

alternatives to the rule. The rule is consistent with statutory requirements.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.232-7007, Limitation of Government's Obligation, have been approved by the Office of Management and Budget under Clearance Number 0704-0359 for use through December 31, 2007.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 232 and 252, which was published at 58 FR 46091 on September 1, 1993, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Section 232.001 is added to read as follows:

232.001 Definitions.

Incremental funding means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

■ 3. Section 232.703-1 is revised to read as follows:

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and—

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.232-7007 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (b), by revising the second sentence;

■ c. By revising paragraph (i); and

■ d. By adding paragraph (j) to read as follows:

252.232-7007 Limitation of Government's Obligation.

* * * * *

LIMITATION OF GOVERNMENT'S OBLIGATION (APR 2006)

* * * * *

(b) * * * The Contractor is not authorized to continue work on those item(s) beyond that point. * * *

* * * * *

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract \$ ____
(month) (day), (year) \$ ____
(month) (day), (year) \$ ____
(month) (day), (year) \$ ____

* * * * *

[FR Doc. 06-3457 Filed 4-11-06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. NHTSA 2006-24455]

RIN 2127-AJ78

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

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to two petitions for reconsideration of our September 2004 final rule amending the Federal motor vehicle safety standard for power-operated windows, partitions, and roof panel systems. The amendments required that switches for these windows and other items in new motor vehicles be resistant to accidental

actuation that causes those items to begin to close. The purpose of the amendments was to reduce the number of injuries and fatalities to people, especially children, that occur when they unintentionally close the power-operated items on themselves by accidentally leaning against or kneeling or standing on the switch or when other occupants accidentally actuate the switch in that manner.

The petitions for reconsideration requested that the agency adopt additional amendments. The petitions are granted in part and denied in part. In responding to the petitions' request to require "pull-up-to-close" power window switches, we are simultaneously implementing a congressional mandate to require such switches. In addition, through this document, we are amending the standard to make a number of technical amendments.

DATES: *Effective Date:* The amendments made in this final rule are effective June 12, 2006.

Compliance Date: The requirements of the September 2004 final rule, as amended by today's rule, become mandatory for all vehicles subject to the standard that are manufactured for sale in the U.S. on or after October 1, 2008. Voluntary compliance is permitted before that date.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by May 30, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; 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. Michael Pyne, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

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I. Executive Summary

This document responds to two petitions for reconsideration of our September 15, 2004 final rule¹ amending Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-Operated Window, Partition, and Roof Panel Systems*. That final rule amended the standard to require that switches for these windows and other items in new motor vehicles be resistant to accidental actuation that causes those items to begin to close. Petitions for reconsideration were submitted by the Alliance of Automobile Manufacturers² and a consortium of special interest groups advocating highway safety.³ The petitions requested additional amendments to Standard No. 118.

The purpose of the September 2004 amendments was to reduce the number of injuries and fatalities to people, particularly children, that occur when they unintentionally close the power-operated items on themselves by accidentally leaning against or kneeling or standing on the switch or when other occupants accidentally actuate the switch in that manner. These amendments to the standard apply to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle

weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.

In summary, the rule amended FMVSS No. 118 by adding a new paragraph S6, specifying that power-operated window, partition, and roof panel switches in new motor vehicles subject to the standard must pass an accidental actuation test that uses a test device simulating a child's knee. The test device is a hemisphere with a smooth, rigid surface and a radius of 20 mm $\pm$ 1 mm. Under the final rule, when the test device is applied with a force not to exceed 135 Newtons (30 pounds) to any switch or the housing surrounding a switch that can be used to close a power-operated window, partition, or roof panel, such application must not cause the window, partition, or roof panel to begin to close. The accidental actuation test in S6 does not apply to switches that are both roof-mounted and incapable of "one-touch" closure, and it does also not apply to power-operated systems that meet the automatic reversal requirements of S5 of Standard No. 118.

The petitioners requested amendments pertaining to matters that they deemed either to be inadequately addressed by our September 2004 final rule or to be newly arising therefrom. Specifically, the advocacy groups' petition asked the agency to reconsider its decision not to require automatic reversal systems and its decision to adopt a performance test for accidental actuation, rather than prohibiting the use of "rocker" or "toggle" switch designs.⁴ The advocacy groups also requested that the agency amend the standard to reduce the size of the test device in the accidental actuation test, in order to account for the potential for inadvertent switch actuation by the hands, ball of foot, knuckles, elbows, toes, and even knees of young children.

The Alliance's petition requested technical amendments involving exemption of vertically-mounted switches from the accidental actuation test, as well as specification/modification of certain characteristics of the test device (e.g., composition,

surface finish, tolerance on size). (See section IV of this document for a complete discussion of issues raised in the petitions and their resolution).

Also, during the pendency of the agency's consideration of the petitions for reconsideration, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).⁵ Section 10308 of that legislation specifically addresses power window switches in motor vehicles, stating:

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

The petitions are granted in part and denied in part, and through this document, we are amending the standard accordingly. Because the issue of requiring installation of "pull-up-to-close" power window switches is already before us in one of the petitions, we are, through this final rule, simultaneously implementing the congressional mandate to require switches that raise the window only when the switch is pulled up or out.

The following points highlight the amendments to Standard No. 118 that we are adopting in response to the petitions for reconsideration of the September 15, 2004 final rule and to the mandate of section 10308 of SAFETEA-LU.

- The agency is amending paragraph S6 of the standard to require that any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted (i.e., "pull-to-close" switches). An actuation device must operate by being pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction. This provision implements the mandate of section 10308 of SAFETEA-LU.

- In order to further clarify and increase the repeatability of testing under the standard, the agency is further amending paragraph S6 to specify a composition (stainless steel) and a surface finish (between 8 and 4 micro inches) for the test device used in the accidental actuation test.

- In addition, we have decided to amend paragraph S6 to reduce the

¹ 69 FR 55517 (Sept. 15, 2004) (Docket No. NHTSA-2004-19032-1).

² This November 1, 2004 petition for reconsideration was submitted by the Alliance of Automobile Manufacturers, an industry trade organization whose members include BMW Group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen. (Docket No. NHTSA-2004-19032-5 and 6.)

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

⁴ "Rocker" switches are designed to pivot on a center hinge, effectively operating like a "see-saw." "Toggle" switches operate using small levers that push back and forth to open and close a window. As a result of their design, downward pressure (e.g., caused by a child kneeling or leaning) on a rocker or toggle switch could result in a window's either opening or closing, depending upon how such force is applied.

In contrast, "push-pull" switches function such that pressing down on the switch will only cause the window to open, but the switch must be actively pulled up in order to close the window. Thus, accidental pressing with a hand, knee, or foot on a push-pull switch could not cause a window to close, although it might cause it to open.

⁵ Pub. L. 109-59, 119 Stat. 1144 (2005).

tolerance range for the radius of the test device from 20 mm $\pm$ 1 mm, as specified in the September 15, 2004 final rule, to 20 mm $\pm$ 0.2 mm. Reduction of this tolerance range, which was incorporated to facilitate testing, is reasonable in light of the precision of current manufacturing capabilities. Such modification would enhance test repeatability while keeping the size of the test device close to the 40 mm diameter intended to represent the knee of a small child.

The agency is denying the request in the advocacy groups' petition for reconsideration to mandate the installation of automatic reversal systems. We are also denying the Alliance's request to amend the standard to exclude switches mounted on vertical or nearly vertical surfaces from the standard's safer switch requirements (including the accidental actuation test).

In addition, this document also makes a technical correction to resolve a testing anomaly that has been brought to the agency's attention. Specifically, we have learned that, in certain cases, the shape of the test device specified in the final rule (a hemisphere) may result in switch actuation under the test in S6, but such actuation is an artifact of the test and does not correspond to any real world risk. Accordingly, the agency has decided to amend paragraph S6 to change the shape of the test device in the accidental actuation test from a hemisphere to a sphere, as originally proposed.

Lead Time and Compliance Date

In amending Standard No. 118 in response to the petitions for reconsideration, the agency has decided to retain the mandatory compliance date of October 1, 2008 for the safer switches provisions, as provided in the September 15, 2004 final rule. In light of industry trends and the close proximity in time between promulgation of the final rule and passage of the SAFETEA-LU legislation, we believe that adequate lead time remains for vehicle manufacturers to make any necessary design changes to incorporate the required pull-to-close power window switches as part of their normal production process. All other changes to the standard involve minor technical modifications. Accordingly, we believe that retention of an October 1, 2008 mandatory compliance date will continue to permit manufacturers to comply with the standard's safer switch requirements at minimal cost. Voluntary compliance is permitted before that date.

II. Background

A. The September 15, 2004 Final Rule

In a final rule published in the **Federal Register** on September 15, 2004, the agency amended FMVSS No. 118 to require new passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4,536 kg (10,000 pounds) or less equipped with power-operated windows, partitions, and roof panel systems to pass an accidental actuation test that uses a device simulating a small child's knee (*see* S6). (For a complete discussion of the history of this rulemaking, including related research, *see* 69 FR 55517.)

This rulemaking was conducted because available information indicated that a small, but persistent problem of injuries and fatalities has been occurring when occupants (particularly young children) unintentionally close power windows on themselves or other occupants when they accidentally actuate power window switches by leaning against or kneeling or standing on them. Although these power window incidents were found to be generally low-frequency events, averaging one to two deaths per year in recent years (1999–2002), there has been a higher incidence in some individual years (*e.g.*, five deaths of this type were recorded in 1998, and a similar number were reported in 2004). Furthermore, these tragic incidents continued to occur despite other safeguards in the standard (*e.g.*, the requirements in S4 that power windows will only operate when the key is in the ignition).

According to the agency's research, switch design is related to such injuries; in virtually all of the accidental actuation incidents, for which the type of switch is known, the vehicle was equipped with "rocker" or "toggle" switches, which are much more prone to accidental actuation as compared to pull up-push down type switches that must be lifted to close the window. If the accidental pressure of a knee, foot, or elbow actuated a pull up-push down switch, it would cause the window to open, not close. Rocker and toggle switches are also much more prone to accidental actuation if they are not shielded or recessed so that they cannot readily be contacted by a foot, knee, or elbow.

In order to address the identified problem, the final rule amended the standard to specify the following requirements for an accidental actuation test. The test device is a hemisphere with a smooth, rigid surface and a radius of 20 mm $\pm$ 1 mm. When the test device is applied with a force not to exceed 135 Newtons (30 pounds) to any

switch or the housing surrounding the switch that can be used to close a power-operated window, partition, or roof panel, such application must not cause those items to begin to close.

As discussed in the final rule, the accidental actuation test in S6 does not apply to switches that are both roof-mounted and incapable of "one-touch" closure, because switches in those locations are very unlikely to be inadvertently actuated. In addition, the requirements of S6 do not apply to power-operated systems that meet the automatic reversal requirements of S5 of Standard No. 118.

In the September 2004 final rule, we stated that the accidental actuation test provides a simple, effective, and inexpensive means of evaluating power window systems and that it will enhance occupant protection, especially of children. The final rule was drafted to be technology-neutral, so as to permit compliance with any available technology that meets the standard's performance requirements. Accordingly, the agency anticipated that vehicle manufacturers could comply by: (1) Shielding or recessing their switches, (2) designing switches so that pressing on them in the manner described above will not cause these windows and other items to close, or (3) installing more advanced technology (*i.e.*, automatic reversal systems).

The September 15, 2004 final rule required compliance with the amended power window switch requirements of the standard for vehicles subject to the standard that are manufactured on or after October 1, 2008 (*i.e.*, MY 2009) for sale in the United States. (Voluntary compliance was permitted immediately.) The agency determined that four years of lead time would allow manufacturers sufficient time to incorporate the required changes into their vehicles in accordance with their normal production cycles. As a result, we concluded that the cost impacts of the rulemaking should be close to zero.

The September 15, 2004 final rule also denied two petitions for rulemaking requesting that the agency mandate the installation of automatic reversal systems in all new vehicles. We reached that decision because much of the potential benefit that might be provided by those systems will instead be provided by the accidental actuation test requirement. Further, we stated that while the cost of better switches will be negligible, the cost of automatic reversal systems is significant.

B. The Congressional Mandate in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)

Since publication of the final rule amending Standard No. 118, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users on August 10, 2005. As noted previously, section 10308 of that Act requires the Secretary of Transportation to issue a final rule by April 1, 2007 to “upgrade Federal Motor Vehicle Safety Standard 118 to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out.” Responsibility for this rulemaking was delegated to NHTSA.

III. Petitions for Reconsideration

NHTSA received two petitions for reconsideration submitted in response to the September 15, 2004 final rule amending FMVSS No. 118 to require safer switches. One petition was submitted by a consortium of special interest groups advocating highway safety, including Advocates for Highway and Auto Safety, KIDS AND CARS, The Zoie Foundation, the Trauma Foundation, Consumers for Auto Reliability and Safety, Consumer Federation of America, Consumers Union, Public Citizen, Kids In Cars, 4RKidsSake, and the Center for Auto Safety (hereinafter “Advocates et al.”). The other petition was submitted by the Alliance of Automobile Manufacturers (Alliance). These petitions may be found in Docket No. NHTSA-2004-19032.

As noted above, the petitioners requested further amendments to FMVSS No. 118 regarding issues they deemed to be either inadequately addressed by our September 2004 final rule or newly arising therefrom. Specifically, the Advocates et al., petition asked the agency to amend the standard by adopting a requirement for pull-to-close power window switches (thereby prohibiting rocker and toggle switches), and by adopting a requirement for automatic reversal systems. The advocacy groups also requested that the agency amend the standard to reduce the size of the test device in the accidental actuation test.

The Alliance’s petition requested a number of technical amendments to the standard, including an exclusion from the accidental actuation test for certain switches based upon their orientation and placement in the vehicle (*i.e.*, vertically-mounted switches) and specification/modification of certain

characteristics of the test device (*e.g.*, composition, surface finish, size of tolerance). All of the issues raised in the petitions for reconsideration are addressed in section IV, *Discussion and Analysis*, immediately below.

IV. Discussion and Analysis

A. Pull-To-Close Power Window Switches

The September 15, 2004 final rule established a performance test under paragraph S6, *Actuation Devices*, applicable to any actuation device mounted in the occupant compartment of a vehicle that can be used to close a power-operated window, partition, or roof panel, unless such device falls within one of two specified exclusions. Because this provision was intended to be technology-neutral, it neither mandates nor prohibits any particular switch design.

The Advocates et al., petition for reconsideration argued that the September 15, 2004 final rule should have prohibited installation of “rocker” and “toggle” switch designs. According to the advocacy groups, due to NHTSA’s failure to outlaw rocker and toggle switches, “manufacturers are permitted to continue to install these obviously inferior safety designs that are inherently susceptible to incidental actuation.” Instead of adopting a performance test, the Advocates et al., petition argued that the agency should have mandated installation of “push-pull” switches, which it stated is the type used exclusively in vehicles produced by European and Japanese manufacturers.

Although the advocacy group acknowledged that NHTSA normally avoids mandating the use of one particular design to the exclusion of others in its rulemakings, their petition suggested that other FMVSSs contain design-restrictive requirements (*e.g.*, FMVSS No. 101, *Controls and Displays*, FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, FMVSS No. 111, *Rearview Mirrors*). According to the Advocates et al., petition, in light of NHTSA’s past adoption of design-restrictive safety requirements, strict adherence to a technology-neutrality principle should not constitute an impediment to mandating the use of a single type of switch (*i.e.*, pull-to-close switches) which possesses superior safety-related characteristics.

In the final rule, the agency decided to adopt a switch performance test, rather than prohibit any particular switch design, for a number of reasons. First, the agency concluded that an

appropriately designed rocker or toggle switch (*i.e.*, one that is properly shrouded or recessed) would be greatly improved as compared to an unprotected rocker or toggle switch and should have essentially the same resistance to inadvertent operation as a pull-to-close switch. Second, the performance test should ensure that all switches are adequately protective no matter how they are designed or where they are mounted in a vehicle.

In their petition for reconsideration, the advocacy groups suggested that the agency’s sole reason for specifying a performance test rather than a design criterion was to avoid being design restrictive. On the contrary, we adopted that requirement because the agency believes that a performance test is the best way to identify switches that are reasonably safe and to provide an objective means of determining compliance. Such an approach generally has the added advantages of obviating the need to precisely describe a particular switch construction and operation that is required in order to qualify as a certain type of switch and of not retarding technological innovation.

However, the agency’s decision in this area has been superseded as a result of the congressional mandate in section 10308 of SAFETEA-LU, which requires all power windows in new vehicles not in excess of 10,000 pounds to have switches that raise the window only when the switch is “pulled up or out.” After thoroughly considering this mandate, it is clear that the intent of the Congress is to specify a strict design requirement so that only pull-to-close power window switches, the type of switch espoused in the Advocates et al., petition, would be allowed. Accordingly, we are granting the request in the Advocates et al., petition to mandate pull-to-close switches, and we are amending Standard No. 118 in a manner that will satisfy the agency’s mandate under SAFETEA-LU. The balance of this discussion explains the steps we have taken to implement our mandate under section 10308 of SAFETEA-LU and related issues.

In overview, we have revised paragraph S6 of the standard to include a new regulatory requirement (*i.e.*, pull-to-close operability) for power window switches under S6(c), as a supplement to the performance test implemented in the September 2004 final rule. Specifically, the paragraph S6 of the standard has been amended to provide:

(c) Any actuation device for closing a power-operated window must operate by pulling away from the surface in the vehicle on which the device is mounted. An

actuation device must operate only when pulled vertically up (if horizontally mounted), or out (if vertically mounted), or in a direction perpendicular to the surrounding surface if mounted in a sloped orientation, in order to cause the window to move in the closing direction.

As noted above, as part of implementing the SAFETEA-LU mandate, we have decided to retain the final rule's accidental actuation performance test, subject to certain technical modifications (discussed below) that were suggested in the petitions. Our rationale is that even given the design requirements for pull-to-close switches, we believe that the performance test is crucial to guard against poorly designed pull-up switches or any unforeseen switch design that could be construed as meeting the newly mandated design requirement but which, for some reason, is still susceptible to inadvertent actuation.

In further clarification of our implementation, we note that the SAFETEA-LU legislation did not mandate pull-to-close switches for power-operated partitions and roof panels. However, we believe that because those switches are already covered under the accidental actuation test, there is not a safety need to extend requirements impacting design beyond those set forth by Congress. All power-operated partition and roof panel switches in vehicles (with the exception of ceiling-mounted ones) are already required to either meet the performance test of the September 2004 final rule (as amended) or be equipped with an automatic reversal system. Thus, we are denying the request in the Advocates et al., petition to require pull-to-close switches in those cases that exceed our mandate under SAFETEA-LU.

B. Orientation and Placement of Switches

Under the September 15, 2004 final rule, there are two exceptions to the accidental actuation test. Specifically, paragraph S6(d)(1) states that the requirement in S6(a)—regarding prevention of window closure due to unintentional switch actuation—does not apply to either:

(1) Actuation devices that are mounted in a vehicle's roof, headliner, or overhead console and that can close a window, partition, or roof panel only by continuous rather than momentary switch actuation, or

(2) Actuation devices for closing power-operated windows, partitions, and roof panels that comply with S5 of this standard [i.e., related to automatic reversal].

In its petition for reconsideration, the Alliance recommended that the

exception in S6(d)(1) should be expanded to include power window switches mounted on vertical or nearly vertical surfaces inside the vehicle. Specifically, the Alliance suggested that the exception should apply to switches "mounted on surfaces of 75 degrees of incline or greater." The Alliance argued that such modification to the standard would be appropriate because children cannot climb on or stand on vertical surfaces, and it also stated that known fatalities related to power window switches involved toggle switches mounted on relatively flat (horizontal) surfaces. According to the Alliance, the final rule as promulgated would require a number of vehicles with toggle power window switches on the console or instrument panel to be redesigned at significant cost, but with no benefit.

After careful consideration, we have decided not to expand the standard's exceptions to the accidental actuation test, so as to include switches mounted on vertical or nearly vertical surfaces. As noted in the final rule, there is some uncertainty surrounding the precise mechanism of action by which occupants may inadvertently actuate power window switches. It is reasonable to conclude that most fatalities/injuries occur when children kneel or stand on the horizontal surface of an armrest containing an exposed window switch or switches. However, it is easily foreseeable that a child or other vehicle occupant might lean against a vertical door panel, in which case a window switch mounted vertically there would present at least as great a risk as a horizontally mounted one.

In contrast, the switches excluded under paragraph S6(d)(1) of the final rule are excluded because they are effectively out of reach for inadvertent contact. The same cannot be said of switches mounted on door panels, whether or not they are vertically oriented. Accordingly, we are not adopting the recommendation in the Alliance's petition to expand the exemption in S6(d)(1) to include power window switches mounted on vertical or nearly vertical surfaces.

C. Test Device and Methodology

1. Size of the Test Device

For the actuation test of S6, the September 15, 2004 final rule specified use of a test device in the form of a hemisphere with a smooth, rigid spherical surface and a radius of 20 mm $\pm$ 1 mm (see S6(b)(1)).

The Advocates et al., petition argued that the diameter of the test device is too large, particularly because the agency increased the size of the device by 60

percent (from 1 inch to 1.6 inches) over that proposed in the our November 1996 notice of proposed rulemaking (NPRM).⁶ The advocacy groups stated that the larger test device would permit manufacturers to utilize recessed openings for switches that are far larger and shallower than those which could have been used under the proposal, and as a result, power window switches will still be susceptible to inadvertent actuation by the hands, ball of foot, knuckles, elbows, toes, and even knees of young children. According to the Advocates et al., petition, the agency's final rule provides for a test device so large as to neglect the possibility of operation by those other body parts. The Advocates et al., petition urged the agency to amend the standard to provide for a smaller test device that would better represent the body parts of small children that might inadvertently actuate a power window switch.

The Alliance's petition also raised an issue related to the size of the test device. Specifically, it objected to the incorporation of the 1 mm tolerance on the size of the test device, which was not proposed in the NPRM, for the following reasons. The Alliance argued that such tolerance is unnecessary, particularly since other types of test apparatus under FMVSS No. 118 do not have size tolerances specified (e.g., test rods under S5). Furthermore, the Alliance's petition stated that a $\pm$ 1 mm radial tolerance in effect changes the required diameter of the test device from 40 mm to 38 mm, because manufacturers need to assume worst-case conditions when they conduct certification tests.

In order to remedy this perceived problem, the Alliance recommended amending the standard to specify a minimum radius of 20 mm for the test device. The Alliance's petition indicated that with current production capabilities for machined parts, tolerances can be held to 0.003 to 0.005 inches (0.076 to 0.127 mm).

Consistent with the reasoning in the final rule, we continue to believe that the size of the test device specified in the final rule is appropriate, and in their petition, the advocacy groups did not present any data to demonstrate that body parts smaller than a child's knee have resulted in inadvertent switch actuation that caused injury. For the reasons that follow, we have decided to deny the request in the Advocates et al., petition that we amend the standard to specify a smaller test device.

⁶ 61 FR 58504 (Nov. 15, 1996) (Docket No. NHTSA-2004-17216-1).

First, power window switches must be of sufficient size to render them reasonably ergonomic and accessible for normal operation. In contrast, a switch that could resist the wide range of actuation possibilities that the advocacy groups assert should be encompassed under the rule would be significantly compromised in terms of normal use. For example, if switches needed to be resistant to actuation by children's knuckles and toes, then even the pull-to-close switches mandated under section 10308 of SAFETEA-LU would fail to meet the requirement, because those child body parts are at least as small, if not smaller, than adult fingers which switches must be able to accommodate.

Second, there is no indication in our review of over two years of child fatality cases that power window switches were inadvertently operated in any way other than the most obvious one (*i.e.*, where a child knelt upon an armrest while leaning out of an open window).

Furthermore, focusing on ways in which switches theoretically might be unintentionally actuated by smaller body parts causes one to lose sight of the reality of the underlying safety problem. Although the evidence from the case data is limited, it appears that the power window switches involved in events leading to death and injury are primarily designs where the switches were largely or totally exposed. It is evident that even minor design changes in the configuration of those switches could have made a significant safety difference.

For these reasons and in light of the congressional mandate for pull-to-close power window switches, we believe that the size of the test device in the final rule, which represents the knee form of a small child, is sufficient to eliminate unsafe switches while maintaining functionality. Accordingly, we are denying the request in the Advocates et al., petition to decrease the size of the test device.

Turning to the issue raised in the Alliance's petition, we note that the agency's intent in including a size tolerance for the test device in the final rule was to facilitate testing under the standard. However, after considering the petitioner's arguments related to the size of the final rule's ± 1 mm manufacturing tolerance for the actuation test device, we agree that a smaller tolerance is appropriate.

Because the test device specified in the accidental actuation test is intended to be representative of the knee form of a small child (the worst-case scenario corresponding to actual cases of inadvertent power window switch

actuation), the agency believes it is appropriate to specify and to test with a test device that is representative of the minimum radius specified under the standard (*i.e.*, 20 mm) in order to ensure that the switch demonstrates the desired level of resistance to inadvertent actuation. Devices with a larger radius would certainly pass an accidental actuation test already passed by a device with a smaller radius.

By specifying a size tolerance, it is possible to facilitate testing by ensuring that the test device meets the standard's specifications so as to be representative of a small child's knee within a reasonable degree of manufacturing variability. However, in light of the information provided on production capabilities for machined parts, we have decided to reduce the tolerance on the test device from ± 1 mm to ± 0.2 mm. We believe that this revision will provide a reasonable manufacturing tolerance that will continue to closely represent the knee form of a small child.

2. Composition and Surface Finish of the Test Device

As noted above, for the actuation test of S6, the September 15, 2004 final rule specified use of a test device in the form of a hemisphere with a smooth, rigid spherical surface and a radius of 20 mm ± 1 mm (*see* S6(b)(1)).

The Alliance's petition for reconsideration expressed concern that the final rule does not specify either the material composition or the surface finish of the test device. The Alliance recommended specification and use of a test device made of stainless steel and with a surface "polished to between 8 and 4 micro inches."

The agency's intent in specifying the material and surface finish for the test device in qualitative terms was to be as unrestrictive as possible in order to facilitate testing under the standard. However, we agree that it would be possible to specify a material composition and surface finish parameters for the test device without increasing testing costs or compliance burdens. We believe that the test would still be easily implemented with such modification, and test repeatability may be enhanced to some extent.

Regarding the choice of material to be used to fabricate the test device, we agree that a more detailed specification is appropriate because of the wide range of possible materials that could be considered "rigid" (*e.g.*, wood, plastic, Teflon, cast iron) and thereby introduce variation into test results. Accordingly, we have decided to adopt the Alliance's recommendation to specify the use a test device made of stainless steel.

Regarding the surface finish of the test device, we note that the actuation test, as adopted in the final rule, was intended to emphasize contact in the normal direction (*i.e.*, perpendicular to the surface of the test device) and to eliminate frictional force in the planar direction (*i.e.*, tangent to the surface of the test device). Nevertheless, if specifications as to the surface of the test device are provided, as suggested by the Alliance, then the potential for lateral friction may be further minimized. Accordingly, we have decided to adopt the Alliance's recommendation that the test device should have a surface finish of between 8 and 4 micro inches, because we believe that this specification would be both practical and appropriate.

D. Automatic Reversal

As discussed in some detail in the preamble of the September 15, 2004 final rule, the agency decided not to amend Standard No. 118 so as to require vehicles equipped with power-operated windows to have an automatic reversal system.⁷ Instead, the standard continues to provide automatic reversal as a manufacturer option for certifying compliance under the standard (*see* S5). In the final rule, we stated that we were not mandating automatic reversal systems in light of their substantial cost (\$8–12.50 per window or \$32–50 per vehicle) and the fact that the amendments to the standard to require power window switches resistant to inadvertent actuation will reduce the limited benefits that could be obtained from those systems.⁸

The Advocates *et al.*, petition for reconsideration requested that the agency reexamine its decision not to require automatic reversal capability for power-operated windows, partitions, and roof panel systems. In explaining why it believes there is a need for automatic reversal, the Advocates *et al.*, petition began by arguing that FMVSS No. 118 "is based on the flawed premise" that adult supervision can be assumed if the ignition key is present in the vehicle. According to the Advocates *et al.*, petition, the provisions of S4, to which all power window systems are certified for compliance, rely on vigilance and "adult supervision"—not on fail-safe design and operation—to prevent power window-related deaths and injuries. However, the advocacy groups point to discussion in the preamble to the September 2004 final rule, stating that most power window-related deaths of young children

⁷ See 69 FR 55517, 55527–28.

⁸ *Id.* at 55523.

occurred while the vehicle's key was in the ignition. Thus, the Advocates et al., petition argued that real-world behavior and circumstances are at variance with the underlying rationale of the standard, so in keeping with the premise of public health countermeasures, the agency should change the nature of the environment in order to abate risk (i.e., by requiring automatic reversal), rather than to rely on the judgment of individuals and human behavior. Thus, the advocacy groups stated that the agency should have gone further to safeguard power windows, addressing all power window fatality scenarios by adopting an automatic reversal requirement, rather than focusing solely on switch design and thereby neglecting a large portion of the problem.

Furthermore, the advocacy groups argued that the agency's cost-benefit assessment related to automatic reversal was inadequate and unpersuasive. In their petition, the advocacy groups asserted that the fatality and injury data relied upon by the agency were unreliable and that the breadth of the safety problem is much greater than the data indicate (especially since many cases may go unreported). More specifically, the Advocates et al., petition stated that current power window systems result in a substantial exposure to risk of death or injury, even if actual harm only occurs in a small percentage of cases, because children are left unsupervised in vehicles with an active power window system (the key in the ignition or the availability of a remote control) thousands of times each day.

In addition, the advocacy groups stated that NHTSA should not have been deterred from mandating automatic reversal merely because of a low benefit-to-cost ratio for that safety system, based upon the precedent in other rulemakings. As examples, the Advocates et al., petition pointed to the agency's 1995 final rule⁹ under FMVSS No. 201, *Occupant Protection in Interior Impact* (including rear seats in the interior occupant protection rule) and our 2000 final rule¹⁰ amending FMVSS No. 208, *Occupant Crash Protection* (issued in part to protect children from air bag-related injuries). The advocacy groups stated that NHTSA adopted requirements in these rulemakings, despite considerable cost to industry and relatively few fatalities.

After careful consideration, we have decided to deny the request in the Advocates et al., petition to include an automatic reversal requirement under

FMVSS No. 118. We note that the advocacy groups have not provided any new data regarding either: (1) The incidence of fatalities and injuries for inadvertent or intentional actuation of power window switches, or (2) the costs of automatic reversal systems. We continue to believe that the limited benefits that could be expected from an automatic reversal requirement are not justified by the high cost of such systems, particularly given the potential for the safer switches requirements (both the pull-to-close mandate of section 10308 of SAFETEA-LU and the performance test in S6) to prevent power window-related injuries and fatalities. The following discussion explains our reasoning in light of the arguments raised in the Advocates et al., petition; however, for a more complete discussion, please also read the discussion in the September 15, 2004 final rule regarding automatic reversal systems.

First, we disagree with the characterization in the Advocates et al., petition that FMVSS No. 118 depends upon supervision of children for safety, and the conclusion that flows therefrom, i.e. that because reliance on adult supervision has proven inadequate, the agency must mandate automatic reversal. Supervision of children and supervisory control of the ignition key, in fact, are not the same. Because of FMVSS No. 118 requirements, control of the ignition key (and of any remote control which can operate the windows) is sufficient for ensuring safety vis-à-vis power windows, thereby obviating the need for direct supervision of children with respect to power window operation. By requiring the simple act of key removal, the standard ensures power windows can be rendered inoperable, rather than making supervision of child occupants a necessary condition for safety, as the advocacy groups assert.¹¹

Furthermore, the September 2004 final rule was intended to prevent fatalities and injuries associated with inadvertent actuation of power window switches, even if children are left unsupervised with the key left in the ignition. Based upon the data examined by the agency (as discussed in the final rule), we believe that the amendments to the standard (i.e., the accidental actuation test and the requirement for

pull-to-close switches) will prevent the types of power-window incidents that have been documented.

In their petition, the advocacy groups presented other possible scenarios, involving either inadvertent or intentional (but accidental) switch actuation that have the potential to produce power window-related injuries. For example, the Advocates et al., petition discussed the possibility of a child becoming entrapped when two or more children are left unattended in the presence of enabled power windows, and the second child inadvertently actuates a switch. In their petition, the advocacy groups alleged that there are cases of this type. However, there is not any documentation that any such cases have actually occurred. Even so, the risk of unintentional switch operation in the two-child scenario presented in the Advocates et al., petition is already addressed by the safer switch requirement of the final rule.

In the case of intentional switch operation (i.e., operating the switch as designed with a finger), one child could entrap another child only if the first child were manipulating switches at the driver's window (the only vehicle location with comprehensive controls for all windows) or if the two children were at the same window. However, the available data did not include any cases in which it could be verified that one child accidentally caused entrapment of another child by intentionally actuating a power window switch.¹² We are aware of only one documented case of a fatality in which a driver may have closed a window while unaware that a child was being entrapped in the window opening.¹³

Furthermore, we do not believe that the speculative arguments in the Advocates et al., petition about magnitude of risk justify their request for the agency to require automatic reversal systems, absent data demonstrating a safety problem. It is not feasible to eliminate all potentially conceivable risks through regulation. We do not believe that the high cost of automatic reversal systems are justified in the absence of data demonstrating a safety need, particularly where the standard's safer switches provision is expected to address the problems which led to this rulemaking.

We likewise find no merit to the argument in the Advocates et al., petition seeking to link the agency's adoption of requirements in other safety

¹¹ We note that key removal is essential for other safety reasons as well, such as to prevent roll-aways and to prevent children from moving the gear selector or starting the engine. Even if all vehicles were equipped with automatically reversing power windows, it still would always be advisable to never leave the ignition key in an unattended vehicle.

¹² See 69 FR 55517, 55523–24 (Sept. 15, 2004).

¹³ See Appendix K of the August 19, 2003 Center for Auto Safety et al., petition for rulemaking (Docket No. NHTSA–2004–17216–19).

⁹ 60 FR 43031 (August 18, 1995).

¹⁰ 65 FR 30680 (May 12, 2000).

standards (despite allegedly low benefit-to-cost ratios) as justification for requiring automatic reversal systems in FMVSS No. 118. On that point, the agency considers each potential amendment to a safety standard on its own merits, and such considerations are not limited to costs. Consequently, the agency's analysis in the rulemakings for FMVSS Nos. 201 and 208 are not relevant to our determination not to require automatic reversal systems under FMVSS No. 118.

For the reasons above, we do not believe that there is significant safety need that would justify the high costs of requiring automatic reversal systems under Standard No. 118, particularly given the potential of current requirements for pull-to-close switches and the accidental actuation test to prevent the types of power window-related incidents documented in the available data. Accordingly, the request in the Advocates et al., petition for an automatic reversal requirement is denied.

V. Technical Correction

Since publication of the September 2004 final rule, a testing anomaly related to the accidental actuation test under S6 of the standard has been brought to our attention. Specifically, it is possible for the hemisphere-shaped test device to contact switches in an unintended manner, one in which a sphere-shaped test device could not.¹⁴ Available information suggests that a hemisphere, unlike a whole sphere, could fit into a side-by-side switch recess designed for fingertips and could actuate a pull-up switch. However, window closure in this situation is the result of an artifact of the test design and has no relevant safety implications, because a hemisphere held in the orientation necessary to cause the problem is not representative of a child's knee.

To resolve this anomaly, we are making a technical correction to S6 to return the shape of the test device to a full sphere, as we originally proposed.¹⁵ The reason for this change from a complete sphere to a hemisphere was primarily to facilitate attachment of a handle to the device and alignment of the applied force in the requisite direction (i.e., through the center of the

point of contact of the device's spherical surface with a switch being tested). We do not believe that this technical correction will have any impact upon the conduct of the accidental actuation test.

VI. Lead Time and Compliance Date

In the September 2004 final rule, the agency stated its intention to provide sufficient lead time to allow vehicle manufacturers to incorporate compliant power window switches as part of the normal vehicle redesign process (which manufacturers suggested range from three to five years). As discussed in that rule, we expressed our belief that providing this lead time would reduce the costs associated with the final rule to essentially zero. Accordingly, the final rule required that all new vehicles subject to the standard that are produced on or after October 1, 2008 for sale in the U.S. must comply with the amended power window switch requirements. The final rule noted that voluntary compliance is permitted prior to the mandatory compliance date.

In setting forth the amended requirements to FMVSS No. 118 contained in this final rule responding to petitions for reconsideration, we have decided to retain the mandatory compliance date of October 1, 2008, for the reasons that follow. The primary change effected by this final rule involves a requirement for power window switches with pull-to-close operability, a new requirement which implements the agency's mandate under section 10308 of SAFETEA-LU. (All of the other amendments to the standard adopted pursuant to this response to petitions for reconsideration are minor technical changes which should not affect lead time considerations.)

However, the enactment of the SAFETEA-LU legislation followed the September 2004 final rule by a relatively short period of time (approximately 11 months), and vehicle manufacturers presumably were aware of this new and relatively straight-forward mandate soon after enactment, if not before.

It is unlikely that vehicle manufacturers committed significant resources to redesigning their switches during that intervening time period, and that they chose a recessed rocker or toggle switch design (as permitted under the September 2004 final rule), as opposed to a pull-to-close switch design that would meet the statutory mandate. In fact, we would note that certain high-volume vehicle models which previously had rocker or toggle switches have been converted to pull-to-close switches since publication of the September 2004 final rule (e.g., Ford

Explorer, Chevrolet Impala). This suggests that the September 2004 final rule only accelerated the industry trend toward installation of pull-to-close switches (the most common design in current vehicles).

In any event, we believe that vehicle manufacturers have adequate lead time to effect changes related to incorporation of pull-to-close power window switches. For these reasons, we believe that additional time to comply with the power window switch requirements in this notice is unnecessary.

VII. Benefits and Costs

Section XI of the September 15, 2004 final rule summarized the benefits associated with our amendments to FMVSS No. 118 to require safer power window switches, and Section XII of that final rule described the associated costs. In summary, those sections of the final rule stated that based upon all available evidence, the agency expects that, on average, at least one child fatality and at least one serious injury (e.g., amputation, brain damage from near suffocation) per year could be prevented by the requirements of the final rule. As discussed in that final rule, we believe that this is a conservative estimate and that actual benefits are likely to be higher.

In terms of costs, we stated in the September 2004 final rule that we expect that the new requirements will impose very little cost burden on vehicle manufacturers, particularly given the ample lead time provided (i.e., compliance date of October 1, 2008). Modifications made to comply with the final rule were expected to consist merely of changes in the mode of switch operation and/or in the shape of surrounding trim pieces, and the final rule was not expected to affect any other aspect of the operation of power windows. The cost to manufacturers, while perhaps greater than zero, were expected to be negligible, given that any necessary switch modifications will presumably be incorporated during the course of normal product design cycles.

The agency has determined that the technical amendments resulting from this final rule responding to petitions for reconsideration, including the congressional mandate for pull-to-close power window switches, will not appreciably change the costs and benefits reported in the September 2004 final rule. We continue to believe that there is adequate lead time to allow manufacturers to comply with the amended standard without appreciable cost. Accordingly, the agency has decided that the estimates in that

¹⁴ A representative from Toyota Motors North American, Inc. (Toyota) discussed this issue with NHTSA staff on June 21, 2005, providing a schematic illustrating the potential actuation problem with a hemisphere-shaped test device. (See Docket No. NHTSA-2004-19032-8.) General Motors provided similar information regarding the shape of the test device. (See Docket No. NHTSA-2004-19032-10.)

¹⁵ 61 FR 58504, 58507 (Nov. 15, 1996).

document remain valid and that additional analysis is not required.

VIII. 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.¹⁶ These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.¹⁷ When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.¹⁸ 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.¹⁹ The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.²⁰

As noted previously, the agency published a final rule in the **Federal Register** on September 15, 2004, amending FMVSS No. 118 to require power window switches resistant to inadvertent actuation. The agency received two petitions for reconsideration of that final rule. In addition, in the intervening period, Congress passed section 10308 of SAFETEA-LU, which directed the Secretary of Transportation "to require that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out." In this final rule responding to petitions for reconsideration, the agency carefully considered the statutory requirements of both SAFETEA-LU 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 petitions for reconsideration. In responding to the issues raised in these petitions, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available

information related to various power window systems. We also carefully considered how best to implement the legislative mandate to require pull-to-close power window switches. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the power window requirements remain practicable, the agency evaluated the potential impacts of the petitions' requested actions in light of the cost, availability, and suitability of various power window systems, consistent with our safety objectives and the requirements of SAFETEA-LU. As noted above, most of the changes resulting from this final rule involve relatively minor modifications to the September 15, 2004 final rule, and even the requirement for pull-to-close power window switches arguably falls in that category. In sum, we believe that this final rule responding to petitions for reconsideration is practicable and will maintain the benefits of the Standard No. 118, including minimizing the likelihood of death or injury from the accidental operation of power-operated window, partition, and roof panel systems.

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 amends the standard to include a requirement for pull-to-close operability of power window switches, and it also makes minor modifications to better define the test device used for the accidental actuation test. The standard's test procedures continue to carefully delineate how testing will be conducted. 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 standard for power-operated window, partition, and roof panel systems.

Fourth, we believe that this final rule responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will enhance the resistance of power window switches to inadvertent actuation, thereby preventing potentially injurious or fatal incidents, particularly those involving small children.

Finally, we believe that this final rule 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 power window switches be resistant to inadvertent actuation, which may lead to fatalities and serious injuries, particularly among children. Under section 10308 of SAFETEA-LU, Congress mandated issuance of a final rule to amend FMVSS No. 118 such that power windows in motor vehicles not in excess of 10,000 pounds have switches that raise the window only when the switch is pulled up or out. Because this is essentially the same modification requested by one of the petitions for reconsideration, addressing Congress's safety objective through this rulemaking was determined to be appropriate and allows us to expeditiously implement congressional intent. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 118 because it furthers the agency's objective of minimizing the likelihood of death or injury resulting from the accidental operation of power-operated window, partition, and roof panel systems.

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.

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. This final rule

¹⁶ 49 U.S.C. 30111(a).

¹⁷ 49 U.S.C. 30102(a)(9).

¹⁸ 49 U.S.C. 30111(b).

¹⁹ *Id.*

²⁰ 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

responding to petitions for reconsideration involves technical amendments to FMVSS No. 118, with the most noteworthy being a requirement that power window switches have pull-to-close operability. The agency has estimated that the incremental costs associated with these technical modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 118. In light of current industry design trends and the substantial lead time provided, the cost of this final rule is expected to be close to zero. On average, we expect that the September 2004 final rule for safer power window switches will result in annual benefits that are expected to be a saving of one child's life and the avoidance of at least one serious injury, and that this final rule responding to petitions for reconsideration will maintain that anticipated level of benefits. Therefore, the impacts of these amendments are so minor that a full regulatory evaluation is not required.

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 responding to petitions for reconsideration only makes technical modifications and corrections to the

safety standard for power-operated window, partition, and roof panel systems. Although the final rule does implement a congressional mandate for pull-to-close power window switches, small entities would continue to have design freedom with respect to materials, subcomponents, electronics, and all other design factors other than the shape of the switch-finger interface. In addition, given the substantial lead time, we continue to expect that the costs associated with this rulemaking would be close to zero.

D. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), 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." "Policies that have federalism implications" are defined in the Executive Order 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, the agency 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, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the regulation.

Although it simultaneously implements a statutory mandate for pull-to-close power window switches, this final rule responding to petitions for reconsideration of September 15, 2004 final rule amending FMVSS No. 118 was analyzed in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule would not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This final rule is not expected to have any substantial effects on the States, or on the current distribution of power and

responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

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

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

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

G. Paperwork Reduction Act

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

collection requirement associated with this final rule.

H. National Technology Transfer and Advancement Act

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

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

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995 (so currently about \$112 million in 2001 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.

This final rule responding to petitions for reconsideration will not result in the expenditure by State, local, or tribal governments or the private sector, in the aggregate, of more than \$112 million annually. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. National Environmental Policy Act

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

K. Regulatory Identifier Number (RIN)

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

L. Privacy Act

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 (65 FR 19477), or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

■ 2. Section 571.118 is amended by revising S6 to read as follows:

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

* * * * *

S6 Actuation Devices. Except as provided in paragraph S6(b), actuation devices in the occupant compartments of vehicles used to close power-operated windows, partitions, and roof panels must meet the following requirements:

(a) An actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested as follows:

(1) Using a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of 20 mm + 0.2 mm, place the surface of the sphere against any portion of the actuation device.

(2) Apply a force not to exceed 135 Newtons (30 pounds) through the geometric center of the sphere. This force may be applied at any angle with respect to the actuation device.

(3) For actuation devices that cannot be contacted by the sphere specified in S6(a)(1) prior to the application of force, apply a force up to the level specified in S6(a)(2) at any angle in an attempt to make contact with the actuation device. The sphere is directionally applied in such a manner that, if unimpeded, it would make contact with the actuation device.

(b) The requirement in S6(a) does not apply to either—

(1) actuation devices that are mounted in a vehicle's roof, headliner, or overhead console that can close power-operated windows, partitions, or roof panels only by continuous rather than momentary switch actuation, or

(2) actuation devices for closing power-operated windows, partitions, or roof panels which comply with paragraph S5.

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

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Jacqueline Glassman,
Deputy Administrator.

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