DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–10773; Notice 3]

RIN 2127–AI26

Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects

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

ACTION: Final rule.

SUMMARY: This document adopts amendments that implement the foreign safety recall and safety campaign reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 3(a) of the TREAD Act requires a manufacturer of motor vehicles or motor vehicle equipment to report to the National Highway Traffic Safety Administration (NHTSA) whenever it has decided to conduct a safety recall or other safety campaign in a foreign country covering vehicles or equipment that are identical or substantially similar to vehicles or equipment offered for sale in the United States. The manufacturer must also report whenever it has been notified by a foreign government that a safety recall or safety campaign must be conducted covering such vehicles or equipment.

DATES: Effective Date: The effective date of the final rule is November 12, 2002. Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than November 25, 2002.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) was enacted on November 1, 2000. The TREAD Act, among other things, amended 49 U.S.C. 30166 to add new subsection (l), ''Reporting of defects in motor vehicles and products in foreign countries,'' and new subsection (m), ''Early warning reporting requirements.'' Because the TREAD Act required us to publish a final rule on early warning reporting by June 30, 2002, and did not impose a deadline for reporting of foreign defects, we accorded priority to implementing Section 30166(m). We issued an advance notice of proposed rulemaking (ANPRM) on January 22, 2001 (66 FR 6532) in which we sought comments on two issues that were also related to the reporting of foreign defects: manufacturers to be covered by the new regulations and the definition of ''substantially similar'' motor vehicles and equipment. The comments on the ANPRM assisted us in addressing both these issues in the NPRM on the reporting of foreign defects, to be codified in Subpart B of 49 CFR part 579, published on October 11, 2001 (66 FR 51907), and in the NPRM on early warning reporting, to be codified in Subpart C of 49 CFR part 579, published on December 21, 2001 (66 FR 66190). In addition, the NPRM on early warning proposed a Subpart A to Part 579, which contains a statement of application and terminology that would apply to both Subpart B and Subpart C.

We encouraged readers to review the two NPRMs in parallel to ensure consistency (66 FR 66191). The comments in response to both these NPRMs raised some issues applicable to both rulemakings, which were resolved in the early warning final rule, published on July 10, 2002 (67 FR 45822). To the extent that the resolution of these issues is equally applicable to the foreign defect reporting final rule, we shall not discuss them in the detail that we did in the early warning final rule, but shall incorporate relevant discussions by reference and provide page citations for them.

Comments on the October 11, 2001 NPRM were submitted by manufacturers of motor vehicles (the Alliance of Automobile Manufacturers (the Alliance) (whose members are BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volvo and Volkswagen), the Association of International Automobile Manufacturers, Inc. (AIAM), Ford Motor Company (Ford), Volkswagen of America, Inc. (VW) including Volkswagen AG and Audi AG, Nissan North America, Inc. (Nissan), the Truck Manufacturers Association (TMA), and Harley-Davidson Motor Company (Harley-Davidson), equipment manufacturers (the Motor Equipment Manufacturers Association (MEMA) together with the Original Equipment Suppliers Association, Breed Technologies (Breed), Delphi Automotive Systems, LLC (Delphi), Johnson Controls (Johnson), and Bendix Commercial Vehicle Systems, LLC (Bendix)), public interest groups (Advocates for Highway and Auto Safety (Advocates) and Public Citizen (PC)), and the National Automobile Dealers Association (NADA). The Juvenile Products Manufacturers Association (JPMA) represented the views of child restraint system manufacturers. The Rubber Manufacturers Association (RMA) represented those of the tire industry. The early warning rule identifies entities that commented on the term ''manufacturer'' and the phrase ''substantially similar motor vehicles and equipment'' in the context of that rulemaking.

As the preamble to the October 2001 NPRM noted, during 2000, NHTSA's Office of Defects Investigation (ODI) became aware of three ''Owner Notification Programs'' that Ford Motor Company (Ford) had conducted on

Ford-manufactured sport utility vehicles equipped with ATX and Wilderness tires manufactured by Bridgestone/Firestone, Inc. (Firestone). These vehicles had been sold for use in the Persian Gulf region, Thailand, and Venezuela. In each case, Ford explained to owners that it was offering to replace the tires because they might experience interior tire degradation and tread separation, due to usage patterns and environmental conditions unique to each geographical region, ''resulting in a loss of vehicle control.'' In none of the three cases did Ford immediately notify NHTSA that it was taking this action, because, as it explained later, there was no regulation requiring it to do so.

Manufacturers of motor vehicles and replacement equipment were, and are, under a longstanding obligation to notify NHTSA if the manufacturer ''learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety.'' (49 U.S.C. 30118(c)(1)). Similarly, under Section 30118(c)(2), when the manufacturer decides in good faith that a vehicle or equipment item does not comply with an applicable Federal motor safety standard, it must report the noncompliance to NHTSA. The precursor to Section 30118(c), which contained substantially similar language, has been held to impose upon a manufacturer the duty ''to notify and remedy *whether it actually determined, or it should have determined,* that its [products] are defective and the defect is safety-related.'' *United States* v. *General Motors Corp. (X-Cars),* 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987) (emphasis added), *affirmed,* 841 F. 2d 400 (D.C. Cir. 1988), citing *United States* v. *General Motors Corp.,* 574 F. Supp. 1047, 1050 (D.D.C. 1983).

Pursuant to 49 U.S.C. 30166, NHTSA has extensive investigative authority. However, until the TREAD Act, the only regulatory requirements to provide information to NHTSA about *potential* defects were established by 49 U.S.C. 30166(f), ''Providing copies of communications about defects and noncompliance,'' as implemented by 49 CFR 573.8, ''Notices, bulletins, and other communications'' (now 49 CFR 579.5(a)). Section 30166(f) provides that:

> A manufacturer shall give [NHTSA] a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard * * * in a vehicle or equipment that is sold or serviced.

To implement Section 30166(f), NHTSA adopted 49 CFR 573.8, which specifies that:

> Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiques and product improvement bulletins), other than those required to be submitted by Sec. 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or flaw or unintended deviation from design specifications), whether or not such defect is safety related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.[1]

PC accurately commented that the regulation does not explicitly exclude the submission of communications provided to dealers overseas. However, NHTSA has never interpreted Section 573.8 to specifically address manufacturer communications only to overseas dealers, and this question was not within the scope of the NPRM. Accordingly, we are not addressing it further in this rule.

To address foreign reporting and other issues, the TREAD Act (Public Law 106–414) was enacted on November 1, 2000. Section 3(a) of the TREAD Act amended 49 U.S.C. 30166 to add a new subsection (l), which reads as follows:

> (1) REPORTING OF DEFECTS IN MOTOR VEHICLES AND PRODUCTS IN FOREIGN COUNTRIES—
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> (1) REPORTING OF DEFECTS, MANUFACTURER DETERMINATION—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
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> (2) REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or other safety campaign must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.
>
> (3) REPORTING REQUIREMENTS—The Secretary shall prescribe the contents of the notification required by this subsection.

The obligation to report under the first two paragraphs above was effective on the day that the TREAD Act was signed into law, November 1, 2000. Since that date, NHTSA has, in fact, received numerous notifications of foreign safety campaigns being conducted by vehicle and equipment manufacturers. The content, format, and scope of these reports have varied, which supports the need for a regulation that defines and standardizes the information provided, as required by the third subparagraph. For example, at the time of the NPRM, Ford was conducting a ''field action'' in Thailand, Malaysia, and Fiji to replace faulty brake caliper bodies on certain Mazda Fighter and Ford Ranger J97 vehicles. Ford advised us that ''This model is not marketed in the United States.'' This leaves unanswered the question whether the model is substantially similar to one marketed in the United States, or whether the brake caliper bodies are identical or substantially similar to brake caliper bodies on Ford/Mazda vehicles that are sold in the United States. At the same time, Firestone was conducting a ''Customer Satisfaction Program'' in the Middle East covering certain tires manufactured in its Wilson, North Carolina plant that were original equipment on 589 vehicles manufactured by Ford, specifically model year 1998 and 1999 Ford Taurus and Mercury Sable sedans and station wagons. Its letter to us did not state whether similar tires were used on vehicles in the United States.

II. Part 579, Subparts A and B

A. Introduction

With the recent publication of the early warning reporting final rule (67 FR 45822), 49 CFR part 579 was reissued with the title ''Reporting of Information and Communications About Potential Defects,'' and the previous provisions of Part 579 were moved and incorporated into 49 CFR Part 573. The notice issuing the early warning final rule established both Subparts A (General) and C (Reporting of Early Warning Information) of Part 579. Subpart A is comprised of sections that establish the scope of Part 579, and its purpose, application, and terminology. That subpart also specifies the address and manner for submitting reports and other information under Part 579, and establishes requirements governing certain notices, bulletins, and other communications to more than one manufacturer, distributor, dealer, lessor,

[1] The notices, bulletins, and other communications required to be submitted by Sec. 573.5(c)(9), which Sec. 573.8 excludes, are those that relate directly to a noncompliance or a safety-related defect that NHTSA or a manufacturer has determined to exist under 49 U.S.C. 30118(b) or (c).

lessee, owner, or purchaser in the United States. See Section 579.5(a). The rule we are issuing today on foreign campaign reporting establishes Subpart B (Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries).

The October 2001 NPRM proposed to establish Sections 579.11, ''Additional definitions for subpart B,'' 579.12, ''Identical or substantially similar vehicles and equipment,'' 579.13, ''Reporting responsibilities,'' 579.14, ''Content of reports,'' and 579.15, ''Who may submit reports.'' As mentioned above, thereafter the December 2001 NPRM on early warning reporting, among other things, noted that it included in Subpart A provisions, applicability, and terminology that would apply to both Subpart B on foreign defect reporting and Subpart C on early warning reporting. We address applicability and the term ''manufacturer'' under point B below. For organizational purposes of locating all definitions in Subpart A, we will add definitions of ''foreign country,'' ''foreign government,'' ''safety recall,'' and ''other safety campaign'' to Section 579.4 rather than provide a separate definitions section in Subpart B. These definitions and substantive issues related to them are addressed in under point C below.

B. Applicability

In Subpart A of Part 579, which was published on July 10, 2002 and applies to today's rule, we defined manufacturer as:

> a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

Under Application (Section 579.3(a)), the rule states that:

> [t]his part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are [identical or] substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States [emphasis supplied]. [The statutory words ''identical or'' were inadvertently omitted and have been added by this final rule.]

In developing these provisions, we considered numerous comments. A number of commenters had taken the same positions in their comments on both the October 2001 and the December 2001 NPRMs, which was understandable given that both addressed foreign events involving substantially similar vehicles and equipment and the statement in the preamble to the December 2001 NPRM that Subpart A would apply to both foreign defect reporting and early warning reporting. For example, on foreign defect reporting VW urged NHTSA ''to refrain from attempting to assert jurisdiction over entities with no nexus to the United States.'' Nissan had a similar comment. They made similar comments in response to the early warning NPRM (see 67 FR 45825–45828). Inasmuch as we addressed these and other comments related to applicability and the definition of manufacturer in the course of the final rule published on July 10, 2002, there is no need to repeat our response here. We incorporate that notice by reference. See 67 FR 45825–45834.

In the October 2001 NPRM, we proposed that ''manufacturer'' would include agents of manufacturers, through the proposed definitions of ''safety recall'' and ''other safety campaign'' (the proposed text is set out in point C below). Nissan and the Alliance specifically objected to the inclusion of ''agent.'' The Alliance asserted that even in the United States, case law does not establish a ''bright line'' test to determine in advance whether an entity, such as a dealer, is an ''agent'' of a vehicle manufacturer. The Alliance asserted that use of the term ''agent'' in a foreign business environment is ''particularly problematic'' because manufacturers in foreign countries ''may have entities (such as independent distributorships) acting on their behalf for certain purposes, but not others.'' We have carefully considered these comments. Noting that we did not use the term ''agent'' in the early warning reporting final rule, we have decided that we do not need it for purposes of foreign defect reporting. The definition of ''manufacturer'' in Section 579.4(c) provides adequate breadth.

Also, both the foreign defect reporting NPRM and the early warning reporting NPRM proposed transferring the provisions of Section 573.8 on notices, bulletins, and other communications to Part 579, the latter NPRM adding the limitation that its provisions applied to documents sent ''in the United States.'' The early warning reporting final rule adopted this proposal, Section 573.8 becoming Section 579.5(a). The limitation addresses AIAM's comment to the foreign defect reporting NPRM expressing concern that, without limiting it to documents sent in the United States, the provision could be construed to require submission of documents relating to foreign non-safety defect communications.

There were additional comments on the foreign defect reporting NPRM that were not raised in the early warning reporting rulemaking and thus not addressed in the July 10 rule. NADA suggested that ''Section 579.3 should include language similar to that in 49 CFR 577.3 indicating that *manufacturers* should include all 'stage' manufacturers.'' Section 577.3 applies in part to ''manufacturers of incomplete motor vehicles,'' and, in the case of vehicles manufactured in two or more stages, allows compliance with the obligation to notify and remedy noncompliances or safety-related defects by either the manufacturer of the incomplete vehicle or any subsequent manufacturer.

We have reviewed this comment and have concluded that vehicle safety concerns do not require that manufacturers of incomplete vehicles be included in the foreign defect reporting requirements with respect to those vehicles. On an average, NHTSA receives only 10 to 15 Part 573 reports each year that apply only to incomplete vehicles. Given the widely varying configurations of incomplete vehicles when completed, and given the relatively few such vehicles that are either exported from or imported into the United States, we believe that the number of foreign safety recalls or other safety campaigns on these unfinished vehicles will be even fewer than experienced in this country, and information about such recalls is likely to be of no real added value in detecting defect trends. Therefore, we have not adopted this suggestion.

In addition, NADA suggested that ''registered importers subject to Part 573 and Part 577 defect and noncompliance reporting and notification requirements also should be subject to the Part 579 [foreign defect campaign] reporting requirements.'' Parts 573 and 577 apply to registered importers (RIs) because 49 U.S.C. 30147 specifically requires RIs to notify and remedy safety-related defects and noncompliances in vehicles they import. However, because RIs are not original manufacturers exporting vehicles, they will not be conducting, or ordered to conduct, campaigns outside

the United States. To the extent that there is a campaign conducted abroad covering vehicles that are identical or substantially similar to those that an RI imports, the campaign will usually be reported to NHTSA by the fabricating manufacturer or its representative. Although foreign campaigns might not be reported which cover vehicles that RIs are authorized to import that have no U.S. certified counterpart (see VCP column, Appendix A, Part 593), these vehicles are few in number and their overall impact upon safety is negligible. Thus, there is little reason to require RIs to report under Subpart B.

C. Additional Definitions in Section 579.4(c), Including ''Safety Recall'' and ''Other Safety Campaign.''

Section 30166(l) requires that a manufacturer of motor vehicles or motor vehicle equipment report to us when it has decided, or has been required by a foreign government, to conduct ''a safety recall or other safety campaign'' outside the United States that involves vehicles or equipment that are identical or substantially similar to products sold in the United States. As we noted in the NPRM, the TREAD Act does not define ''safety recall or other safety campaign.'' Further, NHTSA does not have comprehensive information about the laws of jurisdictions outside the United States relating to recalls of motor vehicles and motor vehicle equipment, and thus does not have detailed knowledge of the terminology or specific practices used in foreign countries to address potential safety problems. For example, some countries may not differentiate defects from noncompliances with safety standards or with safety guidelines. Accordingly, we cannot presume that a procedure abroad will follow that specified in 49 U.S.C. 30118–30120 and 49 CFR Part 573; *e.g.*, a notification to a government agency within 5 days after the manufacturer determines that its product contains a safety-related defect or noncompliance, followed by notification to owners, purchasers, and dealers containing an offer to remedy through repair, repurchase, or replacement.

In the United States, the elements of a ''safety recall'' are established by 49 U.S.C. 30118–30120. In general, these elements are (1) a determination by a manufacturer of motor vehicles or motor vehicle equipment, or by NHTSA, that a safety-related defect or noncompliance exists, (2) notification by the manufacturer to NHTSA within a reasonable time (defined in redesignated 49 CFR 573.6(b) to be within 5 business days of its determination), and (3) notification by the manufacturer to owners, purchasers, and dealers advising of the determination and potential safety consequences, and offering a free remedy.

We proposed to characterize a ''safety recall'' abroad as involving a determination by a manufacturer or one of its affiliates or subsidiaries (or a foreign government) that there is a problem with specific motor vehicles or motor vehicle equipment that relates to motor vehicle safety (*e.g.*, a defect or noncompliance with a local safety standard or governmental guideline), followed by an offer by the manufacturer to provide remedial action. The offer could be made either by notifying the owner directly or through notifying dealers, who would then communicate with owners. Such safety recalls would have to be reported, whether or not the problem at issue would constitute a safety-related defect or noncompliance under U.S. law.

The TREAD Act also does not define ''other safety campaign.'' As discussed in the NPRM, we would distinguish an ''other safety campaign'' from a ''safety recall'' in two ways. First, a manufacturer would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed. Second, the ''campaign'' would not necessarily involve the provision of a remedy. It could include such actions as an extended warranty or simply a warning to owners or dealers about a possible problem that could relate to safety. It would not include ad hoc good will repairs or replacements solely by local dealers for individual owners. Thus, a ''safety campaign'' would be defined as an action in which a manufacturer communicates with owners and/or dealers with respect to conditions under which a vehicle or equipment item should be operated, repaired, or replaced, that relate to safety. As used above, the words ''relate to'' would have the same broad meaning they do in 49 U.S.C. 30118(b) and (c). See, *e.g.*, *Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 383 (1992).

Taking these factors into consideration, we proposed that a ''safety recall'' be defined as:

> An offer by a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline.

We proposed that ''other safety campaign'' mean:

> An action in which a manufacturer, including but not limited to a foreign subsidiary or affiliate or agent of a manufacturer, communicates with owners and/or dealers in a foreign country with respect to conditions under which vehicles or equipment should be operated, repaired, or replaced, that relate to safety.

Before turning to the terms ''safety recall'' and ''other safety campaign,'' we note that these proposed definitions included references to subsidiaries, affiliates, and agents of manufacturers. However, as finally defined in Section 579.4(c) and as discussed above, ''manufacturer'' includes subsidiaries and affiliates, and does not include agents. To avoid redundancy, and consistent with the approach taken with respect to early warning reporting, we are eliminating those references in the definitions of ''safety recall'' and ''other safety campaign'' adopted in this final rule, and simply use the term ''manufacturer'' as defined in Section 579.4(c).

There was little comment on the proposed definition of ''safety recall.'' Nissan noted with approval that the core elements of a safety recall established by the Vehicle Safety Act are present in the proposed definition of ''safety recall.'' However, one of these core elements is that the remedy be without charge. We are not familiar with the laws of other countries on safety recalls and do not wish to imply that provision of free remedy or reimbursement is a necessary component of a ''safety recall'' under the TREAD Act. We are clarifying this in the final definition of ''safety recall,'' which means:

> An offer by a manufacturer to owners of vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

Some commenters contended that the definition of ''other safety campaign'' should relate more closely to that of ''safety recall.'' Nissan contended that ''Congress intended to capture only those 'other safety campaigns' that would be equivalent to a recall if conducted in the United States.'' Noting NHTSA's comment (66 FR 51910) that a manufacturer ''would not necessarily make any acknowledgement, express or otherwise, that a safety problem existed,'' Nissan commented that this statement was inconsistent with the ''determination'' language of the statute. Nissan recommended that ''other safety campaign'' should be defined ''to refer to any campaign that would meet the definition of a safety recall but, because of variations in foreign regulatory

schemes, was not conducted as part of a formal remedy system.'' This in essence was also the position of JPMA and of the Alliance, which suggested that ''other safety campaign'' be defined to mean ''an offer by a manufacturer to owners of two or more vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety, when that foreign country does not have a statutory or regulatory program requiring safety recalls.''

We believe that this is too narrow and misreads congressional intent. It would require a manufacturer to reach the conclusion that a defect exists and that that defect relates to motor vehicle safety. It has been our experience that manufacturers often conduct campaigns in the United States that relate to safety without acknowledging that a defect exists or that there is a safety relationship of a defect. In many cases, after becoming aware of such campaigns pursuant to 49 CFR 573.8 (2001) (now 49 CFR 579.5(a)), NHTSA has required manufacturers to conduct them as safety recalls and also has required manufacturers to broaden the scope of the campaigns. In our view, under the TREAD Act, NHTSA should be apprised of these campaigns in foreign countries at least to the extent we are aware of them in the United States. Moreover, we view the term ''offer'' as a narrower term than our proposed term ''communication by a manufacturer.'' Under our proposal, no safety defect need be identified even implicitly. Precautionary advice provided by a manufacturer on the conditions under which the vehicle is to be operated, repaired, or replaced may reflect the existence of a safety problem. In order to effectuate the purpose of the foreign defect reporting requirement, we have concluded that it is appropriate to adopt an encompassing definition of ''other safety campaign'' that goes beyond a ''safety recall.''

Nissan, RMA, the Alliance, Bendix, AIAM, MEMA, Breed, and JPMA also asserted that the proposed definition of ''other safety campaign'' was too broad. Illustrative of this viewpoint was Nissan's comment that ''other safety campaign'' would cover a wide range of communications including many unrelated to the purpose of Section 3(a) of the TREAD Act. For example, ''a general owner communication campaign providing consumers with tips on safety winter driving of a Nissan vehicle in Europe would be included * * * and thus reportable to NHTSA.'' AIAM expressed concern that the term might be construed to include ''routine maintenance instructions in an owner's manual, advertising relating to maintenance, or even seat-belt use campaign or anti-drunk driving materials.'' MEMA commented that the final definition should exclude ''materials such as promotional information, operational instructions or owner's manuals which accompany the vehicle or equipment at the time of first sale.'' RMA would add a qualifier: ''This definition does not include customer satisfaction, general maintenance, operating or safety information applicable to a broad range of vehicles or equipment and is not directed toward a particular identified safety issue or safety defect in such vehicles or equipment.''

These comments are similar to those we received on the definition we proposed in the early warning reporting rule for ''Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment.'' We responded to these comments by modifying the definition adopted in the final rule to specifically exclude:

> promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment [67 FR 45822, 45874].

We are adding the same exclusions to the definition of ''other safety campaign.''

PC would replace the ending phrase ''that relate to safety'' with the phrase ''as a result of a defect or potential defect.'' PC would not leave to manufacturers the determination of whether an action is safety-related. However, substitution of the suggested phrase would still leave it to a manufacturer to decide whether the subject of its communications involved a ''defect'' or ''potential defect.'' Moreover, contrary to PC's comment, our definition does not leave the determination of a safety relationship to the manufacturer. A communication either relates to safety or it does not, regardless of the express words used. Therefore, we are not adopting this suggestion.

Section 30166(l)(2) requires each manufacturer to report to NHTSA after notification by ''the government of a foreign country'' that it must conduct a safety recall or other safety campaign. We proposed in Section 579.13(b) to also require manufacturers to report to NHTSA if they had been ordered by a political subdivision of a foreign country to conduct such a campaign.

RMA objected to including political subdivisions in the foreign reporting requirements. The commenter asserted that the TREAD Act does not require this, and that a political subdivision should not be included unless it has been given the specific authority to make determinations of recalls or other safety campaigns.

It is settled that a political subdivision of a country may be included within the term ''foreign country.'' In *Burnet* v. *Chicago Portrait Co.*, 285 U.S. 1 (1932), the Court recognized that the term ''foreign country'' ''may mean a foreign government which has authority over a particular area or subject-matter, although not an international person but only a component part, or a political subdivision, of the larger international unit.'' 285 U.S. 1, 5–6. The Court observed that ''the term 'foreign country' is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation.'' See also, *Wisconsin Public Intervenor* v. *Mortier*, 501 U.S. 597, 607 (1991).

This principle is equally applicable to the TREAD Act's foreign campaign reporting requirement. The purpose of this requirement is to alert NHTSA to the possibility of safety-related defects existing in foreign countries that might also exist in the United States. Some foreign countries may have political subdivisions that have authority to direct the manufacturer of a product to conduct a recall or safety campaign. In at least one foreign country, Canada, its Provinces, which are political subdivisions, may issue their own safety standards and enforce them. It is possible to envision a defect whose consequences only occur under conditions of use prevalent in one political subdivision of a foreign country and not another, and that the government of the locale where the condition is occurring might institute action rather than the central government. Thus, we are requiring reporting when any foreign governmental unit with authority to do so orders a manufacturer to conduct a safety recall or other safety campaign on substantially similar vehicles or equipment.

To remove any doubt that may exist as to the scope of foreign recall or campaign reporting, we are adopting definitions of ''foreign country'' and ''foreign government'' in Section 579.4(c). A ''foreign country'' means a country other than the United States. The term ''foreign government'' means the central government of a foreign country as well as the government of

any political subdivision of that country.

D. Definitions of ''Identical or Substantially Similar'' Motor Vehicles, Motor Vehicle Equipment Other Than Tires, and Tires

The obligation to report foreign campaigns to NHTSA applies to recalls and campaigns involving vehicles or equipment items that are ''identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.'' A parallel reporting obligation also exists under the early warning reporting provisions (Section 30166(m)(3)(C)), under which manufacturers of vehicles or equipment must report:

> all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment * * * in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

1. The Meaning of ''Identical''

In the NPRM, we tentatively concluded that a definition of ''identical'' was not needed (66 FR 51907 at 910–911) because if there were good faith doubts whether a vehicle or equipment item is exactly ''identical'' to one that is sold in the United States, it is likely that the vehicle or equipment would be ''substantially similar'' to the U.S. vehicle or equipment, and therefore be covered by the reporting requirement in any case. We came to the same conclusion in the early warning NPRM and final rule, and did not adopt a definition of ''identical.'' No commenter specifically addressed this issue, and we have not defined ''identical'' in this final rule either.

2. Substantially Similar Motor Vehicles

In the October 2001 NPRM, we proposed that substantial similarity of motor vehicles be determined on the basis of meeting one or more of five criteria (66 FR 51917–51918; see 66 FR 51911–51913):

> (a) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if such a vehicle (1) has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards; (2) is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593; (3) is manufactured in the United States for sale in a foreign country; (4) is a counterpart of a vehicle sold or offered for sale in the United States or (5) and a vehicle sold or offered for sale in the United States both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

With the exception of the fifth criterion, we proposed the identical criteria for substantial similarity of vehicles in the early warning NPRM. 66 FR 66199–66200. On the basis of comments received on that NPRM, we adopted the following definition of ''substantially similar'' motor vehicles in the early warning final rule (49 CFR 579.4(d)):

> (1) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if—
>
> (i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;
>
> (ii) Such a vehicle is listed in the VSP or VSA columns of Appendix A to part 593 of this chapter;
>
> (iii) Such a vehicle is manufactured in the United States for sale in a foreign country; or
>
> (iv) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

It will be noted that we did not adopt the proposed criterion of ''a counterpart of a vehicle sold or offered for sale in the United States.'' For the reasons expressed in the early warning final rule preamble, we are also not adopting the vehicle counterpart criterion in the foreign defect reporting final rule. However, we are adopting each of the other criteria established by the early warning final rule. The first three of these criteria were adopted largely on the basis of the discussion in the October 2001 NPRM (66 FR 51907 at 51911–51913).

The first criterion in section 579.4(d) is that a vehicle will be substantially similar to a vehicle sold in Canada or certified to conform to the Canadian motor vehicle safety standards (CMVSS). To be sold in Canada, a vehicle has to be certified to conform to the CMVSS. Over 99 percent of gray market vehicles imported into the United States each year are certified to conform to the CMVSS. Generally, they have required only a few modifications of labels (and perhaps modifications to daytime running lamp systems) to meet the U.S. FMVSS. Because of the near identicality of the safety standards of the two countries, Canadian and American vehicles are substantially similar to each other.

The second criterion is that the vehicle is listed in the VSP or VSA columns of Appendix A to 49 CFR part 593. This is a list of gray market vehicles that NHTSA has found to be ''substantially similar'' under 49 U.S.C. 30141(a)(1)(A)(i) to U.S.''certified vehicles of the same make, model, and model year.

The Alliance, NADA, and Nissan questioned the applicability of the third criterion, commenting that it should not apply unless the vehicle that is manufactured in the United States for sale in a foreign country is also sold in the United States. However, none of these commenters gave a specific example of a vehicle manufactured in the United States for sale abroad that is not also sold in the United States. Also, the United States is not a low cost manufacturing environment that, based on economics, would be selected for assembly operations of such vehicles. Further, if a manufacturer produced such a vehicle, the vehicle would ordinarily contain a substantial number of parts manufactured in the United States and used in vehicles produced by that manufacturer, which could be involved in a foreign recall or other safety campaign. The comments have not persuaded us, and we are applying the third criterion to Subpart B.

This leaves us to consider the final criterion that we proposed for foreign defect campaign reporting:

> both [vehicles] contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

This criterion reflected a components or system-based approach that is different from the final criterion of the early warning reporting rule, which is platform-based. As we noted in the preamble to the October 2001 NPRM, when a vehicle is the subject of a defect recall or safety campaign, the vehicle in its entirety is not defective; instead, a manufacturer will recall a vehicle because of a defect or problem in one or more of its components or systems that may or may not be used in other vehicles that the manufacturer builds. Therefore, we proposed to require a manufacturer to report a foreign campaign that the manufacturer conducts in which the defective component or system is substantially similar to the component or system that the manufacturer used on a vehicle which it sells in the U.S., even if the vehicle itself is on a different platform

or would not be ''substantially similar'' under other criteria.

TMA supported this concept, commenting that substantial similarity for purposes of medium and heavy duty trucks should be defined around major component systems rather than the vehicle make and model. Thus, if medium and heavy duty trucks share identical component parts, they would be considered substantially similar.

However, there were a number of objections to this criterion. The Alliance objected for four principal reasons. First, the Alliance asserted that the proposal would be unworkable because it would require new, extensive recordkeeping systems to track worldwide the application of parts. In accord was AIAM, which commented that it knew of no company that tracks at the component or subcomponent level. VW also commented that it would be burdensome to maintain lists of utilization for the over 10,000 components per vehicle.

Second, in the Alliance's opinion, ''the proposal will not produce much information of value that NHTSA would not obtain anyway.'' The Alliance asserted that manufacturers ''already have a routine practice of determining whether components involved in an actual safety recall in a foreign country might also have made their way into the U.S. market, and whether the same safety risk is presented in the U.S. market.''

The Alliance also argued that there was no definition of what a substantially similar component might be. It asked whether, for example, an air bag inflator would be considered '''substantially similar' to all other air bag inflators, because they perform the same intended function? Or must two air bag inflators have to contain the same lot number and be built at the same factory before they would be considered 'substantially similar'? Or is the 'substantial similarity' found somewhere in between?''

In the Alliance's opinion, the proposal also appeared to require a vehicle manufacturer to report if it finds that the part involved in a foreign vehicle recall is installed on another manufacturer's vehicle in the United States. We do not understand this reasoning. Section 30166(l) clearly requires a manufacturer to report only campaigns that the manufacturer conducts, and not to report other manufacturer's campaigns, even if they involve substantially similar vehicles or equipment.

Harley-Davidson raised the scenario of equipment incorporated from outside suppliers that may have been subject to a recall that is not relevant to its application in a Harley-Davidson product, and of which it might be unaware. The company argued that this possibility may ''place a burden on an ultimate vehicle manufacturer that cannot be met.'' Harley-Davidson misunderstood the thrust of the foreign defect reporting requirement. Harley-Davidson must report on campaigns that Harley-Davidson itself (or its subsidiaries or affiliates) conducts in a foreign country. If Harley-Davidson determines that a campaign by one of its foreign equipment suppliers relates to equipment that Harley-Davidson uses on one of its foreign (or domestic) vehicles, and then determines to conduct a campaign, only at that point would the company be required to report its vehicle campaign to NHTSA.

Advocates commented that the component-based approach ''unduly restricts reporting only to those situations involving 'substantially similar' defective components.'' It ''believes that Congress intended [Section 30166(l)] to cast a wider net and requires notification of foreign recalls and campaigns on 'substantially similar' vehicles even if the particular defective part is not 'substantially similar.' ''

We have carefully reviewed these comments and considered the possible burden adduced by manufacturers against the safety value of the information that might be provided were we to adopt the proposed fifth criterion. We have concluded that the simplest, most productive course is to adopt the same approach as we did in the early warning final rule: to dispense with a component-based approach and to consider vehicles substantially similar if they use the same vehicle platform (this takes into account our proposal and comments and is an outgrowth from them). In Section 579.4(c), we defined ''platform'' to mean:

> * * * the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

The term ''platform'' is commonly used in conjunction with light vehicles. TMA pointed out in its comment to the early warning reporting NPRM that manufacturers of medium-heavy vehicles, buses, and trailers generally do not use the term ''platform'' to apply to their products. We observed (67 FR 45843) that

> The terminology used by manufacturers is not determinative in this context. In addition to reporting on the basis of a structure that a manufacturer designates as a platform, we expect these manufacturers to report foreign deaths involving vehicles built with a structure similar to those used in the United States. To guard against possible underreporting of such incidents, we are including the word ''chassis'' in the definition of ''platform'' in this rule.

This means, under the uniform criteria that we are adopting, that vehicles that are substantially similar for early warning reporting purposes will also be substantially similar for reporting of foreign recalls and other safety campaigns (we are making an appropriate modification in the heading and first sentence of Section 579.4(d) to accomplish this). We believe that many of these vehicles will share identical or substantially similar components or systems which could be the subject of a foreign campaign.

3. Substantially Similar Motor Vehicle Equipment Other Than Tires

Section 30166(l) also requires reports of foreign recalls and safety campaigns pertaining to substantially similar motor vehicle equipment. As we noted in the preamble to the NPRM, recalls and other safety campaigns involving problems with original equipment (OE) components or systems abroad, as here in the United States, are likely to be conducted by the manufacturer of the vehicle in which they were installed, although under certain circumstances an OE manufacturer is required to notify NHTSA of a defect or noncompliance in U.S. vehicles. *See* 49 CFR 573.5(e) and (f) (2001) and the discussion at 66 FR 51907 at 51913. Nevertheless, in those instances in which an OE manufacturer decides to conduct a foreign recall or safety campaign involving substantially similar equipment, it would have the duty to report that campaign to us. Similarly, if a foreign government notified an OE manufacturer that it was required to conduct a safety recall or other campaign, the OE manufacturer would be obligated to provide notice to us under Section 30166(l)(2). However, if all vehicle manufacturers using the item in question timely provide us with a report of a foreign safety recall or other safety campaign, we proposed that the OE component manufacturer would not be obligated to provide notice under Section 30166(l)(1) (66 FR 51907 at 51913).

Ordinarily, recalls and other safety campaigns involving problems with replacement equipment, abroad or in

the United States, would be conducted by the replacement equipment manufacturer. Examples of replacement equipment recalls conducted in the United States are those involving defects and noncompliances in child restraint systems, lighting equipment, suspension components, brake hoses, and brake fluids.

We proposed, at 66 FR 51918, that motor vehicle equipment other than tires would be substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, regardless of whether the part numbers are identical.

We also stated that we would regard foreign child restraint systems as substantially similar (if not identical) to U.S. child restraint systems if they incorporated one or more parts that are used in U.S. models of child restraint systems, regardless of whether the restraints are designed for children of different sizes than those sold in the United States and regardless of whether they share the same model number or name. For example, if buckles, tether hooks, anchorages, or straps are common throughout a manufacturer's range of models, the child restraint systems would be substantially similar even though the buckles, hooks, anchorages, or straps might be used on a variety of add-on, backless, belt positioning, rear-facing, or booster seats produced by the manufacturer. However, a manufacturer would not have to report a foreign campaign on its child seats if the problem that led to the foreign campaign involved a component or part that was not used on any child restraint system sold or offered for sale in the United States.

JPMA commented that it had ''three important reservations.'' The first of these was based upon its belief that the proposed definition ''would impute a reporting obligation on a manufacturer conducting a foreign recall if the component or part involved in the foreign recall was used on a child restraint sold in the United States by *another manufacturer*.'' JPMA related that child restraint manufacturers frequently obtain the same component from a common supplier. ''Because the manufacturer conducting a recall in this example would not necessarily know that one of its competitors was installing on a U.S. child restraint a component or part that was also installed on the recalled product in the foreign country, the recalling manufacturer cannot be expected to report that foreign recall to NHTSA.'' To address this reservation, JPMA suggested language clarifying that the equipment that is sold in the United States must be manufactured by the same manufacturer that conducted the foreign campaign.

We do not understand the basis for this JPMA concern. Under the proposed and final rules, a manufacturer is required only to report its own foreign safety recalls and campaigns, and it is not obliged to report safety recalls by other manufacturers of products even if those products incorporate components common to its own recalled product. If the safety recall is conducted by the component manufacturer itself, the component manufacturer would have to notify NHTSA if the component is used in substantially similar vehicles or equipment sold in the United States. We have concluded that no amendment is required to clarify this aspect of the reporting obligation.

The second reservation was that ''it is unclear whether NHTSA intended to limit the foreign recall reporting to instances in which the *same* component or system is used in both the foreign and the U.S. model, or whether * * * the foreign recall reporting [extends] to instances in which the component or system at issue is *substantially similar* to a component or system used in a U.S. child restraint model manufactured by that manufacturer.'' JPMA explained that the regulatory text indicated the same component or system but that the preamble suggested that NHTSA may want reports on substantially similar components. In our preamble language at 66 FR 51914, we observed that ''if * * * buckles * * * are common throughout a manufacturer's range of models, the child restraints would be substantially similar even though the buckles * * * might be used on a variety of add-on, backless, belt positioning, rear-racing or booster seats produced by the manufacturer.'' JPMA then commented that all child restraint system buckles are to some extent substantially similar to other such buckles because they all perform the same function using similar designs and materials, but that there can be substantial differences in buckle performance based on hardware specifications, quality of the manufacturer, and interaction among the buckle components.

We do not consider the variations in buckle performance that JPMA mentioned as relevant as to whether a manufacturer ought to report. Foreign recalls or campaigns involving substantially similar child restraint systems must be reported to NHTSA; however, the reporting manufacturer may include its arguments as to why a defect would not exist in identical or substantially similar child restraint systems sold in the United States. This resolves JPMA's comment.

Finally, JPMA argued that the definition of ''substantially similar equipment'' proposed for purposes of foreign defect reporting could not be applied for early warning reporting purposes. We addressed early warning issues in the December 2001 early warning NPRM and modified the proposal in the early warning final rule. We note that for equipment, there is no ''platform'' comparable to that for motor vehicles. Therefore, a platform-based definition would not be workable.

The Alliance commented that, considering the separate definitions for original and replacement equipment, the proposed rule ''appears to require reports of foreign recalls involving subcomponents used on *dissimilar* vehicles in the United States.'' Because, in its opinion, this interpretation would make the definition of ''substantially similar motor vehicle'' unnecessary, the Alliance recommended restricting the definition to replacement equipment. However, we have not adopted the proposed criterion under which campaigns involving dissimilar vehicles with the same components would be reported, and the Alliance's comment is therefore moot.

Our proposed definition was almost identical to the one we adopted for substantially similar equipment in the early warning reporting final rule. Under that final rule, motor vehicle equipment is substantially similar:

> * * * if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

Given our decision above to adopt the same definition for ''substantially similar'' motor vehicles for both the early warning reporting and foreign defect reporting rules, as discussed above, and for ''substantially similar'' tires, as discussed below, we have decided that we should adopt the same definition for ''substantially similar'' motor vehicle equipment. However, we have added a provision stating that a foreign campaign involving substantially similar equipment need not be reported under Subpart B if the component or system that gave rise to a safety recall or other safety campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States. See

Section 579.11(d)(2). This addresses comments by Bendix and MEMA. In Bendix's view, a similar or identical product in other countries many have entirely different failure modes with different impacts on safety. MEMA asserted that any definition of substantially similar equipment should also include an application-specific reference.

Finally, we note that Delphi commented that ''suppliers of equipment should also be responsible for reporting recalls and campaigns of their equipment in a foreign country when the OEM does not sell the vehicle it is used on in the United States but where the same equipment or component that caused the foreign recall or campaign is used in another application that is sold in the US.'' We do not believe that the language suggested by Delphi needs to be added. To the extent that any equipment (original or replacement) covered by a recall in a foreign country is sold as replacement equipment in the United States, reporting is already required under our definition. The Delphi comment would require reports of foreign campaigns on equipment sold in the United States but used in a different application than in the foreign country. It is likely that in most cases any such original equipment would also be sold in the United States as replacement equipment, and thus covered by the rule. Requiring reporting in those rare circumstances where that is not the case would create extensive burdens without yielding much relevant information.

4. Substantially Similar Tires

In the NPRM, we proposed that tires would be substantially similar if they have ''the same model name and size designation, or if they are identical except for the model name.'' This was identical to the definition we proposed two months later in the early warning NPRM. However, the early warning final rule defines a substantially similar tire differently:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.

The definition we adopted in the early warning final rule was based upon comments by RMA. In its comments on the NPRM, RMA asserted that there should be a common definition for both rules. For a discussion of these issues, see the preamble to the early warning rule (67 FR 45822 at 844–845). We find these reasons equally applicable to this final rule, and for this reason, we are adopting the same definition previously established at Section 579.4(d) for early warning reporting.

III. Section 579.11, Reporting Responsibilities

Proposed section 579.13 contained five paragraphs referring to reporting responsibilities relating to foreign campaigns. Paragraphs (a) and (b) proposed the time frames within which a manufacturer must submit a report to NHTSA. Paragraph (c) proposed to establish a due date for reports pertaining to foreign campaigns conducted before the effective date of the final rule. Paragraph (d) specified certain exclusions from reporting. Finally, paragraph (e) proposed to require manufacturers to provide a yearly list of substantially similar vehicles. These subjects are now addressed in Section 579.11.

A. Time Frames for Reporting: Paragraphs (a) and (b)

Proposed paragraph (a) would require a manufacturer to submit a report within 5 working days of its determination to conduct a foreign safety recall or other safety campaign covering vehicles or equipment substantially similar to a vehicle or equipment offered for sale or sold in the United States. Paragraph (b), as proposed, would require a manufacturer to submit a report, also within 5 working days, after it receives notification that a foreign government (or a political subdivision of that government) has determined that a safety recall or other safety campaign must be conducted on a substantially similar vehicles or equipment.

Comments were submitted regarding the sufficiency of a 5-working day period for submitting information, the character of the determination by the foreign government, and the appropriateness of including political subdivisions as a component of a foreign government. (We have addressed the last issue earlier in this notice.)

1. The Requirement To Report Within 5 Working Days

The principal concern of commenters was whether 5 working days afforded sufficient time to file reports with NHTSA.

Our proposal was based upon the specific language of Section 30166(l), which requires that manufacturers notify NHTSA ''not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country'' on substantially similar vehicles and equipment, or after receiving notification from a foreign government that such a campaign must be conducted. Congress did not provide direction on the meaning or implementation of the 5 working days period for submission of these reports. In the NPRM, we assumed that this 5-day period was based upon the time period in regulations NHTSA had adopted to implement the defect and noncompliance notification provisions of the Vehicle Safety Act. Section 30119(c)(2) of the Vehicle Safety Act states in pertinent part that notification to the Secretary of such defects or noncompliances under Section 30118 ''shall be given within a reasonable time after the manufacturer first decides that a safety-related defect or noncompliance exists.'' After notice and comment, we adopted a regulation specifying that ''not more than 5 working days'' is a ''reasonable time'' for notifying NHTSA of decisions that will lead to domestic recall campaigns (49 CFR 573.6(b) (2002)).

Based on our tentative reading of the TREAD Act, we proposed that the time period for reporting foreign safety recalls or other safety campaigns be 5 working days from the date that the manufacturer, including one of its subsidiaries or affiliates, decides to conduct, or is notified by a foreign government (including a foreign governmental unit) that it must conduct, the recall or other campaign. As we noted in the NPRM, ''the 5-day period in Section 30166(l) is very achievable in those cases in which the decision to conduct the recall or other campaign is made by, or with the concurrence of, the manufacturer's headquarters and there is little doubt that the foreign vehicles or equipment in question are identical or substantially similar to vehicles offered for sale in the U.S.'' We thought it reasonable to assume that, in most cases, local subsidiaries or affiliates of multinational manufacturers are not authorized to decide to conduct safety recalls or other safety campaigns without the concurrence of the corporate headquarters, or at least without contemporaneously advising such headquarters of the action. Thus, the headquarters would have at least basic information on the recall or campaign.

As we further noted in the NPRM, as a practical matter, we would expect few difficulties when a foreign government provides notification of its determination that a recall or other campaign must be conducted (there have been very few recalls ordered by foreign governments). We would expect

that there would be communications between the foreign government and the manufacturer's headquarters or its local subsidiary or affiliate before a government-directed recall, so that any formal notification would not be a complete surprise to the manufacturer. In any event, in our view, the notification would be in the form of a written communication to the manufacturer or its local entity. The addressee would be deemed to ''receive'' the notification when it is delivered by mail, facsimile or other mechanism to the addressee. This document could readily be forwarded to a manufacturer's headquarters and then to NHTSA.

We recognized that it may be difficult for a local subsidiary or affiliate to know whether the vehicles or equipment covered by the recall or other campaign in its country are substantially similar to products offered for sale in the United States. However, we expected that the parent corporation could readily address this question. Manufacturers could assure that all recalls and campaigns in foreign countries be brought to the attention of appropriate persons at the company's headquarters, who would be able to decide promptly whether they must be reported to NHTSA. In addition, the annual list of similar vehicles to be submitted by the manufacturer to NHTSA pursuant to section 579.11(e) could be sent to all foreign subsidiaries and affiliates of a vehicle manufacturer, which would assist them to know whether a recall or other campaign needed to be reported.

There were a number of comments on the meaning of ''5 working days.'' VW, Delphi, and Bendix recommended that ''5 working days'' be defined as 5 business days in the foreign country involved in the report at issue. The Alliance would interpret the term to mean the days that a manufacturer conducts business, and would not include days in which the manufacturer might be closed for ''scheduled factory and headquarters shutdowns (which occur with regularity in foreign markets for a period of a week or more at a time).'' VW recommended that there should be a maximum number of U.S. days encompassed in the phrase. Comments by AIAM and TMA were much the same, and quantified the maximum number of days as 15 U.S. business days.

We do not believe that the reporting will involve a complex sequences of events, and our experience and the comments did not show otherwise. The statute addresses identical or substantially similar vehicles and equipment in at least one foreign country and the United States. To satisfy reporting obligations, ordinarily offices in no more than one or two foreign countries would be involved.

Reports of foreign recalls and campaigns that the agency has received to date pursuant to 49 U.S.C. 30166(l) reflect a variety of practices, as the following examples show. Where a multinational manufacturer has its world headquarters in the United States, reports have been submitted by the U.S.-based entity stating that the company and its various subsidiaries and affiliates were conducting field actions in markets other than the United States. In addition, a report has been submitted by the North American operations arm of a U.S.-based company informing the agency that a foreign subsidiary had notified a foreign government of a particular matter. Where a multinational manufacturer is based in a foreign country, ordinarily the U.S. subsidiary submits the report. On some, the U.S. subsidiary submitted a report on behalf of the foreign parent. On others, the U.S. subsidiary simply submitted a report. One foreign company reported on the U.S. subsidiary's letterhead. With regard to the lines of communications, in some cases, the foreign parent communicated directly to authorities in countries other than the United States. In others, the foreign subsidiary (*e.g.,* in Australia) provided information that there has been a campaign. In yet others, the report simply stated that the manufacturer was submitting information on a particular campaign, and identified the country and vehicles involved. In one, the manufacturer referred to the factory as having provided information. Some identified a manufacturer, which often is identified as the foreign parent, but other times is a subsidiary in a foreign country. One reported that its foreign licensee planned to recall vehicles assembled by the licensee. Although the examples above reflect a variety of practices, each of them is straightforward.

The decision to conduct a recall or other safety campaign ordinarily would be made by or at least approved by the corporate parent. For example, if a Ford or General Motors product were involved, the decision to conduct the recall or campaign ordinarily would be made or at least approved in the United States. If a Toyota, BMW, or Hyundai product were involved, the decision ordinarily would be made or approved in a foreign corporate headquarters.

We recognize that, in theory, recalls or campaigns ordered by a foreign government could raise additional concerns (*e.g.,* the possibility of delay in notifying the corporate headquarters and the possible need for translation of the recall order). However, such government-ordered recalls are very rare, and translation is not an issue since, as noted by RMA, only three countries other than the United States have statutes authorizing the government to recall vehicles or equipment, and all of these are English-speaking (Canada, the United Kingdom, and Australia). Also, the statutory obligation to report under 49 U.S.C. 30166(l) had been in place for over one year by the time that the comment period on the NPRM closed, and the comments did not demonstrate any insurmountable problems.

The statute establishes a deadline that counts working days. We believe that it is appropriate to base this period on the general business practice of the involved offices of each individual manufacturer, including its relevant subsidiaries or affiliates. As discussed above, this could include offices in the country where the recall or campaign is directed by the government, the multinational headquarters, and the U.S. subsidiary, if any. In some countries, general business practice may be a matter of law; in others, a matter of custom, but it is the framework within which all manufacturers conduct their business operations. By ''general business practice,'' we mean the days that the corporate offices of a company conduct business (in the United States, generally Monday through Friday) as contrasted with the days that its plants are in operation (in the United States, this often includes Saturday). For example, on a certain day, a factory may be closed for inventory but its corporate office remains open; that day would be a ''working'' day. We have not adopted a maximum reporting date of 15 U.S. working days because working days may be determined on the basis of the general business practices of countries other than the United States, and it is possible that ''5 working days'' in a foreign country, under some circumstances such as corporate shutdown for an annual summer vacation, could exceed 15 U.S. working days.

MEMA commented that the 5-day period should begin on the date that the manufacturer determines that the vehicle or equipment recalled is substantially similar to a U.S. product rather than the date the manufacturer or government determines that a recall is required. This comment is posited on the presumed difficulty of identifying substantially similar vehicles and equipment in the United States at the time a foreign campaign is determined to be conducted. However, the statute is

clear that 5 working days is counted from the day of a manufacturer's determination or its receipt of notice from a foreign government. We believe that MEMA's suggestion would introduce too much potential delay into the process.

Accordingly, the final rule states that, where a determination is made by a manufacturer, the 5-working day period ''is determined by reference to the general business practice of the office in which such determination is made, and to the office reporting to NHTSA (Section 579.11(a)). Where a determination is made by a foreign government, the 5-working day period ''is determined by reference to the business practice of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA (Section 579.11(b)).

In determining the 5-working day period, the particular working days of the offices involved in individual reports would be considered in toto. The rule does not provide separate 5-working day periods to each office within the multinational manufacturer that is involved in the determination and reporting process. The following hypothetical illustrates how working days are computed. It assumes that a vehicle manufacturer's world headquarters is in Germany, with subsidiaries in Asia and the United States. The Asian subsidiary receives a governmental notice on Thursday, September 1, that it must conduct a safety recall of certain vehicles. That day does not count in the computation of the relevant period, particularly in view of the fact that the notice might not be received until late in the day. On Friday, September 2, the subsidiary reviews the notice, and perhaps translates it into German (Day 1). The subsidiary observes a Saturday and Sunday weekend, and Monday is a national and corporate holiday. On Tuesday, September 6, the subsidiary faxes the original and the translation to Germany (Day 2). On Wednesday, September 7, the German headquarters confirms that the vehicles are substantially similar to those sold in the United States, and that the recall must be reported to NHTSA (Day 3). The headquarters office is closed on Thursday and Friday, as well as the weekend. On Monday, September 12, the headquarters office prepares the report and an English-language translation of the notice (Day 4). Headquarters faxes the report, notice, and translation to its U.S. subsidiary on Tuesday, September 13, but the subsidiary is closed that day. On Wednesday, September 14, the U.S. subsidiary would be required to submit the materials to NHTSA (the 5th working day).

2. A Manufacturer Must Report to NHTSA Even if the Determination by a Foreign Government Is Not a Final Determination

We proposed that a manufacturer report to NHTSA whenever it has been notified that the government of a foreign country has determined that it should or must conduct a safety recall or other safety campaign involving covered vehicles or equipment, whether or not the subject of the campaign would be a safety-related defect or noncompliance under the laws of the United States. For example, if the foreign government moves to prohibit further sales of a vehicle for reasons relating to motor vehicle safety, we would consider that action to be the equivalent of a ''safety campaign.''

The Alliance and MEMA commented that the notification by a foreign government should be one that is ''written.'' In the NPRM, we had assumed, as noted above, that such notification would be in written form, but we did not specify it in the regulatory text. We are clarifying this in the final rule, and the text of the final rule clarifies that reporting is only required with respect to written notifications.

There may be occasions when the manufacturer will contest a foreign government's determination or order, be it proposed or final. In the United States, NHTSA may make an initial decision that a defect or noncompliance exists pursuant to 49 U.S.C. 30118(a), affording the manufacturer and public an opportunity to present data, views, and arguments. Then NHTSA may make a final decision that a defect or noncompliance exists and order a recall under 49 U.S.C. 30118(b). Such an order can be challenged in court.

We are not fully conversant with the administrative and judicial practices of countries other than the United States, and we asked for comments on the vehicle and equipment safety recall laws and practices of other countries as they might relate to implementation of reporting of foreign governmental defect determinations. RMA advised that ''only the United States, Canada, the United Kingdom, and Australia have statutes authorizing the federal (or national) government to recall motor vehicles or motor vehicle equipment in use in those countries).'' However, RMA did not discuss these statutes in detail, and there were no other comments on possibly relevant laws or regulations of other countries.

The Alliance did not provide any information on countries with statutes authorizing recalls or on particular difficulties that its members would likely encounter with respect to them. Instead, the Alliance asserted that NHTSA's lack of familiarity with the practices of other countries justified excluding any determination other than a final one. It commented that a term such as a ''conditional'' determination might be meaningful when used in the context of some of NHTSA's regulatory proceedings but much less clear in other unspecified countries. It asked ''is a foreign government's expression of interest in a potential defect a 'conditional' determination that a recall is required? At what point during a pending investigation does official curiosity become a 'conditional' determination?'' In our view, an ''expression of interest'' or ''curiosity'' is nothing more than that. However, a conditional determination reflects at least some belief on the part of the foreign government that a recall should be conducted, and thus is of interest to NHTSA, even if a further step is needed prior to a directive that a recall take place.

RMA would apply the criterion that ''the determination would be considered a safety-related defect under U.S. law,'' and that only final determinations should be reported. At the present time, we do not expect foreign law to mirror the Vehicle Safety Act with respect to such determinations, and we do not know whether elements of U.S. law would be met. The RMA formulation could result in non-reporting where a foreign recall was based on a somewhat different standard than governs under U.S. law. Also, this could result in extensive delays before a resolution of whether a condition was a defect under foreign law. Even in the United States, some cases have remained unresolved for an extended period of time following an initial decision under Section 30118(a). Further, RMA's criterion would not encompass determinations covering ''other safety campaigns,'' which could be ordered in the absence of a defect determination. Information about interim determinations or safety campaigns where a defect has not explicitly been found to exist will enhance NHTSA's ability to give earlier consideration to potential defects in vehicles operated abroad that might also exist in substantially similar vehicles in the United States. We therefore are adopting the proposal to require reporting of all determinations by foreign governmental entities, whether

proposed, interim, or final, that a recall or other safety campaign must be conducted and regardless of whether there has been a finding of a safety-related defect.

B. One-time Historical Reporting: Paragraph (c)

Manufacturers have been required to report determinations or notifications of applicable foreign recalls and other safety campaigns to us since November 1, 2000, the effective date of Section 30166(l). Some have done so. In order to be certain that we are aware of all such determinations and notifications, we proposed that manufacturers provide us with reports of all relevant determinations and notifications between November 1, 2000, and the effective date of the final rule, if they had not already been reported to us. This one-time historical reporting would assure that we receive information on recalls and campaigns that might not previously have been reported to us because of uncertainty whether such campaigns covered substantially similar vehicles and equipment within the meaning specified in the final rule. We proposed that reports would be due within 30 days of the effective date of the final rule.

We had no comments on this proposal, and we are adopting it as section 579.11(c). However, to avoid unnecessary burdens and duplicative reporting, we are including a provision stating that, if a foreign recall or campaign has already been reported to NHTSA, it need not be resubmitted under section 579.11(c) if the original report identified the model(s) and model year(s) of the products that were the subject of the foreign recall or campaign, identified the identical or substantially similar U.S. products, and identified the defect or other condition that led to the foreign recall or campaign.

C. Exemptions From Reporting: Paragraph (d)

In the NPRM, we recognized that manufacturers may conduct identical recalls in the U.S. and abroad. We proposed that a manufacturer would not be required to report foreign recalls or campaigns to us under this rule if it had filed a Part 573 report covering the same safety defect or noncompliance in substantially similar products offered for sale or in use in the United States, provided that the manufacturer's remedy in the foreign campaign is identical to that provided in the U.S. campaign, and the scope of the foreign campaign is not broader than that of the U.S. campaign.

The Alliance commented that it was ''inappropriate and unnecessary to condition the availability of this exemption on the motivations of the manufacturer to undertake the campaigns, which may well be different from country to country.'' For example, Section 30118 motivates a manufacturer files a Part 573 report but that would not be the motivation for a parallel campaign outside the United States. In its view, ''the objective fact that a foreign campaign is being undertaken'' should be sufficient. We believe the Alliance is reading this phrase in a manner different than we intended. In our view, the phrase ''for the same or substantially similar reasons'' means that a manufacturer is conducting a foreign campaign for the same or substantially reasons relating to motor vehicle safety that it filed a Part 573 report. We are therefore modifying the phrase in section 579.11(d)(1) of the final rule to read ''for the same or substantially similar reasons relating to motor vehicle safety.''

In addition, the Alliance expressed concern ''about the limitation of the exemption to campaigns in which the remedies are identical.'' For example:

> An illustration of a campaign in which remedies might differ is one in which the failure is likely to occur only in cold or cool temperatures, such that all consumers in the United States receive a replacement component to protect against the possibility of failure, but consumers in countries with hot climates year-round need only receive an inspection with a replacement as necessary.

On reflection, we have decided that the exemption should apply even if the remedies in foreign countries and the United States are not identical. Pursuant to 49 U.S.C. 30120(a)(1), a manufacturer may elect the remedy for a defect or noncompliance. In general, NHTSA does not question the appropriateness of a remedy selected by a manufacturer unless there is some reason to believe that it is not adequate. If we do open an investigation into the adequacy of a remedy in the United States, we can and will obtain any relevant information about foreign remedies.

The Alliance was also concerned about limiting the exemption to campaigns in which the ''scope'' of the foreign campaign ''is identical to the scope of the U.S. campaign.'' In its view, if ''scope'' means the population of potentially affected vehicles, then the exemption will become meaningless, as vehicle models abroad will differ from those in the United States. According to the Alliance, the ''scope'' of the campaign should not matter ''as long as NHTSA has received a Part 573 report about the same alleged defect on U.S. vehicles with a proposed scope that is suitable and appropriate for the U.S. market.''

The Alliance misquoted the regulatory text. The exemption applies not if the scope is ''identical,'' but if ''the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States.'' By ''scope,'' we meant the subject matter of the recall and the time frame in which the recalled vehicles were manufactured. For example, if both the U.S. and foreign campaigns related to the same defect in a hydraulic brake system, the scope may be identical. But if the foreign recall included a recall of hydraulic brake hoses used in vehicles with the brake system that was not included in the U.S. recall, the scope would not be identical and the campaign would have to be reported. Similarly, if the foreign recall covered three model years and the U.S. recall covered only one of those years, the foreign recall would have to be reported. Of course, the manufacturer would have the opportunity to provide an explanation of why the smaller scope of the U.S. recall was appropriate.

The Alliance recommended expanding the exemption to cover circumstances in which a foreign safety recall is properly and timely reported to NHTSA, and is later expanded by the manufacturer to other foreign countries. In its view, as long as NHTSA has been informed of the first foreign recall, ''and has the necessary information to make a judgment about whether a similar campaign is warranted in the United States, it should not need to receive redundant reports when that campaign is extended to other foreign countries.'' We disagree. The decision to broaden the scope of a foreign recall and extend it to other foreign countries may be based upon factors that differ from those which resulted in the initial foreign campaign reported to NHTSA, such as the climate or road conditions in which a vehicle is operated. Given the wide variety of vehicle operating environments in the United States, information on the extension of campaigns could prove of assistance in fulfilling the purpose of the TREAD Act of earlier detection of potential safety defects. We therefore have not adopted a new exemption.

As noted above, we are exempting from reporting any safety campaign involving substantially similar motor vehicle equipment that does not perform the same function in vehicles or equipment sold or offered for sale in the United States. See Section 579.11(d)(2).

In addition, we are not requiring manufacturers to report to us a foreign

safety recall (or other safety campaign) whose sole subject is a label affixed to a vehicle or equipment. See Section 579.11(d)(3). Some foreign recalls involve failure to follow requirements for labels in a foreign language that are not germane. Even if the label is in English, the governmental requirement in the foreign country is likely to be different from the applicable U.S. requirements. Moreover, the agency has often judged errors in labels to be inconsequential to safety when manufacturers reporting such noncompliances under Part 573 have petitioned for determinations under Part 556 that they be relieved of further notification and remedy obligations. For these reasons, we have concluded that reports of foreign recalls or campaigns involving only labels are not likely to lead to discovery of defects or noncompliances in identical or substantially similar U.S. vehicles and equipment that require remedial action.

TMA noted that differences in various regions worldwide could influence recalls that might not be necessary under the Vehicle Safety Act. TMA would report these foreign recalls, but commented that it would be appropriate for a manufacturer to provide its views of why such recalls should not be conducted in the United States. Nothing in today's final rule requires or prohibits such an addition to a report, but if a manufacturer chooses to amplify a report, its views should follow the information that the rule requires in the report.

Harley-Davidson pointed out that the European Union (EU) has mandated a uniform two-year warranty on new vehicles, and that manufacturers may conduct campaigns in order to honor the warranties. In its opinion, such campaigns ought to be excluded from reporting. We do not agree; if an EU warranty campaign meets the definition of ''safety recall'' or ''other safety campaign,'' it must be reported.

D. Annual Identification of Substantially Similar Vehicles: Paragraph (e)

In commenting on the early warning reporting ANPRM, the Alliance suggested that each vehicle manufacturer submit to NHTSA annually, at the beginning of each model year, a list of the vehicles that the manufacturer intends to sell abroad during that year that the manufacturer believes are ''substantially similar'' to vehicles sold or planned for sale in the United States. We thought that such a list could help both the manufacturers and NHTSA in determining whether foreign recalls and other campaigns need to be reported. Accordingly, we proposed that manufacturers identify, not later than November 1 of each year, any vehicles they plan to sell abroad in the next year that they believe to be substantially similar to vehicles sold or offered for sale in the United States, or planned for sale in the United States during the next year.

AIAM commented in the context of the component-based proposed criterion of the definition of ''substantially similar'' motor vehicle, and its comment is moot since we are adopting a platform-based criterion. Harley-Davidson asserted that it does not know as of each November 1 all the motorcycles that will be substantially similar to its U.S. models in the 12 months of the next calendar year, as its model year ends on June 30 of any given year, and decisions regarding models for the second half of that calendar year are not made until January of that year. The regulation does not require that a manufacturer provide a definitive and final list, only an identification of the vehicles it ''plans'' to sell in the coming year as of November 1. If its plans change thereafter, a manufacturer would not be required to amend the list.

Given the lack of comments by other manufacturers, there appears to be no problem in providing NHTSA with an annual list of vehicles as of November 1. Generally, manufacturers will have made advance announcements of their plans for the following calendar year by that date. If there are confidentiality concerns, manufacturers may request confidential treatment pursuant to 49 CFR part 512.

Accordingly, we are adopting our proposal. See Section 579.11(e). We are adding the requirement that the manufacturer also identify the vehicle sold in the United States that is identical or substantially similar to the identified vehicle being sold in a foreign country.

IV. Section 579.12, Contents of Reports

Under the NPRM, proposed Section 579.14 (adopted as Section 579.12) contained two subsections, the first specifying the contents of the report to NHTSA and the second dealing with the reporting of information that is not available at the time of the initial report.

A. Contents of the Report

When a manufacturer of motor vehicles or motor vehicle equipment decides to conduct a notification and remedy campaign in the United States to address a safety-related defect or a noncompliance with a FMVSS, or is ordered to do so by NHTSA, it must furnish information to the agency as specified in 49 CFR part 573, ''Defect and noncompliance reports.'' The contents of the required notification are set out in Section 573.6(c)(1–11) (formerly Section 573.5(c)(1–11)). These include the manufacturer's name (paragraph (c)(1)), identification of the vehicles or items of motor vehicle equipment potentially containing the defect or noncompliance, including a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall (paragraph (c)(2)), the supplier of the defective or noncomplying equipment where applicable (paragraph (c)(2)(iv)), the total number of vehicles or items of equipment potentially containing the defect or noncompliance (paragraph (c)(3)), the percentage of vehicles that actually contain the defect or noncompliance (paragraph (c)(4)), a description of the defect or noncompliance (paragraph (c)(5)), in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like (paragraph (c)(6)), in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination (paragraph (c)(7)).

We proposed that this same information be provided in the manufacturer's notification to NHTSA of a safety recall or other safety campaign in a foreign country. In addition, the manufacturer would have to identify the foreign country, state whether the determination was made by the manufacturer or by a foreign government, state the date of the determination, state whether the action in question was a safety recall or other safety campaign, and identify with specificity the motor vehicles or motor vehicle equipment sold or offered for sale in the United States that are identical or substantially similar to those covered by the foreign campaign. Manufacturers who are reporting campaigns ordered by a foreign government would also be required to furnish copies of the determination by the foreign government in the original language and translated into English (if necessary).

We recognized that this is more information than is currently required in connection with some campaigns in the United States that are not safety recalls under the Vehicle Safety Act. Under former 49 CFR 573.8 (now section 579.5(a)), manufacturers must

merely submit the documents that they send to more than one owner or dealer regarding vehicle and equipment malfunctions, and they need not provide all the information set out in 49 CFR 573.6(c). We proposed to require more complete information, in part, because of the difficulty in distinguishing between ''safety recalls'' and ''other safety campaigns'' in foreign countries. We asked for comments on whether and how the level of detail can be reduced for certain type of foreign safety campaigns.

The Alliance, Nissan, and MEMA each commented that it would be burdensome and unnecessary to provide all the information proposed to be submitted.

With respect to the seven items of information we proposed to require based on former section 573.5(c), Nissan, MEMA, and AIAM recommended limiting these to paragraphs (c)(1)(identification of manufacturer), (c)(2)(identification of vehicle or equipment), and (c)(5) (description of the defect). Each suggested that NHTSA could request further information if the agency desired it. These commenters contended that some of the seven items of information may not have been developed, and that their collection would be time-consuming. RMA would limit reports to only information covered by former section 573.8 (notices, bulletins, and other communications).

After reviewing these comments, we have decided that it is not necessary for purposes of foreign recall and campaign reporting to require information specified by 49 CFR 573.6 paragraphs (c)(4) (the percentage of vehicles or equipment items estimated to contain the defect), (c)(6)(in the case of a defect, a chronology of principal events that were the basis for the determination including summaries of field or service reports, warranty claims, and the like), and (c)(7) (in the case of a noncompliance, the test results or other basis upon which the manufacturer made its determination). By not requiring these three items of information, the burden upon manufacturers will be lessened. However, in addition to those that the manufacturers did not object to, we will adopt our proposal to require the information specified in paragraph (c)(3) (the total number of vehicles or items of equipment covered by the foreign campaign). This information has been provided in numerous reports of foreign recalls received to date, and its collection is unlikely to be burdensome. As for RMA's comment, as we stated above, we believe it is important to require more complete information than is required for domestic actions that are not safety recalls, in part because of the difficulty in distinguishing between ''safety recalls'' and ''other safety campaigns'' in foreign countries.

No commenter addressed the other information regarding foreign campaigns that we proposed to require, and we are adopting those requirements in the final rule. We are also adding the requirements that the report itself be dated, and that, in the case of a recall, it describe the manufacturer's program for remedying the defect or noncompliance, information presently required by section 573.6(c)(8) for U.S. recalls.

B. Information Not Available at the Time of the Initial Report

As discussed above, foreign recalls and other safety campaigns must be reported within 5 working days. We recognized that some of the required information might not be available within 5 working days. Consistent with redesignated section 573.6(b), we proposed that such information be submitted as it becomes available. There were no comments on this aspect of our proposal, and we are adopting it. See section 579.12(b).

V. Section 579.3(b), Who May Submit Reports

In its defect and noncompliance reporting regulations, the agency has addressed the question of who may file a defect or noncompliance report related to an imported item. Under 49 CFR 573.3(b), in the case of vehicles or equipment imported into the United States, a defect or noncompliance report may be filed by either the fabricating manufacturer or the importer of the vehicle or equipment. Defect and noncompliance reports covering vehicles manufactured outside of the United States have generally been submitted by the importer of the vehicles, which is usually a subsidiary of a foreign parent corporation (*e.g.*, defects in vehicles made in Japan by Honda Motor Co. Ltd. are reported by American Honda Motor Co., Inc., even if the vehicle was certified by Honda Motor Co. Ltd).

We proposed in section 579.15 to apply the reporting requirements for foreign campaigns in the same manner as we currently utilize for reporting noncompliance and defect determinations to NHTSA under part 573. That is to say, the report might be filed by either the fabricating manufacturer or by the importer of the vehicle that is identical or substantially similar to that covered by the foreign recall or other safety campaign. The Alliance recommended that the final rule ''contain a provision authorizing manufacturers engaged in joint ventures or other similar enterprises to allocate between or among themselves which entity will assume responsibility for reporting to NHTSA.'' The Alliance asserted that allocation of responsibility would be similar to that between component suppliers and OE manufacturers in part 573.

In the early warning NPRM, we also proposed that fabricating manufacturers or importers could file early warning reports. However, in the final rule, we expanded these entities and adopted section 579.3(b), which specifies that:

> In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment, shall be considered compliance by all persons.

We are adopting largely the same reporting provision for manufacturers who report foreign campaigns. We believe that this is responsive to the Alliance's recommendation. In any event, we note that historically, Alliance members' U.S. headquarters (if the multinational headquarters is in the U.S.) or U.S. subsidiary (if the multinational headquarters is in a foreign country) have submitted reports under section 30166(l) and that this has sufficed. However, rather than adopting a separate provision in Subpart B, we are amending section 579.3 to redesignate paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and to adopt a new paragraph (b) which reads:

> In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

It should be noted that this differs from the early warning reporting paragraph in that a report may be filed by a ''subsidiary,'' not just a ''United States subsidiary.'' This means that any of the named entities, including a foreign subsidiary who makes a determination or receives a notice from a foreign government, may file a report, whether it is located in the United States or in a foreign country. As we noted in the NPRM, a multinational corporation must ensure that all relevant campaign information

throughout the world is made available to whatever entity makes those reports so that its designated entity timely provides the information to NHTSA. Thus, it would be a violation of law for a foreign manufacturer to designate its U.S. importer as its reporting entity, and then fail to assure that it is provided with information about relevant foreign recalls and campaigns. All manufacturers will have to adopt and implement practices to assure the proper flow of information regarding relevant foreign recalls and campaigns.

There was one further reporting issue. Under proposed section 579.13(a), after a manufacturer determines to conduct a foreign safety campaign ''covering'' substantially similar motor vehicles and equipment, the manufacturer ''of the vehicle or equipment covered by the recall or other campaign'' would report the determination to NHTSA. Johnson found it unclear whether ''the manufacturer who makes [the recall] determination is the one who needs to make the report.'' Johnson noted that ''in the case of original equipment or replacement equipment, the equipment manufacturer can make the determination of defect. In those cases, the equipment manufacturer should be the person who makes the report required under section 579.13(a).'' It argued that ''imposing an obligation on the manufacturer 'covered by' the recall is ambiguous, particularly in a case where a recall by a vehicle manufacturer is undertaken as a result of a defect discovered by the vehicle manufacturer in an original component made by an equipment manufacturer.'' It would clarify that the manufacturer making the report is the manufacturer making the determination to recall.

The issue of alternative reporting responsibilities has been addressed with respect to notification of defects and noncompliances that lead to domestic recall campaigns in section 573.3(e). This paragraph permits either a vehicle manufacturer or an OE manufacturer to notify NHTSA if the OE manufacturer's defective equipment is used only in the vehicles of that manufacturer, and the reporting manufacturer to conduct the remedial campaign. This paragraph appears to be the basis of Johnson's comment.

We did not address the issue of alternative reporting responsibilities in the context of foreign campaigns in the NPRM. Under our proposed fifth criterion, substantially similar vehicles would be those sharing the component that led to the safety recall or campaign. Thus, it did not seem likely that the foreign manufacturer of the defective OE would be the person determining to conduct a safety recall of foreign motor vehicles equipped with its defective OE. However, in the final rule, as discussed above, we have moved to a platform-based criterion. This means that, even if the same defective OE is used in both U.S. and foreign vehicles and in the same application, the vehicle manufacturer is not required to report the campaign to NHTSA if the two vehicles do not share a common platform (or qualify as substantially similar vehicles under one of the other three criteria). We have concluded that Johnson's suggestion provides greater clarity, and we are including language in final section 579.11(a) to clarify that the manufacturer making the determination to conduct a safety recall or other safety campaign is the manufacturer required to report to NHTSA. We are making a corresponding clarification in section 579.11(b) that it is the manufacturer that receives the notification from a foreign government that must report to NHTSA.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures. This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures.

We estimate that fewer than 500 reports of foreign recalls and other safety campaigns will be submitted annually; some of these would involve parallel campaigns in multiple countries. The costs associated with this rule are minimal and are principally related to hours of burden. There would be costs in determining whether vehicles or equipment that are covered by a foreign recall or campaign are identical or substantially similar to vehicles and equipment sold in the United States, and there will be costs associated with preparing and submitting the annual list of substantially similar vehicles. The cost of determining which vehicles are substantially similar will be less under the final rule because the most relevant criterion will be commonality of the vehicle platform, rather than commonality of parts giving rise to the foreign campaign, as initially proposed. Moreover, the existence of the annual list will simplify this decision.

There will be costs to manufacturers to prepare and submit reports of these recalls and campaigns to the agency. If a determination has been made by a foreign government in a language other than English, a manufacturer would also have the cost of translating the determination before supplying it to us; however, currently such determinations are not made in any language other than English. Finally, there may be costs involved in searching out and filing reports with NHTSA that are related to foreign determinations made between November 1, 2000 and the effective date of the final rule. The costs would appear to be principally those of man-hours. We estimate that the costs will be less than $200,000 per year industry-wide. We sought comments from manufacturers on the estimated costs of meeting a final rule based on this proposal and received none.

Regulatory Flexibility Act. We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. The basis for this certification is that most manufacturers of motor vehicles and motor vehicle equipment that operate internationally are not small entities. Any small business that operates internationally is likely to have less than one report per year to send to NHTSA. Thus, the final rule is not economically significant, and no regulatory flexibility analysis has been prepared.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase 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.'' This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment, will not have substantial direct effect 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, as specified in E.O. 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires a manufacturer of motor vehicles and motor vehicle equipment

to report information and data to NHTSA if it decides to conduct, or if it is informed by a foreign government that it must conduct, a safety recall or other safety campaign in a country outside the United States. These provisions are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329. We published a Paperwork Reduction Act Notice on August 9, 2002 (67 FR 51925). Following receipt of comments, due by October 8, 2002, we will submit the required materials to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 579

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

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

2. Section 579.2 is revised to read as follows:

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and noncompliances in their products, including the reporting of safety recalls and other safety campaigns that the manufacturer conducts outside the United States.

3. Section 579.3 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d) respectively, and by adding a new paragraph (b), to read as follows:

§ 579.3 Application.

(a) This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are identical or substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.

(b) In the case of any report required under subpart B of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign, shall be considered compliance by all persons.

* * * * *

4. Section 579.4(c) is amended by adding in alphabetical order the terms ''foreign country,'' ''foreign government,'' ''other safety campaign,'' and ''safety recall,'' to read as follows:

§ 579.4 Terminology.

* * * * *

(c) *Other terms.* * * *

* * * * *

Foreign country means a country other than the United States.

Foreign government means the central government of a foreign country as well as any political subdivision of that country.

* * * * *

Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

* * * * *

Safety recall means an offer by a manufacturer to owners of motor vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action.

* * * * *

5. Section 579.4(d) is amended by removing the title and introductory phrase ''*Terms related to foreign claims.* For purposes of subpart C of this part:'' and by adding in its place ''*Identical or substantially similar motor vehicle, item of motor vehicle equipment, or tire.*''

6–7. Subpart B is revised to read as follows:

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

Sec.

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Foreign Countries

§ 579.11 Reporting responsibilities.

(a) *Determination by a manufacturer.* Not later than 5 working days after a manufacturer determines to conduct a safety recall or other safety campaign in a foreign country covering a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office in which such determination is made, and the office reporting to NHTSA.

(b) *Determination by a foreign government.* Not later than 5 working days after a manufacturer receives written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country with respect to a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States, the manufacturer shall report the determination to NHTSA. For purposes of this paragraph, this period is determined by reference to the general business practices of the office where the manufacturer receives such notification, the manufacturer's international headquarters office (if involved), and the office reporting to NHTSA.

(c) *One-time historical reporting.* Not later than 30 calendar days after November 12, 2002, a manufacturer that has made a determination to conduct a recall or other safety campaign in a foreign country, or that has received written notification that a foreign government has determined that a safety recall or other safety campaign must be conducted in its country in the period between November 1, 2000 and November 12, 2002, and that has not reported such determination or notification of determination to NHTSA in a report that identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, the model(s) and model year(s) of the vehicles, equipment, or tires that were identical or substantially similar to the subject of the recall or campaign, and the defect or other condition that led to the foreign recall or campaign, as of November 12, 2002, shall report such determination or notification of determination to NHTSA if the safety recall or other safety campaign covers a motor vehicle, item of motor vehicle equipment, or tire that is identical or substantially similar to a vehicle, item of equipment, or tire sold or offered for sale in the United States. However, a report need not be resubmitted under this paragraph if the original report identified the model(s) and model year(s) of the vehicles, equipment, or tires that were the subject of the foreign recall or other safety campaign, identified the model(s) and model year(s) of the identical or substantially similar products in the United States, and identified the defect or other condition that led to the foreign recall or other safety campaign.

(d) *Exemptions from reporting.* Notwithstanding paragraphs (a), (b), and (c) of this section a manufacturer need not report a foreign safety recall or other safety campaign to NHTSA if:

(1) The manufacturer has determined that for the same or substantially similar reasons relating to motor vehicle safety that it is conducting a safety recall or other safety campaign in a foreign country, a safety-related defect or noncompliance with a Federal motor vehicle safety standard exists in identical or substantially similar motor vehicles, motor vehicle equipment, or tires sold or offered for sale in the United States, and has filed a defect or noncompliance information report pursuant to part 573 of this chapter, provided that the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States;

(2) The component or system that gave rise to the foreign recall or other campaign does not perform the same function in any vehicles or equipment sold or offered for sale in the United States; or

(3) The sole subject of the foreign recall or other campaign is a label affixed to a vehicle, item of equipment, or a tire.

(e) *Annual list of substantially similar vehicles.* Not later than November 1 of each year, each manufacturer of motor vehicles that sells or offers a motor vehicle for sale in the United States shall submit to NHTSA a document that identifies both each model of motor vehicle that the manufacturer sells or plans to sell during the following year in a foreign country that the manufacturer believes is identical or substantially similar to a motor vehicle sold or offered for sale in the United States (or to a motor vehicle that is planned for sale in the United States in the following year), and each such identical or substantially similar motor vehicle sold or offered for sale in the United States.

§ 579.12 Contents of reports.

(a) Each report made pursuant to § 579.11 of this part must be dated and must include the information specified in § 573.6(c)(1), (c)(2), (c)(3), and (c)(5) of this chapter. Each such report must also identify each foreign country in which the safety recall or other safety campaign is being conducted, state whether the foreign action is a safety recall or other safety campaign, state whether the determination to conduct the recall or campaign was made by the manufacturer or by a foreign government, describe the manufacturer's program for remedying the defect or noncompliance (if the action is a safety recall), specify the date of the determination and the date the recall or other campaign was commenced or will commence in each foreign country, and identify all motor vehicles, equipment, or tires that the manufacturer sold or offered for sale in the United States that are identical or substantially similar to the motor vehicles, equipment, or tires covered by the foreign recall or campaign. If a determination has been made by a foreign government, the report must also include a copy of the determination in the original language and, if the determination is in a language other than English, a copy translated into English.

(b) Information required by paragraph (a) of this section that is not available within the 5-working day period specified in § 579.11 of this part shall be submitted as it becomes available.

Issued on: October 7, 2002.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020215032–2127 02; I.D. 100102E]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfers

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

ACTION: Commercial quota transfers.

SUMMARY: NMFS announces that the Commonwealth of Virginia and the States of Florida and Rhode Island have transferred 100,000 lb (45,372 kg), 200,000 lb (90,744 kg), and 125,000 lb (56,689 kg), respectively, of their 2002 adjusted commercial quotas to New York. The revised quotas for the calendar year 2002 following the transfer are: Virginia, 1,095,283 lb (496,952 kg), Florida, 856,269 lb (388,507 kg), Rhode Island 589,851 lb (267,506 kg), and New York, 1,299,372 lb (589,284 kg).

NMFS has adjusted the quotas and announces the revised commercial quotas for Virginia, Florida, Rhode Island, and New York. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and prevent negative economic impacts to the New York commercial bluefish fishery.

DATES: Effective October 10, 2002 through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail *Myles.A.Raizin@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial