency to further clarify S4.4(c)(2). The Alliance asserted that that provision does not appear, on its face, to preclude initiation of a second flashing sequence during the same ignition cycle if the system detects a subsequent TPMS malfunction. However, as the Alliance stated in its petition, the preamble to the September 2005 final rule made clear the agency's intention to permit only a single flashing sequence per ignition cycle for the combined low tire pressure/TPMS malfunction telltale. The Alliance's second petition provided new information which more fully explained the nature of its concerns with S4.4(c)(2) and the anticipated impact that the agency's current provision would have on the automobile industry, if NHTSA were to continue to limit the TPMS malfunction indicator in a combined telltale to a single flashing sequence in one ignition cycle, even if subsequent TPMS malfunctions are detected.

According to the Alliance, the agency's current approach is unduly restrictive and would prevent a number of current system design architectures from complying with the standard's TPMS malfunction indicator requirements. The Alliance stated that many current vehicle architectures utilize "distributed logic," in which the TPMS telltale can be independently commanded from different parts of the system. In terms of the system's operation, the Alliance further explained that the combined TPMS telltale, which is located in the instrument cluster, may be commanded to flash by the multi-function control module, or, if it loses communications with the multi-function control module, the telltale recognizes the loss and initiates a flash sequence.

The Alliance stated that in most cases, a TPMS fault detected by a multi-function control module will initiate a flash sequence per the current requirements of S4.4(c)(2), but in extremely rare instances, communication between the multi-function control module and the telltale

may be lost, which would result in a second flashing sequence during the same ignition cycle. However, the Alliance acknowledged that in such situations, subsequent ignition cycles would produce only a single flashing sequence due to such lost communications. (General Motors North America (General Motors) submitted supplemental information in support of the Alliance's petition intended to illustrate instances in which sequential faults in the TPMS could trigger the MIL to flash more than once during an ignition cycle.<sup>21</sup>)

The Alliance argued that a requirement that a second flashing sequence never occur during the same ignition cycle would prohibit the use of a distributed logic and could, in effect, require all fault detection and control logic to be located at the telltale location. According to the Alliance, such system redesigns would not be practicable prior to the September 1, 2007 mandatory compliance date for the TPMS malfunction indicator requirements.

In addition, the Alliance argued that no additional safety benefits would result from requiring system redesigns to ensure that combined TPMS malfunction indicators are limited to a single flashing sequence during each ignition cycle. The Alliance stated that the agency did not provide any data or study to show that multiple telltale flashing sequences resulting from multiple malfunctions would cause consumer confusion. Instead, the Alliance countered that current, voluntary TPMS malfunction systems operating in the manner described above have been in production for more than two years, and there has been no apparent consumer confusion.

Furthermore, the Alliance argued that consumer confusion is unlikely, because multiple TPMS malfunctions during the same ignition cycle are expected to be highly infrequent events. (We note that Ford Motor Company (Ford) submitted confidential data showing the frequency of multiple TPMS malfunctions that would trigger a second MIL flashing sequence, an occurrence which the data showed to be an extremely rare event.<sup>22</sup>)

Based upon the above reasoning, the Alliance's petition requested that the agency permit, but not require, subsequent flash sequences when the initial malfunction is followed by others

in the same ignition cycle, and it urged the agency to amend S4.4(c)(2) to read as follows:

(2) When the ignition locking system is activated to the "On" ("Run") position, flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any *singular condition* specified in S4.4(a). After this period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the "On" ("Run") position until the situation(s) causing the malfunction(s) has (have) been corrected. *Subsequent malfunctions occurring during any key cycle may, but are not required to, reinitiate the prescribed flashing sequence at any time.*

(Emphasis in original)

After carefully considering the new information presented in the Alliance's second petition and the supporting information provided by General Motors and Ford, we have decided to amend the standard's requirements and test procedures related to operation of the combined low tire pressure/TPMS malfunction indicator telltale. Specifically, we have decided to retain the requirement for the system to detect a system malfunction and to initiate a 60–90 second flashing sequence for the TPMS combined telltale (followed by continuous illumination) within 20 minutes of occurrence of that malfunction. However, we are amending the standard to provide that if the TPMS subsequently encounters additional, separate malfunctions, the TPMS may, but is not required to, initiate another flashing sequence for each distinct malfunction condition. As a related matter, we are amending the standard's test procedures to provide that only one malfunction will be simulated during each malfunction detection test (*i.e.*, one per ignition cycle). Under the standard, the agency may still test for more than one malfunction, although this would be in separate tests during different ignition cycles, rather than simulating multiple TPMS malfunctions during the same ignition cycle. We are adopting this approach for the reasons that follow.

Based upon the latest information provided by the Alliance and certain of its members, the agency now better understands the technical difficulties associated with requiring TPMSs with a combined telltale to limit the MIL flashing sequence to once per ignition cycle in the event of multiple, independent malfunctions. Redesigning affected TPMSs to overcome this technical limitation may not be

<sup>20</sup> The Alliance raised this issue in an October 24, 2005 letter to the agency, which it alternatively asked to be treated as a request for a letter of interpretation pertaining to S4.4(c)(2) or a petition for rulemaking (Docket No. NHTSA–2005–22251–3). In a letter dated December 21, 2005, NHTSA responded that the language of the regulation and the portion of the preamble dealing with S4.4(c)(2), when read together, left little ambiguity in terms of how the agency would interpret that provision, so the agency stated its intention to treat the Alliance's letter as a petition for reconsideration of the September 2005 final rule (*see* Docket No. NHTSA–2005–22251–9).

<sup>21</sup> The General Motors submission explained the fault scenarios discussed in the Alliance's petition through a series of block diagrams of a generic TPMS showing a tire pressure sensor, a TPMS receiver, and a display controller. (*See* Docket No. NHTSA–2005–22251–13.)

<sup>22</sup> Docket No. NHTSA–2005–20586–15.

practicable prior to the September 1, 2007 compliance deadline for the MIL.

Furthermore, the new information provided by Ford suggests that a second TPMS malfunction within an ignition cycle is likely to be an extremely rare event. A third TPMS malfunction within a given ignition cycle is likely to be a matter of only theoretical concern. Accordingly, we believe that the occurrence of more than one flashing sequence would be highly infrequent and, therefore, would not pose a nuisance to drivers or lead to considerable confusion. Although operation of the combined telltale may not be entirely uniform across the vehicle fleet, the message will nonetheless remain highly consistent, given the expected rarity of multiple TPMS malfunctions. Thus, in light of the data provided, we do not believe the potential delay that might accompany a strict limitation to one MIL flashing sequence for a combined telltale is warranted.

Because we have decided to grant the request in the Alliance's petition to permit more than one MIL flash sequence during a given ignition cycle, it is no longer necessary to retain that aspect of S6(k) which provides for simulation of multiple TPMS malfunctions at the same time (*i.e.*, to ensure that the combined TPMS telltale is limited to a single flashing sequence per ignition cycle). The system is still required to detect any TPMS malfunction, as required under S4.4(a). Accordingly, we have decided to amend the standard's test procedures to limit simulation of TPMS malfunctions to one per ignition cycle, which is consistent with the methodology employed in other Federal motor vehicle safety standards (*e.g.*, FMVSS No. 105, *Hydraulic and Electric Brake Systems* (S7.9, *Service brake system test—partial failure*), FMVSS No. 135, *Light Vehicle Brake Systems* (S7.10, *Hydraulic circuit failure*)). This modification will also simplify testing under the standard. However, the agency reiterates its intention to preserve its ability to test for more than one type of TPMS malfunction. We believe that such a provision is necessary to ensure the robustness of the system, although this objective will now be achieved by simulating different malfunctions during different ignition cycles, rather than multiple malfunctions during the same ignition cycle.

## V. Benefits and Costs

Section VI of the April 2005 final rule summarized the costs associated with the TPMS standard, as more fully described in the Final Regulatory

Impact Analysis (FRIA)<sup>23</sup> accompanying the final rule. The FRIA addresses the full range of anticipated costs related to TPMSs, including the cost of different TPMS technologies, overall vehicle costs, maintenance costs, testing costs, and opportunity costs.

In summary, the FRIA estimated that the average incremental cost for all vehicles to meet the standard's requirements would range from \$48.44–\$69.89 per vehicle, depending upon the specific technology chosen for compliance. Since approximately 17 million vehicles are produced for sale in the U.S. each year, the total annual vehicle cost is expected to range from approximately \$823–\$1,188 million per year. The agency estimated that the net cost per vehicle would be \$26.63–\$100.25 (assuming a one-percent TPMS malfunction rate for replacement tires) and that the total annual net cost would be approximately \$453–\$1,704 million.

The agency has determined that the technical amendments resulting from this final rule responding to the Alliance's petition for reconsideration will not appreciably change the costs and benefits reported in the FRIA. Accordingly, the agency has decided that the estimates in that document remain valid and that additional analysis is not required.

## VI. Rulemaking Analyses and Notices

### A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.<sup>24</sup> These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.<sup>25</sup> When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.<sup>26</sup> The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.<sup>27</sup> The responsibility for promulgation of Federal motor vehicle

safety standards has been delegated to NHTSA.<sup>28</sup>

As noted previously, section 13 of the TREAD Act mandated a regulation to require a tire pressure monitoring system in new vehicles. In satisfaction of this congressional directive, NHTSA established FMVSS No. 138, *Tire Pressure Monitoring Systems*, in a final rule published in the **Federal Register** on April 8, 2005. The agency received 17 petitions for reconsideration of the final rule (two of which were subsequently withdrawn), the agency published a final rule responding to petitions for reconsideration in the **Federal Register** on September 7, 2005, and the agency received two additional petitions for reconsideration in response to this latest TPMS rulemaking (one of which is addressed here). Most of these petitions requested amendments involving technical modifications. In this final rule partially responding to petitions for reconsideration, the agency carefully considered the statutory requirements of both the TREAD Act and 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in the Alliance's petition for reconsideration. In responding to the issues raised in the petition, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available research, testing results, and other information related to various TPMS technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the TPMS requirements remain practicable, the agency evaluated the potential impacts of the petition's requested actions in light of the cost, availability, and suitability of various TPMSs, consistent with our safety objectives and the requirements of the TREAD Act. As noted above, most of the changes contained in this final rule involve relatively minor modifications to the April 2005 and September 2005 final rules for TPMS. In sum, we believe that this final rule partially responding to petitions for reconsideration is practicable and will maintain the benefits of the TPMS standard, including prevention of deaths and injuries associated with significantly under-inflated tires, increased tread life, fuel economy savings, and savings associated with avoidance of property

<sup>23</sup> Docket No. NHTSA–2005–20586–2.

<sup>24</sup> 49 U.S.C. 30111(a).

<sup>25</sup> 49 U.S.C. 30102(a)(9).

<sup>26</sup> 49 U.S.C. 30111(b).

<sup>27</sup> *Id.*

<sup>28</sup> 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

damage and travel delays (*i.e.*, from crashes prevented by the TPMS).

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, this final rule makes minor modifications to the performance requirements for operation of the TPMS, in terms of providing warnings related to system malfunction. The standard's test procedures continues to carefully delineate how testing will be conducted, including malfunction testing. The agency continues to believe that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of the TPMS standard.

Fourth, we believe that this final rule partially responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will enhance the ability of the TPMS standard to provide a warning to the driver when the system becomes non-operational, thereby permitting the driver to take corrective action in a timely fashion and potentially averting crash-related injuries.

Finally, we believe that this final rule partially responding to petitions for reconsideration is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard resulting from this final rule will further the agency's efforts to address Congress' concern that significantly under-inflated tires could lead to tire failures resulting in fatalities and serious injuries. Under the TREAD Act, Congress mandated installation of a system in new vehicles to alert the driver when a tire is significantly under-inflated, and NHTSA has determined that TPMSs meeting the requirements of this final rule offer an effective countermeasure in these situations. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 138 because it furthers the agency's objective of preventing deaths and serious injuries associated with significantly under-inflated tires.

#### *B. 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 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.

Although the April 2005 final rule was determined to be economically significant, this final rule partially responding to petitions for reconsideration involves only relatively minor technical amendments to FMVSS No. 138. Accordingly, this rulemaking document was not reviewed under E.O. 12866. Further, this action has been determined to be "not significant" under the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that the incremental costs associated with the minor modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 138. Accordingly, the figures presented in the Final Regulatory Impact Analysis, docketed along with the April 2005 final rule, remain apposite without modification.

#### *C. Regulatory Flexibility Act*

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

significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present final rule partially responding to petitions for reconsideration only makes minor technical modifications to the safety standard for TPMS. As discussed in detail in the April 2005 final rule establishing FMVSS No. 138, we do not anticipate that the TPMS standard will have a significant economic impact on a substantial number of small entities, and nothing in this final rule would change either that assessment or its underlying reasoning.

#### *D. Executive Order 13132 (Federalism)*

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications, because the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government."

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30102(b)(1). In addition, we note that the final rule establishing a safety standard for tire pressure monitoring systems was mandated by Congress, pursuant to section 13 of the TREAD Act. It is this statutory commands that preempts State law, not today's



rulemaking, so consultation would be inappropriate.

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

#### *E. Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the pre-emptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement. Pursuant to this Order, NHTSA notes as follows. The pre-emptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

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

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that

the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule partially responding to petitions for reconsideration is not an economically significant regulatory action under Executive Order 12866, and furthermore, the problems associated with underinflated tires equally impact all persons riding in a vehicle, regardless of age. Consequently, this final rule does not involve decisions based upon health and safety risks that disproportionately affect children, as would necessitate further analysis under Executive Order 13045.

#### *G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. As part of the April 2005 final rule, each of the estimated 21 affected vehicle manufacturers is required to provide one phase-in report for each of two years, beginning in the fall of 2006.

Pursuant to the June 5, 2002 TPMS final rule, the OMB approved the collection of information "Phase-In Production Reporting Requirements for Tire Pressure Monitoring Systems," assigning it Control No. 2127–0631 (expiration 6/30/06). NHTSA has been given OMB clearance to collect a total of 42 hours a year (2 hours per respondent) for the TPMS phase-in reporting. NHTSA subsequently requested and was granted an OMB extension of this clearance (expiration 9/30/09).

However, the present final rule partially responding to petitions for reconsideration does not contain any additional information collection requirements beyond those contained in the April 2005 final rule.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards related to TPMS available at this time. However, NHTSA will consider any such standards as they become available.

#### *I. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995 (so currently about \$118 million in 2004 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

As discussed in that notice, the April 2005 final rule establishing FMVSS No. 138 is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than \$118 million annually, but it is expected to result in an expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In that final rule, NHTSA adopted a performance requirement for a system with a four-tire, 25-percent under-inflation detection capability; we believe that this approach is consistent with safety and the mandate in the TREAD Act, and it should provide a number of technological choices, thereby offering broad flexibility to minimize costs of compliance with the standard.



In contrast, the present final rule partially responding to petitions for reconsideration only makes technical modifications to the standard. Therefore, we do not believe that this final rule will appreciably change the costs of compliance with FMVSS No. 138. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

#### J. National Environmental Policy Act

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

#### K. Regulatory Identifier Number (RIN)

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

#### L. Privacy Act

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

#### List of Subjects in 49 CFR part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

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

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

■ 2. Section 571.138 is amended by revising paragraphs S4.4(c)(2) and S6(k), and adding paragraph S6(o) to read as follows:

#### § 571.138 Standard No. 138; Tire pressure monitoring systems.

\* \* \* \* \*

##### S4.4 TPMS malfunction.

\* \* \* \* \*

##### (c) Combination low tire pressure/TPMS malfunction telltale. \* \* \*

\* \* \* \* \*

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the “On” (“Run”) position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the “On” (“Run”) position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the “On” (“Run”) position until the situation causing the malfunction has been corrected. Multiple malfunctions occurring during any ignition cycle may, but are not required to, reinitiate the prescribed flashing sequence.

\* \* \* \* \*

##### S6 Test procedures.

\* \* \* \* \*

(k) Simulate one TPMS malfunction by disconnecting the power source to any TPMS component, disconnecting any electrical connection between TPMS components, or installing a tire or wheel on the vehicle that is incompatible with the TPMS. When simulating a TPMS malfunction, the electrical connections for the telltale lamps are not to be disconnected.

\* \* \* \* \*

(o) The test may be repeated using the test procedures in paragraphs S6(k)–(n), with each such test limited to simulation of a single malfunction.

\* \* \* \* \*

Issued: July 5, 2007.

**Nicole R. Nason,**  
Administrator.

[FR Doc. 07–3382 Filed 7–6–07; 4:34 pm]

**BILLING CODE 4910–59–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 061020273–6321–02]

RIN 0648–XA94

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2007 Black Sea Bass, and Total Allowable Landings (TAL) and Loligo Squid Initial Optimum Yield (IOY)

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

**ACTION:** Temporary rule; restoration to the 2007 black sea bass TAL and *Loligo* squid IOY.

**SUMMARY:** NMFS restores 18,142 lb (8.23 mt) of unused research set-aside (RSA) to the 2007 black sea bass TAL and 151,235 lb (68.60 mt) of unused RSA to the *Loligo* squid IOY, and makes corresponding adjustments to the 2007 black sea bass commercial quota, the 2007 black sea bass recreational harvest limit, and the 2007 *Loligo* squid commercial Trimester II and III quotas. The adjustments are intended to return unallocated RSA quotas to the respective fisheries.

**DATES:** Effective July 12, 2007 through December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, Policy Analyst, (978) 281–9153, fax (978) 281–9135, e-mail: [paul.perra@noaa.gov](mailto:paul.perra@noaa.gov)

**SUPPLEMENTARY INFORMATION:** In December 2006, proposals for research projects requested more summer flounder RSA than was available through the annual 2007 summer flounder specification process (71 FR 240, December 14, 2006), and, therefore, NMFS offered the projects increased amounts of *Loligo* squid and black sea bass RSA, within the amounts authorized under the respective fishery management plans (FMPs), to offset the summer flounder shortfalls. The respective 2007 FMP specifications allotted RSA to the four projects as follows: 389,490 lb (176.67 mt) of summer flounder; 1,124,356 lb (510 mt) of *Loligo* squid; 360,000 lb (163.29 mt) of scup; 150,000 lb (68.04 mt) of black sea bass; and 363,677 lb (164.96 mt) of bluefish. Following the 2007 specification process, NMFS, in January 2007, through emergency rulemaking