

NHTSA notes: The Deputy Administrator, James Owens, signed the following document on January 15, 2021, and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at <http://www.archives.gov/federalregister/index.html>.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 565, 566, 567, 586, and 591

Docket No. NHTSA-2021-0006

RIN 2127-AL77

Vehicle Identification Number (VIN) Requirements;

Manufacturer Identification; Certification;

Replica Motor Vehicles; Importation of Vehicles and Equipment Subject to

Federal Safety, Bumper, and Theft Prevention Standards

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

ACTION: Final rule.

SUMMARY: This final rule implements an exemption program for replica motor vehicles manufactured or imported by low-volume manufacturers, as set forth in Section 24405 of the Fixing America's Surface Transportation Act (FAST Act). The FAST Act amended the National Traffic and Motor Vehicle Safety Act to direct the Secretary of Transportation (NHTSA by delegation) to exempt annually 325 replica motor vehicles manufactured or imported by low-volume manufacturers from Federal motor vehicle safety standards that apply to motor vehicles, but not standards that apply to motor vehicle equipment. To implement the exemption program and the procedural mandates of the FAST Act, this final rule establishes a new part 586 and

amends VIN requirements in part 565, manufacturer identification requirements in part 566, manufacturer certification requirements in part 567, and importation requirements in part 591.

DATES: Effective Date: This rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received no later than **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Note that all petitions received will be posted without change to <http://www.regulations.gov>, including any personal information provided. To facilitate social distancing due to COVID-19, please email a copy of the petition to nhtsa.webmaster@dot.gov.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

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

(49 CFR part 512). To facilitate social distancing due to COVID-19, NHTSA is treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the Agency under 49 CFR part 512. <https://www.nhtsa.gov/coronavirus>

FOR FURTHER INFORMATION, CONTACT:

For technical issues and information concerning the information collections, you may contact Ms. Mary Versailles, Office of Rulemaking, telephone 202-366-2057, email Mary.Versailles@dot.gov. For legal issues: Ms. Callie Roach, telephone 202-597-1312, Callie.Roach@dot.gov; Mr. Daniel Koblenz, telephone 202- 366-5329, Daniel.Koblenz@dot.gov; Office of the Chief Counsel. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., West Building, Washington, D.C. 20590.

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I. Executive Summary

This final rule establishes an exemption program for replica motor vehicles manufactured or imported by low-volume manufacturers, as directed by Section 24405 of the FAST Act (Public Law 114-94). The National Traffic and Motor Vehicle Safety Act (Safety Act)¹ states at § 30112 that a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment unless the vehicle or equipment complies with all applicable Federal motor vehicle safety standards (FMVSS) in effect on the date of manufacture, unless covered by a

¹ 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*).

nonapplication provision or exempted under the Safety Act. Section 24405 of the FAST Act, entitled, “Treatment of Low-Volume Manufacturers,” amended § 30114 (Special exemptions) of the Safety Act by adding a new subsection (b). As amended, § 30114(b) requires the Secretary (NHTSA by delegation) to exempt “325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer” from 49 U.S.C. 30112(a) regarding FMVSSs “applicable to motor vehicles and not motor vehicle equipment.”

The FAST Act amended § 30114 of the Safety Act to define “low-volume manufacturer” and “replica motor vehicle” (a motor vehicle intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle, manufactured under a license for the product configuration, trade dress, trademark, or patent, for the original vehicle). The amended § 30114 requires low-volume manufacturers seeking an exemption to register with NHTSA, and gives NHTSA a limited period to review and either approve or deny an application for registration before the application is deemed approved. It requires that NHTSA require the manufacturers to affix permanent labels to the exempted motor vehicles to identify the vehicle as a replica and with other information determined necessary by NHTSA. The provision also requires replica manufacturers to provide annual reporting to NHTSA and directs NHTSA to maintain an up-to-date list of registrants and a list of the makes and models of exempted motor vehicles at least annually (and publish such list in the Federal Register or on NHTSA’s website). The FAST Act amendments direct that the 325-vehicle production authorization is limited to the calendar year in which the exception is granted, and unused production capacity (i.e., the difference between the 325-vehicle authorization and actual vehicle production) does not accrue and carry forward into subsequent calendar years, but expires at the end of the calendar year in which it was granted. The provisions authorize

NHTSA to revoke an existing registration based on a failure to comply with applicable requirements, or a finding by the Agency of either a safety-related defect or unlawful conduct that poses a significant safety risk.

This final rule implements the replica motor vehicle exemption program. NHTSA published the notice of proposed rulemaking (NPRM) preceding this final rule on January 7, 2020 (85 FR 792, Docket No. NHTSA-2019-0121).² NHTSA proposed to implement the replica motor vehicle exemption program in 49 CFR part 586 of NHTSA's regulations, and proposed amendments to the Agency's regulations for VIN requirements (49 CFR part 565), manufacturer identification (part 566), and certification (part 567), to accommodate the FAST Act exemption program.

Proposed 49 CFR part 586 included the FAST Act definitions to define and adopt the exemption program and proposed procedural and substantive requirements to implement the Act's mandates. The NPRM proposed to exempt each qualified and registered low-volume manufacturer from § 30112(a)'s prohibitions, allowing for the production of up to 325 replica motor vehicles per year (hereafter "covered replica vehicles"). The exemption was to be conditioned on the replica manufacturer complying with all requirements of the program. Covered replica vehicles were to be exempt from complying with the "vehicle" standards in effect on the date of manufacture of the replica vehicle that apply to new vehicles of the replica's type (passenger car, multipurpose passenger vehicle, truck, or bus), but were not to be exempt from the "equipment" standards.³ Any equipment to which FMVSS equipment standards apply

² For a detailed summary of the FAST Act provisions, *see* the NPRM, 85 FR at 793-794.

³ Some of the FMVSS are "vehicle" standards that apply only to new completed vehicles as a unit and not to aftermarket components, some are "equipment" standards that apply to original and aftermarket items of equipment, and a few are both vehicle and equipment standards.

were to be required to meet all applicable equipment standards in effect on the equipment's date of manufacture.

After reviewing the comments to the NPRM, NHTSA adopts the majority of proposed provisions, but is adjusting some aspects of the program (see the section below highlighting these changes). The discussion in this preamble follows the overall outline of the NPRM and discusses, under each section, the proposed requirement, comments received, and NHTSA's decisions for this final rule.

High Level Summary of Comments

NHTSA received 20 comments on the NPRM. The commenters included prospective replica vehicle manufacturers, suppliers, trade associations, consultants and individuals.⁴ Commenters were generally supportive of the proposed rule, but a number suggested changes to specific aspects of the NPRM. The significant comments are summarized below.

The FAST Act defines a replica vehicle as a vehicle "intended to resemble the body" of another motor vehicle that was manufactured at least 25 years before the replica. NHTSA proposed several requirements to implement this "resemblance" requirement in an objective manner. NHTSA proposed that a "replica motor vehicle" must have the same length, width, and height as the vehicle being replicated (hereafter, "original motor vehicle"). In response, commenters, including potential replica motor vehicle manufacturers, suppliers, the Specialty Equipment Market Association (SEMA), Vehicle Services Consulting, Inc. (VSCI), and several individuals, urged NHTSA to provide more flexibility in how the resemblance requirement is implemented. Many commenters argued that NHTSA should allow deviation between the dimensions of the replica motor and the original motor vehicle being replicated by up to 10

⁴ NHTSA received three other comments, but they were either not substantive or outside the scope of this rulemaking.

percent. Commenters pointed to the definition of a “specialty motor vehicle” used by the California Air Resources Board (CARB), which provides such deviation. The proposal also defined “body” as including any part of the vehicle that is not part of the chassis or frame. Some potential replica manufacturers suggested a vehicle’s body should be limited to the body’s exterior design and appearance.

Several commenters discussed the intellectual property (IP) provisions of the NPRM. NHTSA proposed a requirement that manufacturers submit documentation to support the assertion that the replica vehicle is intended to resemble the original. The Alliance for Automotive Innovation (Alliance) supported the proposal, asserting that public disclosure of the documentation “will permit intellectual property owners to take action to protect their rights if they believe that the applicant does not have the necessary authorizations.” Other commenters suggested that NHTSA simply require that replica motor vehicle manufacturers certify or declare that they have all necessary rights to produce a replica motor vehicle, rather than provide the underlying documentation. Comments were also received on whether replica vehicles should be required to reproduce logos and emblems from the original vehicle.

Comments were mixed on whether multistage manufacturers should qualify for an exemption, and how NHTSA should apply the FAST Act exemption to vehicles produced in multiple stages. SEMA pointed out that the replica manufacturers it is most familiar with do not produce their vehicles in more than one stage. Some commenters suggested NHTSA should allow replication of original motor vehicles made available for sale anywhere in the world, and not just in the United States.

Regarding procedural requirements, the NPRM proposed that a replica vehicle manufacturer is considered registered if NHTSA confirms that the registration is approved.

Several potential replica motor vehicle manufacturers pointed to the FAST Act language providing that an application is “deemed approved” if NHTSA does not respond to the application within 90 days and argued that the proposal was inconsistent with statute.

Regarding labeling and disclosure requirements, some commenters believed it overly burdensome to require the certification label list all the standards from which the replica motor vehicle is exempted. Some comments objected to the redundancy of having to provide temporary labels in addition to the statutorily-mandated labeling.

Several commenters addressed the FAST Act’s provisions regarding preemption of State titling and registration laws. Some commenters disagreed with NHTSA’s tentative interpretation that State titling and registration laws could require vehicles to be equipped with components.

Main Differences Between the NPRM and Final Rule

This final rule adopts most of the proposal, but has revised several aspects in response to comments, as highlighted below. All changes, and others of a more minor nature, are discussed in the relevant sections of this final rule.

The main changes are:

- NHTSA considered limiting the exemption program to replica vehicles that are built in one stage. For the final rule, NHTSA decided not to prohibit the manufacture of replica vehicles built in more than one stage, nor require that all first stage or intermediate stage manufacturers must be low-volume manufacturers.
- Registrants will not be required to submit actual documentation to demonstrate they own or have license to the intellectual property (IP) necessary to manufacture a replica motor vehicle. Instead, they must certify to this fact.

- A replica motor vehicle will not be required to maintain the exact dimensions of the original motor vehicle to meet the requirement that it “resemble” the original motor vehicle. A 10 percent leeway is provided. NHTSA is also not requiring that replica motor vehicles resemble not only the original vehicle’s exterior, but also its interior.
- NHTSA has streamlined the regulatory text to clarify how NHTSA will process registrations, and how the Agency will address “deemed approved” registrations.
- This final rule reduces the amount of information replica manufacturers must disclose to members of the public, compared to the NPRM’s proposal.
- NHTSA has reconsidered its view of 49 U.S.C. 30114(b)(9), which states that the replica program shall not be construed to preempt, affect, or supersede State titling or registration laws or regulations, finding that State requirements that replica vehicles have certain equipment are preempted by the FAST Act.

II. Final Rule Decisions – General

a. Who qualifies for the exemption program as a low-volume manufacturer

49 U.S.C. 30114(b)(1) limits the exemption to not more than 325 replica motor vehicles per year “that are manufactured or imported by a low-volume manufacturer.” NHTSA interpreted this provision to mean that replica vehicles must be produced by a low-volume manufacturer and that “replica vehicles may only be imported by their fabricating low-volume manufacturer.”⁵ Further, NHTSA proposed that each low-volume manufacturer would be

⁵ *See*, 85 FR at 795, col. 1. Interpreting the statute to allow replicas to be produced by foreign manufacturers that do not qualify as low-volume manufacturers and then imported by low-volume manufacturers is contrary to Congress’s intent to create an exemption program designed to address the unique financial challenges small manufacturers face.

limited to importing 325 replica vehicles per year, regardless of the calendar year of manufacture.⁶

NHTSA stated that replica vehicles produced by a foreign low-volume manufacturer may only be imported by that specific registered low-volume manufacturer. NHTSA stated it interpreted the wording of the FAST Act provision in the same way NHTSA has interpreted the hardship exemption provision in 49 U.S.C. 30113, i.e., as not authorizing the Agency to grant hardship exemptions to entities that seek to import vehicles they did not produce.⁷ NHTSA asserted that interpreting §24405 of the FAST Act in the same manner is appropriate because both provisions recognize that small manufacturers are faced with unique financial challenges in meeting the FMVSS, and provide exemptions to alleviate this burden. NHTSA argued that by prohibiting an entity seeking to import replica motor vehicles from registering as a low-volume manufacturer of replica vehicles unless it is also the entity fabricating the replica vehicles would ensure that small importers are not permitted to import replica vehicles manufactured by large foreign manufacturers.

Comments Received

NHTSA received divergent comments on its proposal to allow only a fabricating manufacturer to register as a replica vehicle manufacturer and import replica vehicles. The American Association of Motor Vehicle Administrators (AAMVA) and the Alliance supported NHTSA's proposal to ensure conformance to the 325 vehicles per manufacturer limit. SEMA, Caterham Cars Ltd. (Caterham) and ElectroMeccanica Vehicles Corp. (ElectroMeccanica)

⁶ A low-volume manufacturer would not be permitted to import 326 replica vehicles into the U.S. in a single calendar year, regardless of whether those vehicles were fabricated over the course of two calendar years.

⁷ See letter to Mr. Bill Cox (March 24, 1997) available at <https://isearch.nhtsa.gov/files/kill.ztv.html>.

requested that NHTSA allow one subsidiary or distributor of a foreign fabricating manufacturer to import and sell replica motor vehicles.

NHTSA Response

NHTSA has reconsidered the discussion in the NPRM, and does not believe it is necessary to limit the eligibility for the replica program to importers who fabricate vehicles. There is no such prohibition in the FAST Act provisions⁸ and the need to restrict the program to importers that fabricate the vehicles is not clear. NHTSA believes that the general statutory definition for “manufacturer,” which covers both entities that manufacture motor vehicles, and entities that import motor vehicles for resale, should apply.⁹ Further, NHTSA does not believe it is necessary to require the low-volume foreign manufacturer to use a single subsidiary to import its replica motor vehicles, provided there are limits on how a foreign low-volume manufacturer may import its replica vehicles through multiple U.S.-based subsidiaries. In the latter situation, the total production of all entities associated with that manufacturer (U.S.-based or not) may not exceed 5,000 vehicles annually, and the total number of replica motor vehicles sold by all of its U.S.-based subsidiaries may not exceed 325 vehicles annually.

b. Number of permitted exempted vehicles

The FAST Act exempts “not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer” that registers with NHTSA.¹⁰ NHTSA proposed that the FAST Act allows the Agency to grant each registered low-volume manufacturer an exemption to produce up to 325 replica vehicles per calendar year.

Comments Received

⁸ However, 49 U.S.C. 30114(b)(2) provides that “[NHTSA] shall establish terms that ensure that no person may register as a low-volume manufacturer if the person is registered as an importer under section 30141 of this title.”

⁹ 49 U.S.C. 30102

¹⁰ See § 30114(b)(1) and (2).

Three comments concurred with the Agency's statements about the 325-vehicle cap, some with requests for clarification. VSCI asked NHTSA to clarify that the exemption limit did not apply in two situations. First, that the limit did not apply to replica motor vehicles produced by a manufacturer for sale outside the United States, if the total annual production for the manufacturer did not exceed 5,000. Second, VSCI asked whether the manufacturer could produce similar vehicles in excess of the 325-limit if those vehicles were certified as complying with all applicable FMVSS. The National Automobile Dealers Association (NADA) supported the 325-limit, but cautioned that manufacturers should not be allowed to evade this limit through multiple importers, shell corporations or multi-stage manufacturing. An individual noted that where multiple manufacturers planned to produce replica motor vehicles based on the same vehicle, the 325-limit should apply to the total vehicles produced by all such manufacturers. The individual did not suggest how NHTSA should allot the vehicles among the manufacturers in such a scenario.

Agency Response

NHTSA agrees that a replica motor vehicle manufacturer must not be permitted to exceed the production cap using affiliated parent or subsidiary companies, and the Agency sought to draft part 586 to prevent this from happening. The annual production cap for replica motor vehicle manufacturers applies to each low-volume manufacturer, and the definition of "low-volume manufacturer" explicitly includes production by parent or subsidiary companies. Thus, a replica motor vehicle manufacturer cannot exceed the production cap using affiliated parent or subsidiary companies. A low-volume manufacturer is permitted to have multiple registrations to produce a variety of replica motor vehicle models, so long as the cumulative production for the manufacturer remains at or below 325 replica motor vehicles per year. In such a case, the low-

volume manufacturer must state in all applications how it has allocated the 325 vehicles produced.

As noted above, the Safety Act treats U.S.-based importers that are subsidiaries of foreign manufacturers as manufacturers. Thus, importers that are subsidiaries of foreign manufacturers are limited to importing 325 replica motor vehicles across all connected companies. This assumes, of course, that the importer and the foreign manufacturer are low-volume manufacturers.

Finally, VSCI's understanding is correct that the cap does not apply to vehicles sold by a low-volume manufacturer outside the U.S. Also, the 325-limit does not include vehicles produced that are certified as compliant with all applicable FMVSSs, as long as the manufacturer does not produce more than 5,000 motor vehicles annually.

c. Vehicles built in two or more stages

NHTSA requested comment on whether the replica vehicle program should exclude vehicles manufactured in two or more stages. The Agency was concerned that some of the proposed requirements may be impossible to meet unless the replica vehicle is manufactured in a single stage.

NHTSA identified a possible incompatibility between the multistage manufacturing process and a requirement that the vehicle's VIN identify the vehicle as a replica. NHTSA sought to ensure replica vehicles are properly identified as replicas in their VINs, and that the VIN denote the make, model, and model year of the original vehicle. NHTSA was concerned that those requirements could not be met by vehicles produced in two or more stages because under NHTSA's VIN regulation, each vehicle manufactured in two or more stages has a VIN

assigned by the incomplete vehicle manufacturer.¹¹ NHTSA noted that it was unlikely an incomplete vehicle manufacturer would know the make, model, and model year of the vehicle being replicated, so the VIN would be missing this information.

NHTSA also noted its belief that the replica program is not conducive to the multistage manufacture of replica vehicles as a practical matter. NHTSA interpreted the FAST Act as intending that each manufacture of a vehicle manufactured in more than one stage would need to be a low-volume manufacturer, and that incomplete vehicle manufacturers are typically not low-volume manufacturers. NHTSA sought comment on an alternative to excluding multistage manufacturing from the exemption program, to allow joint registration submissions from two or more manufacturers wishing to manufacture the replica vehicle. NHTSA envisioned that under a joint registration program, the incomplete vehicle manufacturer would know, at the onset of manufacturing, the make, model, and model year of the vehicle the replica resembles, and thus would be able to code the information about the finished replica vehicle into the VIN.

Comments Received

NHTSA received divergent views on the proposal to prohibit replica motor vehicles to be manufactured in more than one stage. The American Association of Motor Vehicle Manufacturers (AAMVA), the National Truck Equipment Association (NTEA) and the Alliance supported the proposal to exclude multistage manufacturing. AAMVA noted that it is essential to tie the VIN to the manufacturer at each stage of manufacturing if NHTSA decides to allow multi-stage manufacturing. NTEA agreed that most multistage manufacturers would not qualify as low volume manufacturers and that ensuring compliance across multiple manufacturers would be difficult. VSCI supported NHTSA's alternative to allow joint registrations for

¹¹ 49 CFR 565.13(a). See also 49 CFR 567.3 for definitions of “incomplete vehicle,” “incomplete vehicle manufacturer,” “final-stage manufacturer,” and other terms relevant to this discussion.

incomplete/intermediate vehicle manufacturers wishing to produce or import replica motor vehicles.

Calloway Cars (Calloway) and SEMA noted that current replica vehicle manufacturing practices typically do not involve producing vehicles in more than one stage. These commenters describe a process where replica vehicle manufacturers purchase a subassembly from a supplier consisting of an assemblage of parts (referred to as a “rolling chassis”). The subassembly does not include an engine, and therefore does not meet NHTSA’s definition of an incomplete vehicle.¹² The commenters asked for clarification that the Agency does not consider a vehicle manufactured from a rolling chassis to be a vehicle produced in more than one stage.

Finally, other commenters, while agreeing that multistage manufacturing of replica vehicles is not currently the norm, urged NHTSA to allow multistage manufacturing as an option. MOKE USA (MOKE) specifically discussed the economic benefits that large-scale manufacturing offered, and indicated that replica vehicle manufacturers could not benefit from these economies if multistage manufacturing were not a possibility. Edelbrock LLC (Edelbrock) also commented that the regulation should not require incomplete vehicle manufacturers supplying components to replica vehicle manufacturers to be small manufacturers.

Agency Response

After considering the comments, NHTSA has decided to allow the manufacture of replica motor vehicles in more than one stage. NHTSA proposed the prohibition out of a concern that the VIN of a replica vehicle might not have the information identifying the vehicle as a replica. The incomplete vehicle manufacturer encodes the VIN, and NHTSA was concerned that the

¹² 49 CFR 567.3.

incomplete vehicle manufacturer is unlikely to know that the final-stage manufacturer will be producing a replica vehicle.

After considering the comments, NHTSA believes its concern about proper VIN encoding can be addressed without prohibiting the multistage manufacture of replicas. The requirement that a replica motor vehicle's status as a replica must be coded into the VIN enables the Agency, among other things, to enforce the 325-vehicle annual production cap. The final-stage manufacturer could inform the incomplete vehicle manufacturer to code the VIN indicating a replica vehicle when the final-stage manufacturer obtains the incomplete vehicle. (This coordination is similar to the joint registration arrangements NHTSA envisioned when it proposed allowing joint registrations of incomplete/intermediate/final vehicle manufacturers wishing to produce replica motor vehicles.) A final-stage manufacturer that is manufacturing replica vehicles will need to coordinate with the first-stage and intermediate manufacturers to ensure the incomplete vehicle has the replica vehicle VIN when it procures the incomplete vehicle, but that responsibility is manageable and can be part of the commercial transaction. NHTSA does not believe it is necessary to specify in its regulation how a replica manufacturer should accomplish this straightforward VIN marking requirement.

The manufacture of non-replica vehicles in more than one stage is well established in the vehicle manufacturing industry, often involving small final-stage manufacturers. Permitting replica vehicles to be manufactured in more than one stage, provided the VIN is properly encoded identifying the vehicle as a replica, allows more low-volume manufacturers to produce replica vehicles in the manner they have regularly used.

NHTSA stated in the NPRM it tentatively believed that each manufacturer in the multistage manufacturing process would have to be a low-volume manufacturer. NHTSA has

decided in this final rule there is not a sufficient basis for that finding. In NHTSA's view, an incomplete vehicle manufacturer would not ordinarily produce a "replica vehicle," as incomplete vehicles cannot be said to "resemble" older vehicles, as they are simply assemblages, rather than complete vehicles. Thus, the actual replica vehicle was not manufactured by the incomplete vehicle manufacturer, and the incomplete vehicle manufacturer would not be expected to be the entity applying for the exemption. However, to meet the statutory requirements for being a replica vehicle manufacturer, the final stage manufacturer must still be a low-volume manufacturer.

NHTSA's view here is based on the assumption that the incomplete vehicle will be in such a stage that it would not "resemble" the older vehicle on which a replica is based, and would therefore not be a "replica" under the statutory or regulatory definitions. However, in a particular instance, if the contribution from an incomplete vehicle manufacturer is so great and that of the completed vehicle is so minor, the Agency may determine that the incomplete vehicle is intended to meet the resemblance requirement, meaning that the incomplete vehicle was itself a replica vehicle. In such a situation, the Agency would determine that incomplete vehicle is the actual manufacturer and would, thus, need to meet the requirements of a low-volume manufacturer. Finally, the Agency will continue to monitor the market to ensure that the flexibility provided in the final rule is not abused by larger incomplete manufacturers that produce a significant amount of incomplete replicas; should such a development occur, the Agency may need to reconsider this interpretation, as it would defeat the purpose of restricting the program to low-volume manufacturers. Accordingly, NHTSA has decided not to adopt the proposed requirement that replica vehicle manufactured in more than one stage must only use

incomplete vehicles produced by low-volume manufacturers, but will continue to monitor this situation as the market develops.

III. Definitions

The provisions in the FAST Act directing this exemption program define the terms “low-volume manufacturer” and “replica motor vehicle.” To facilitate implementation of the program, NHTSA proposed to define the term “replica motor vehicle manufacturer” as “a low-volume manufacturer that is registered as a replica motor vehicle manufacturer pursuant to the requirements in this part.”

a. Low-volume manufacturer

Section 30114(b)(7)(A) defines “low-volume manufacturer” as: “a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of this title, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.” Since several of NHTSA’s existing regulations already use the term “low-volume manufacturer,” and, in some cases, define the term differently than the FAST Act provision, NHTSA proposed that part 586 define “low-volume manufacturer” by simply referring to 49 U.S.C. 30114(b)(7). Thus, the proposed definition¹³ stated: “*Low-volume manufacturer* is defined in 49 U.S.C. 30114(b)(7).”

Comments Received

Some commenters believed that the regulatory text of part 586 should communicate the production limits set by the FAST Act so that the meaning of the term would be clearer on the face of the regulation. Further, some commenters suggested clarifying aspects of the term. Some believed the regulatory text should specify that the limit of 325 vehicles per year cannot be

¹³ *Id.* at 819, col. 2.

evaded through multiple subsidiaries. VSCI suggested NHTSA should clarify that low-volume manufacturers can produce or import up to 325 replica motor vehicles per year, regardless of how many replica vehicles the manufacturer produces outside of the U.S., as long as the total number of vehicles produced worldwide is less than 5,000. Some commenters believed the regulatory text should be clarified as it applies to foreign manufacturers who could have more than one U.S.-based subsidiary, or to domestic manufacturers who own multiple subsidiaries. Edelbrock suggested that NHTSA clarify that suppliers to low-volume manufacturers are not limited to supporting only 325 replica vehicles per year. SEMA, VSCI, and Caterham commented that U.S.-based subsidiaries of foreign manufacturers should be permitted to import replica motor vehicles, in addition to the foreign manufacturer itself.

NHTSA Response

After considering the comments, NHTSA has included in the final rule regulatory text defining “low-volume manufacturer” and clarifying aspects of the term. The text specifies that the 325-vehicle limit, or “cap,” applies across all subsidiaries owned by a single manufacturer. That is, as long as the total global production of the connected subsidiary manufacturers does not exceed 5,000 vehicles annually, the connected manufacturers that wish to register as replica vehicle manufacturers may all do so, so long as their registrations note the connections and allocate (and identify to NHTSA) the 325-cap between the manufacturers. All connected subsidiary manufacturers must together produce no more than 325 replica vehicles for import into the United States. A foreign low-volume manufacturer seeking to have its replica motor vehicles imported into the United States is only permitted to have up to 325 replica motor vehicles imported in total. U.S.-based subsidiaries of foreign low-volume manufacturers are treated the same as replica vehicle manufacturers sharing common ownership. NHTSA

emphasizes that the statute prohibits an entity from being a registered importer under 49 U.S.C. 30141 and registering as a replica motor vehicle manufacturer.

For purposes of this final rule, NHTSA will use the terms “replica motor vehicle manufacturer,” “replica manufacturer,” “applicant” and “registrant” interchangeably to mean a low-volume manufacturer that is or seeks to be registered under part 586.

b. Replica motor vehicle

Section 30114(b)(7)(B) defines “replica motor vehicle” as

[A] motor vehicle produced by a low-volume manufacturer that

(i) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and

(ii) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

NHTSA’s proposed definition for “replica motor vehicle” largely tracked the statutory definition, but included a few minor modifications to emphasize that replica motor vehicles must be manufactured by a replica manufacturer and that production is limited to 325 replica motor vehicles in that calendar year.¹⁴ NHTSA also proposed requirements to ensure that a replica vehicle meets the requirement that it be intended to resemble the original motor vehicle.¹⁵ In addition, NHTSA addressed the provision relating to IP rights associated with the original motor vehicle.

1. Meaning of the term “resemble”

¹⁴ 85 FR at 819, col. 2.

¹⁵ *Id.*

The FAST Act provides that a replica vehicle is one “intended to resemble the body” of another motor vehicle that was manufactured at least 25 years before the replica. NHTSA proposed requirements to give objective meaning to “intended to resemble.” NHTSA explained in the NPRM¹⁶ that the Agency would interpret the term “resemble” as requiring the same height, width, and length of the original motor vehicle. NHTSA incorporated this interpretation of the term “resemble” into the proposed registration requirements to require manufacturers to submit documentation to support that the replica vehicle is “intended to resemble” the original vehicle by demonstrating that the replica vehicle has the same length, width, and height as the original, including images of the original vehicle and design plans for the replica vehicle. The NPRM did not specify that the replica vehicle must incorporate the original motor vehicle’s logos and emblems to “resemble” the underlying vehicle.

Comments Received

Thirteen commenters argued that NHTSA’s view that a replica motor vehicle must have the same length, width and height as the original vehicle was overly restrictive and burdensome. In addition to making arguments about the plain language meaning of the word “resemble,” some were concerned that requiring a replica motor vehicle to have the same dimensions as the original motor vehicle would make it more difficult for replica vehicle manufacturers to incorporate new safety features, use off-the-shelf components and/or components that comply with equipment FMVSS, or make replica motor vehicles more fuel efficient. Some potential replica motor vehicle manufacturers claimed that they had made significant business investments premised on the assumption that NHTSA would permit some leeway in the dimensions of replica motor vehicles. Most commenters suggested that part 586 should be consistent with the

¹⁶ *Id.* at 796, col. 2.

California Air Resources Board (CARB) definition for a “specialty produced motor vehicle” (SPMV). The SPMV definition used by CARB states that a SPMV resembles another motor vehicle “on an overall 1:1 scale (± 10 percent) of original body lines, excluding roof configuration, ride height, trim attached to the body, fenders, running boards, grille, hood or hood lines, windows, and axle location.” The commenters argued that adopting a 10 percent leeway would address the various safety and economic concerns they raised.

NHTSA Response

After considering the comments, NHTSA agrees that the proposed interpretation of “resemble” (requiring a replica motor vehicle maintain the exact dimensions of the original motor vehicle) was too restrictive. While objectivity is crucial, NHTSA agrees that the statute’s use of the word “resemble,” as opposed to a more stringent term (e.g., “identical”), indicates Congress’s intent to allow some leeway in the appearance of a replica motor vehicle. Providing replica motor vehicles with a 10 percent margin recognizes the practical difficulties of manufacturing vehicles on a low-volume basis to specified physical dimensions in light of technological developments and equipment requirements.

While NHTSA is allowing for some variation in the dimensions of replica vehicles as compared to the original vehicle, the Agency is not strictly adopting a ± 10 percent cutoff as the accepted tolerance. This is because there may be instances where variation greater than 10 percent may be warranted (e.g., to allow for modern safety features). NHTSA seeks to avoid a cutoff that necessitates the Agency’s having to deny an application or find a noncompliance automatically when seeing a difference slightly outside of the 10 percent margin. Thus, the final rule allows a 10 percent tolerance in the dimensional differences between the original vehicle and the replica vehicle without need for further justification. The final rule also provides a

means by which replica manufacturers may seek approval for dimensional differences that exceed 10 percent, but such proposed designs will be critically examined by NHTSA.

Differences deemed unwarranted will be grounds for NHTSA's denying the registration on the finding the vehicle does not qualify as a replica vehicle.

Whether a replica motor vehicle sufficiently "resembles" an original motor vehicle is a matter NHTSA will decide on an individualized basis and in its discretion, taking into account the overall appearance of the vehicle. The closer a replica motor vehicle tracks the original dimensions, the more likely it is that NHTSA will determine the vehicle is eligible for, or has been produced in conformance with, an exemption under 49 CFR part 586. To be clear, the FAST Act creates an exemption program designed to allow historic models to be replicated in a less costly way by low-volume manufacturers. NHTSA does not interpret "resemble" in a manner in that would allow vehicles that are merely *inspired* by older vehicles to be built, or otherwise allow for artistic license to create vehicles that merely *remind* the public of past automotive heritage.

2. Meaning of the term "body"

NHTSA also discussed in the NPRM¹⁷ its tentative determination that the term "body" meant any part of the vehicle that is not part of the chassis or frame, which would include, but would not be limited to, a vehicle's exterior sheet metal and trim, the passenger compartment, trunk, bumpers, fenders, grill, hood, interior trim, lights and glazing. NHTSA based this interpretation on the Agency's definition of "body type" in 49 CFR 565.12, which is defined as the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (e.g., sedan fastback,

¹⁷ *Id.* at 796, col. 3.

hatchback). Because this definition references both exterior and interior features, NHTSA interpreted “body” as including both exterior and interior features as well, such that merely replicating the exterior features of the vehicle may not be sufficient.

Comments Received

Five commenters (SEMA, VSCI, and three potential replica motor vehicle manufacturers) believed NHTSA incorrectly interpreted the term “body” in the NPRM. According to these commenters, “body” is a term of art in the automotive industry, which refers only to a vehicle’s exterior design and appearance, and does not include interior features. They believe NHTSA should align its interpretation of “body” with the definition used by industry.

NHTSA Response

NHTSA agrees with the commenters that the Agency’s tentative interpretation of “body” in the NPRM was too broad. Given that the intent of the replica vehicle statute is to permit the sale of vehicles with an outward appearance that looks like a motor vehicle sold at least 25 years ago, the only aspects of the vehicle that would be covered by the term “body” should be those that affect the outside appearance of the replica motor vehicle. This would not cover the interior portions of the replica motor vehicle, such as the passenger compartment, except to the extent that their design affects the outside appearance of the vehicle. NHTSA makes this decision also to facilitate replica vehicle manufacturers’ efforts to incorporate new safety features into the body of their vehicles, and to use off-the-shelf components and/or components that comply with the equipment FMVSS.

3. Prototypes

The NPRM proposed the replica vehicle must resemble the body of another motor vehicle that was manufactured “for consumer sale” not less than 25 years before the manufacture

of the replica motor vehicle. NHTSA asserted its belief¹⁸ that the provision “for consumer sale” indicates that the replica vehicle exemption program was not to apply to prototype, concept or show vehicles that were never sold to consumers. The Safety Act defines a motor vehicle as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways.¹⁹ NHTSA stated that, since prototypes or concepts are not intended for sale to the public, they are not motor vehicles for these purposes. Accordingly, since the FAST Act provision requires that the replica vehicle resemble another motor vehicle manufactured for consumer sale, a vehicle replicating a prototype would not qualify for the exemption.

Comments Received and NHTSA Response

All commenters responding to this issue agreed with NHTSA’s proposal. This final rule adopts the provision for the reasons discussed in the NPRM.

4. Requirement to manufacture under license agreement for intellectual property rights

The FAST Act definition of a replica motor vehicle provides that such vehicles are “manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.” The NPRM proposed that this provision required replica vehicles to be licensed products,²⁰ meaning that the replica manufacturer must obtain all legal rights necessary to produce the replica vehicle from the original manufacturer, its successes or assignees, or current owner of such intellectual property rights. NHTSA proposed that, when submitting its

¹⁸ Id. at 797

¹⁹ 49 U.S.C. 30102(a)(7).

²⁰ 85 FR at 797.

registration, manufacturers must provide a binding certification that attests that they can legally produce each replica vehicle model they propose to make. This proposed requirement meant that manufacturers would have to certify that they have determined the legal rights required and that they have obtained all licenses or permissions necessary to produce the replica vehicle.²¹ Applications that contain a missing or incomplete certification would be disapproved. NHTSA also proposed that manufacturers must provide supporting documentation that sets forth a description of the types of IP necessary to produce the replica vehicle, describing the status of each of those rights. If the manufacturer had a license for particular rights, the Agency proposed it should provide documentation to that effect. NHTSA sought comment on whether the replica vehicle manufacturer should be required to obtain a license to use the original vehicle's make and model names.

Comments Received

Many of the commenters addressed NHTSA's proposed requirements regarding intellectual property (IP) rights. VSCI, SEMA, Edelbrock, NADA, and potential replica vehicle manufacturers believed that NHTSA should require a certified statement that the replica vehicle owner either is the owner of all relevant IP rights, or has obtained the IP rights from the owner(s). These commenters disagreed with NHTSA's requiring the submission of documentation, stating that NHTSA was not the proper entity to address the issue of IP rights. Some commenters noted that NHTSA can revoke a license if such a statement was determined to be invalid. In contrast, two commenters, Tom Scarpello and the Alliance, supported a

²¹ NHTSA stated it viewed its role as ensuring that the manufacturers who register under part 586 meet the statutory requirements set forth in the FAST Act. "Although NHTSA will review registration applications, NHTSA will not determine what intellectual property is required to produce a replica vehicle. Manufacturers remain responsible for performing the due diligence necessary to determine what rights are needed, and to obtain relevant rights. In areas of dispute, where the rights of a replica manufacturer are questioned, NHTSA plans to allow general legal procedures to take place without involvement." 85 FR at 798, col. 1.

requirement that the potential replica vehicle manufacturer demonstrate that it has the IP rights. The Alliance argued that NHTSA should attend to the rights of IP holders, and stated that the documentation accompanying an application should be in the public domain to help an IP holder who needed to assert its rights. The Alliance asked NHTSA to place the documentation in the public domain as soon as possible.

NHTSA Response

After considering the comments, NHTSA has decided not to require the submission of documentation showing ownership of IP or a license to use that IP. NHTSA's domain of expertise is automotive safety, not intellectual property; NHTSA does not have the expertise to access the validity or sufficiency of documentation submitted to show IP rights. Disputes over IP rights and ownership are best resolved through adjudicatory processes set up by the U.S. Patent and Trademark Office and the Federal courts. Given NHTSA's limited role in such processes, a requirement to submit the documentation to NHTSA is a paperwork burden that the Agency cannot justify.

Accordingly, this final rule requires a low-volume manufacturer registering as a replica manufacturer to certify that the vehicle will be manufactured under a license for the product configuration, trade dress, trademark, or patent. This requirement is necessary pursuant to 49 U.S.C. 30114(b)(7)(B)(ii). It helps ensure that the vehicle is a "replica motor vehicle" as defined by § 30114(b)(7)(B), and thus qualifies for the FAST Act special exemption for replica vehicles. However, NHTSA is also requiring the registrant to certify it has obtained all IP necessary to produce the replica vehicle, not only the IP rights pertaining to the exterior of the vehicle, but also any IP implicated by designs elsewhere in the vehicle, such as the interior. Congress

provided a special exemption for replica vehicles but clearly did so intending that all IP is to be respected in producing the vehicles.

The commenters did not support NHTSA's requiring a replica motor vehicle to include the make/model or badging on the vehicle. Commenters stated that this could create confusion between the replica vehicle and the original vehicle. Commenters also argued that NHTSA should not require the make/model of the replicated vehicle to be disclosed on the certification label and/or application, but merely the model year, asserting that such a disclosure could create a copyright violation. NHTSA has decided that it will not require any make/model or badging for the vehicle being replicated on the exterior of the vehicle. However, NHTSA will require replica vehicle manufacturers to include the make/model and model year of the vehicle they intend to replicate as part of their registration applications. Similarly, NHTSA will make available on NHTSA's website the information of make, model, and model year of the original vehicle the vehicle replicates. This information facilitates NHTSA's oversight of the program by helping the Agency determine whether the registrant is manufacturing vehicles consistent with the information in its registration, and verify whether they are correctly labeling the vehicles with the information required by section 30114(b)(3)(A).

Making this information public also increases the transparency of the program, better informing the public as to which vehicles are replicated, and IP rights asserted by registrants. Publishing this information on the Agency's website reasonably facilitates the public's role in overseeing the IP aspect of the program. IP rights are most effectively protected through a transparent registration process in which IP owners can protect their own rights. For those processes to work, owners and holders of IP rights must know when a replica motor vehicle manufacturer claims to hold the IP rights to the original vehicle. NHTSA will make public on its

website certain other aspects of the vehicle that implicate IP rights, such as whether the replica vehicle is of a limited edition or customized model. Members of the public will be able to review this information and inform NHTSA of apparent improprieties or concerns that may disqualify a registration in the program.

IV. Safety Requirements

a. Equipment FMVSS

NHTSA explained in the NPRM that the FAST Act exempts replica motor vehicles from complying with the “vehicle” Federal motor vehicle safety standards in effect on the date of manufacture of the replica. The vehicle standards are those that apply to new vehicles of the replica’s type (e.g., passenger car, multipurpose passenger vehicle, see 49 CFR 571.3). The FAST Act is clear that replica vehicles are not exempt from the FMVSS that apply to “equipment” on or in the vehicle.²²

Comments Received

A few commenters argued that there were some situations in which NHTSA should exempt replica vehicles from equipment standards. SEMA and Callaway argued that replica vehicle manufacturers should be permitted to use seat belts that do not fully comply with FMVSS No. 209 (which is an equipment standard) if the replica motor vehicle’s design is inconsistent with the standard (e.g., if the use of retractors is not possible due to the vehicle’s design). SEMA, Edelbrock, and Callaway argued that, because compliance with the *new* vehicle equipment requirements in FMVSS No. 108 may not be technically or financially possible for replica motor vehicle manufacturers, NHTSA should permit compliance with *replacement* equipment requirement. Similarly, SEMA and Edelbrock argued that replica motor vehicle

²² 49 U.S.C. 30114(b)(1)(B).

manufacturers should be permitted to use glazing that meets the “aftermarket requirement” in FMVSS No. 205, which allows the use of glazing that complies with 49 CFR 571.205a.

NHTSA Response

The FAST Act does not provide NHTSA with discretion to exempt replica vehicles from equipment standards. Accordingly, replica vehicle manufacturers must ensure that their vehicles comply with equipment standards such as FMVSS No. 209. However, we note that this final rule permits manufacturers a 10 percent leeway to vary from the dimensions of the original vehicle designs. As commenters suggested in the discussion as to dimensional flexibility, this flexibility should enable the installation of modern safety features, such as FMVSS No. 209-compliant retractors. That fact is one of the Agency’s primary reasons for permitting such flexibility. Accordingly, this leeway should satisfactorily accommodate the installation of compliant equipment.

NHTSA concurs that the lighting and glazing standards (FMVSS Nos. 108 and 205, respectively) have provisions that apply to vehicles (constituting a “vehicle standard”) and provisions that apply to replacement equipment (which constitute an equipment standard).²³ We concur with the commenters’ suggestion that this final rule should permit replica vehicles to meet the requirements for replacement equipment in the lighting and glazing standards. A reasonable reading of the FAST Act provision leads to this outcome, since FMVSS Nos. 108 and 205a include equipment-specific provisions, and because the only source of relevant equipment may be in the aftermarket replacement equipment market. NHTSA therefore agrees that, while lighting equipment and glazing must be FMVSS-compliant, replica motor vehicle manufacturers

²³ NHTSA explained in the NPRM that some FMVSSs are both vehicle and equipment standards. 85 FR at 793, col. 1.

must meet the replacement equipment requirements of those standards, and not the vehicle-specific requirements.

b. Safety-related defects

NHTSA explained in the NPRM that obtaining an exemption from the FMVSS applicable to vehicles would have no effect on a replica vehicle manufacturer's obligation under the Safety Act to recall and remedy its vehicles found by the manufacturer or NHTSA to contain a defect that creates an unreasonable risk to safety. Further, manufacturers of replica vehicles must comply with the requirements of 49 U.S.C. 30116 through 30120A relating to defect reporting and notification. In addition, the FAST Act specifies that a low-volume manufacturer's registration in the program may be revoked if the manufacturer fails to comply with requirements, if its vehicles are found to contain a safety-related defect, or if the manufacturer engages in unlawful conduct that poses a significant safety risk. NHTSA did not receive any significant comments on this issue. This final rule confirms these provisions in the NPRM.

V. Registration Requirements

Under 49 U.S.C. 30114(b)(2), low-volume manufacturers must be registered “[t]o qualify for an exemption.” The NPRM proposed requirements to implement the registration requirements, discussed below.

a. When and how to register

NHTSA proposed that each manufacturer wishing to manufacture replica motor vehicles under this program must register as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured. NHTSA would determine whether a manufacturer is eligible to manufacture replica motor vehicles based on the information the

manufacturer provides in its registration documents. The Agency proposed that manufacturers would register using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (<https://vpic.nhtsa.dot.gov/>). Comments were requested on whether to allow submissions by mail as well.

Comments Received and NHTSA Response

VSCI agreed that prospective replica manufacturers should only register through vPIC. NHTSA received no comments relating to whether written submissions should also be permitted. This final rule requires the vPIC platform to be used to register for and submit information to the replica exemption program. This computerized platform facilitates NHTSA's oversight and administration of the program, better allowing the Agency to keep track of registrations and assess submissions. The vPIC platform also increases the transparency of registrations, enabling members of the public to examine registrations and learn about replica vehicle manufacturers and the vehicles they produce.

b. Required information

NHTSA proposed that persons seeking to register must submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, does not exceed 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

The NPRM proposed that each registrant must provide information about the replica vehicle(s) it intends to manufacture, including a statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year. The NPRM proposed that registrants must submit images of the front, rear, and side views of the original vehicle's exterior.

The manufacturer would also need to provide documents showing that it obtained the intellectual property rights necessary to produce the replica vehicle, documents to support that it has done so, and a statement certifying to that effect. The NPRM stated that proof of such rights could be shown by furnishing a license for the product configuration, trade dress, trademark, or patent, for the intended replica motor vehicle from the original manufacturer, its successors or assignees, or the current owner of such product configuration, trade dress, trademark, or patent. This documentation could also include a statement as to why obtaining licenses for certain intellectual property is not required.

NHTSA proposed that the replica vehicle manufacturer would need to certify that it would not manufacture more than 325 replica motor vehicles in a calendar year. NHTSA interpreted the 325-vehicle limit in the FAST Act to mean that a manufacturer would be limited to 325 replica vehicles, regardless of whether it is manufacturing replicas of different makes and models of vehicles.

Comments Received and NHTSA Response

No significant comments were received on this issue. This final rule adopts the provisions as discussed in the NPRM.

c. Other submissions

The NPRM proposed that a manufacturer must submit information required by other administrative regulations, including all information required by 49 CFR part 566, to identify itself to NHTSA as a replica motor vehicle manufacturer, plus VIN-deciphering information required by 49 CFR part 565, and a designation of a permanent resident of the United States as its agent for service of process if the manufacturer is not located in the United States (49 CFR part 551, subpart D).

Comments Received and NHTSA Response

No significant comments were received on this issue. This final rule adopts the provisions as proposed.

d. Time periods

49 U.S.C. 30114(b)(5) specifies that NHTSA has 90 days to review and approve or deny a registration, plus an additional 30 days if the registration is determined to be incomplete. NHTSA anticipated setting up the program so that registration under part 586 on the vPIC portal provides an acknowledgment of receipt of the registration to the manufacturer when the registration is submitted. The NPRM proposed that, since some of the information would be provided by the manufacturer in attachments, NHTSA would review the submission, including attachments, within 90 days of acknowledging receipt to ensure that the registration is complete.

NHTSA proposed procedures to provide for registrants submitting an incomplete application. Rather than denying the incomplete application immediately and outright, the proposed procedures would permit NHTSA to inform the manufacturer that the registration is incomplete via email. NHTSA proposed to give registrants 60 days from the date of NHTSA's email to submit the necessary information to complete the registration. If the necessary information were not submitted within 60 days, the registration would be denied.²⁴

Under the proposal, once a manufacturer submitted missing information within 60 days of being informed of the incomplete status, NHTSA would have 30 additional days to review the amended registration. That is, these 30 days would will be added to any remaining days from the

²⁴ The manufacturer may resubmit the registration (presumably, the resubmitted registration will include the information that was missing from the prior application) but doing so would restart the 90-day clock. The NPRM proposed to deny repetitious incomplete or inadequate registrations. For example, if a manufacturer resubmitted a previously-denied registration in identical form, NHTSA could deny the application without requesting additional information.

initial 90-day review period. If the submission was still incomplete, NHTSA would deny the registration. If a registrant submitted information on its own initiative (without being notified by NHTSA that its registration is incomplete), NHTSA would have the same 30 additional days added to any remaining days from the initial 90-day period to review the amended registration. These additional days to review would provide NHTSA the ability to manage its resources to accommodate and account for incomplete registrations.

Comments Received and NHTSA Response

The only comment on this issue was from SEMA, which concurred with the proposal to allow 60 days to reply to a request for additional information. Aside from clarifying changes made to the regulatory text, this final rule adopts the provisions relating to the timing of incomplete registrations as discussed in the NPRM.

e. Deemed approved

49 U.S.C. 30114(b)(5) states that any registration not approved or denied within 90 days after initial submission, or 120 days if the registration submitted is incomplete, shall be deemed approved. The NPRM proposed that a manufacturer would not be considered registered with NHTSA unless the manufacturer received confirmation from NHTSA that it is registered. A manufacturer whose registration was not approved or denied within the allotted time, believing its registration deemed approved, would still have been required to receive confirmation of the approval from NHTSA. NHTSA would add the manufacturer to the up-to-date list of registrants once approval was confirmed.

NHTSA explained that this proposal for confirmation of approvals was to safeguard the integrity of the exemption program against confusion and fraud. The Agency sought to avoid situations in which a manufacturer might assume its registration was deemed approved when, in

fact, it was never received. The proposal explained the confirmation process would better-establish a means of communication between the Agency and the manufacturer, and better ensure the list of replica manufacturers on NHTSA's website is complete and accurate. A complete and accurate list is important for the public to determine whether a manufacturer qualifies for an exemption, and which vehicles are covered by the exemption. The list also provides NHTSA with a strong enforcement mechanism to monitor which manufacturers are lawfully presenting themselves as registrants, and which vehicles are appropriately offered for sale.

If a registration were deemed approved but had not met part 586 requirements originally, the NPRM proposed a means by which NHTSA could request additional information from the "deemed approved" manufacturer to rectify the registration. NHTSA proposed that, when notified of the submission's shortcomings, the manufacturer would have 60 days to submit information to correct and/or complete the registration.

Comments Received

Calloway, Caterham, DeLorean Motor Company (DeLorean), Edelbrock, VSCI and SEMA all disagreed with NHTSA's proposal to require manufacturers to confirm that their application has been "deemed approved." Commenters stated that this requirement was contrary to the FAST Act, with Calloway adding that this requirement would essentially allow NHTSA unlimited time to process applications. Edelbrock, VSCI and SEMA also noted that NHTSA retains the authority to revoke a "deemed approved" application that it later determined was improper.

NHTSA Response

NHTSA agrees that the “deemed approved” procedure can be made less burdensome on registrants, but believes that many commenter concerns arose from a misunderstanding of the proposal and can be addressed with the following explanation of the registration process and clarifying changes to the regulatory text. NHTSA has developed the vPIC platform to accommodate the replica vehicles exemption program. The platform is designed so that, when NHTSA receives an application through its vPIC portal, the vPIC system will acknowledge the application, provide the registrant with a key number to track its application, and automatically start a 90-day timer. At the end of 90 days, if NHTSA has taken no action on the application, vPIC will automatically add the applicant to the list of approved replica motor vehicle manufacturers (albeit, with a note that their application was “deemed approved” rather than affirmatively approved by the Agency). An application that has *not* been affirmatively approved and does *not* show up on the list of approved replica manufacturers, would occur only because (1) NHTSA determined the application was incomplete, or (2) NHTSA denied the application. In either of these scenarios, the vPIC system would notify the applicant of NHTSA’s determination automatically, but, for some reason, such notice was not received.

NHTSA intended its proposed regulatory text to address situations where the applicant did not hear from NHTSA but was not listed as an approved replica manufacturer. Because the vPIC system would automatically add a “deemed approved” registrant to the list of approved registrants after 90 days, the Agency wanted to make clear that, if this a deemed approved email was not received, that fact was an indication that application has been determined to be incomplete or has been denied, but a technical issue (e.g., the email was blocked by the applicant’s “spam filter”) prevented receipt of the notification. Because a determination that an application was incomplete or denied would automatically generate an email communication

from NHTSA to the applicant, the Agency wanted to emphasize that potential applicants should enquire with NHTSA as to why their application has not been “deemed approved,” and their name listed, after 90 days. NHTSA designed vPIC and the registration system to provide for open email communications between applicants and the Agency. An applicant believing a communication not to have been received could overlook the notice or had an email address configured such that the email was not delivered. NHTSA sought to prevent a situation where an applicant assumes it is approved and commences operations after 90 days, when the application was incomplete, denied, or never received. Such an applicant would be at risk of potentially violating 49 U.S.C. 30112(a) for manufacturing for sale or selling nonconforming vehicles. Accordingly, NHTSA drafted this final rule with text encouraging applicants to check the list of approved registrants after 90 days, and to inquire with the Agency if their name is missing. Applicants can easily check the status of their application themselves on the vPIC website using the key number that NHTSA sends in the confirmation email generated at the time the application is submitted. They can also contact the NHTSA Manufacturer Helpdesk at manufacturerinfo@dot.gov or 1-888-399-3277.

NHTSA also reiterates that, while the Agency, by statute, will deem approved registrants if the Agency does not respond to the application within the statutory timeframe, the Agency can review the “deemed approved” application later in the process to determine whether it meets the requirements of the FAST Act and part 586. It is NHTSA’s understanding that the purpose of the provision is to ensure that replica motor vehicle manufacturers are not burdened by procedural delays beyond their control. To ensure the provision does not become a means by which nonconforming replica vehicles not meeting requirements can be produced and sold, the Agency makes clear that it can determine later, based on the contents of the application, that the

application should be denied, and at such time may take steps to remove the manufacturer from the list of registrants. SEMA supported this position and noted that NHTSA has authority to revoke a “deemed approved” registration later found not to meet the requirements of part 586.

Given commenter confusion over NHTSA’s procedures for “deemed approved” registrants, NHTSA is finalizing clarified regulatory text describing the procedures for processing and approving or denying registrations.

VI. Other Administrative Requirements

a. Manufacturer identification requirements (49 CFR part 566)

NHTSA proposed amending part 566 to list replica motor vehicles among the types of vehicles manufactured. Manufacturers who have already submitted information under part 566 would be required to update their information before manufacturing replica vehicles. NHTSA intended the addition of replica motor vehicles to the types of vehicles list in part 566 would merely identify the manufacturer as a replica vehicle manufacturer and would have no effect on vehicle type for application of the FMVSS. The manufacturer of a replica vehicle would determine from which standards the replica vehicle is exempt by examining the standards for a vehicle of that type as defined in 49 CFR 571.3. The vehicle’s vehicle identification number (VIN) and certification labels would reflect that the vehicle is a replica of a specific vehicle type defined in 571.3 (e.g., replica passenger car).

NHTSA proposed to update §566.5 to indicate that the information required of all manufacturers could either be submitted via the vPIC portal or mail. However, the NPRM proposed that replica motor vehicle manufacturers would be required under part 586 to submit information via vPIC because of administrative requisites, such as the time limits under which

NHTSA must decide on the registrations. Most, if not all part 566 manufacturer identification entries are currently submitted on vPIC.

Comments Received and NHTSA Response

No significant comments were received on this aspect of the program. Thus, NHTSA is requiring the use of the vPIC website to reduce the administrative costs and complications that are associated with processing hard-copy applications, especially given that a large portion of the information submitted to register as a replica motor vehicle manufacturer would need to be uploaded to vPIC so that it can be made available to the public. Moreover, the use of an electronic system ensures that “deemed approved” applicants will be reliably added to the list of approved registrants. Because most, if not all, part 566 manufacturer identification entries are currently submitted on vPIC, NHTSA believes requiring replica manufacturers to use vPIC will not be burdensome.

b. Manufacturer identifier and VIN requirements

Manufacturers intending to manufacture motor vehicles for sale or introduction into interstate commerce in the United States must obtain a manufacturer identifier from SAE International. The manufacturer identifier is incorporated into the vehicle’s VIN (see section below). NHTSA has a contract with SAE International to assign manufacturer identifiers to manufacturers in the United States. Manufacturers contact SAE International directly (and not NHTSA) to request the assignment of a manufacturer identifier. They would do so by telephoning 724-772-8511 or by writing to: SAE International, 400 Commonwealth Avenue, Warrendale, PA 15096, Attention: WMI Coordinator. The NPRM proposed that replica motor vehicle manufacturers also must obtain unique manufacturer identifiers

NHTSA's regulations at 49 CFR part 565 require, among other things, a motor vehicle manufacturer to assign each motor vehicle manufactured for sale in the United States a 17-character VIN that uniquely identifies the vehicle. Under regulations administered by NHTSA, a vehicle identification number is "a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes."²⁵

VINs deter vehicle theft and serve a variety of public safety purposes. VINs serve "to increase the accuracy and efficiency of vehicle recall campaigns"²⁶ and are the key identifier in data systems that track such things as compliance with Federal importation regulations, vehicle registrations, insurance coverage, and motor vehicle crashes. Entities that today utilize VINs in data systems include NHTSA, State motor vehicle departments, law enforcement agencies, insurance companies, organizations involved in motor vehicle research, and manufacturers.²⁷

NHTSA proposed several changes to the VIN requirements to account for replica vehicles. The changes are discussed in detail in the NPRM (85 FR at 801).

Comments Received

AAMVA stated that it appreciated the attention to detail but asked for clarification that NHTSA is not changing current coding as many other systems would need require changes if this were the case. One individual stated that the make, model and model year of the replicated vehicle should be coded in the VIN. NTEA recommended putting all requirements in part 586 as was done in part 595, "Vehicle Modifications to Accommodate People with Disabilities," rather than amending parts 567 and 568.

NHTSA Response

²⁵ 49 CFR 565.12(r).

²⁶ 49 CFR 565.10.

²⁷ 73 FR 23367-01, September 30, 2008.

This final rule does not change how VINs are coded for non-replica motor vehicles. The primary change it makes is to add requirements unique to replica motor vehicles--most notably the requirement that, in addition to the information required for the replica motor vehicle's type classification, the manufacturer must code the make, model, and year of the original motor vehicle being replicated into the "vehicle attributes" section of the VIN (positions four through eight). NHTSA does not anticipate that States must change their VIN coding system because of the replica vehicle VIN requirements.

c. Importation of replica motor vehicles

NHTSA proposed that imported replica vehicles would be subject to requirements in 49 CFR part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards*. Section 591.5, *Declarations required for importation*, requires importers to file declarations and documentations with the U.S. Customs and Border Protection at the time vehicles or items of motor vehicle equipment are imported. Consistent with NHTSA's treatment of vehicles that are subject to exemptions under 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, NHTSA expected that replica vehicles could be imported pursuant to 49 CFR 591.5(b). This is to say, importers would mark box "2A" on NHTSA's HS-7 declaration form, *Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper Standards* when importing a replica motor vehicle. NHTSA requested comment on whether the Agency should amend 49 CFR 591.5 to provide clarity and include specific language that states that replica vehicles may be imported pursuant to a declaration under 49 CFR 591.5(b).

Comments Received

SEMA and others supported NHTSA's proposal to allow replica vehicle manufacturers to check box 2A on the importer form (Form HS-7). Conversely, AAMVA requested a separate listing on the importer form for clarity.

NHTSA Response

As explained in the NPRM, NHTSA believes that replica motor vehicles should be treated similarly to vehicles exempted under NHTSA's general exemption authority (49 U.S.C. 30113), since they are not being imported for a specified purpose other than resale. NHTSA therefore does not believe it is necessary to amend the HS-7 declaration form at this time. Importers of replica motor vehicles should mark box 2A on the form.

We note that this final rule includes a minor change to the regulatory text to 49 CFR part 591.5(b) so that the regulation specifically includes replica motor vehicles as a category of imported vehicles. Although NHTSA proposed making this change in the preamble to the NPRM and specifically took comment on it, due to a clerical error, the changes to part 591.5(b) was inadvertently omitted from the proposed regulatory text.

VII. Labels and Other Consumer Disclosures

49 U.S.C. 30114(b)(3)(A) directs NHTSA to require low-volume manufacturers to affix a permanent label to motor vehicles produced pursuant to a replica vehicle exemption. The label "identifies the specified standards and regulations for which the vehicle is exempt from section 30112(a), states that the vehicle is a replica, and designates the model year such vehicle replicates." *Id.* Section 30114(b)(3)(B) states that NHTSA may require a low-volume manufacturer of a replica vehicle to deliver written notice of the exemption to the dealer and the first consumer purchaser of the vehicle.

a. Permanent label

NHTSA proposed that the requirement for permanent labeling be incorporated into the requirements for certification labels under 49 CFR part 567 because part 567 includes permanent labeling requirements pertaining to FMVSS certification. NHTSA proposed an added statement for replica vehicles. For replicas, NHTSA proposed the label state that the vehicle is a replica, designate the model year the vehicle replicates, state that the vehicle is exempt from FMVSS that apply to a vehicle of its type, and include a list of all vehicle FMVSS and regulations the vehicle does not meet.

Comments Received

Several commenters expressed concerns about the requirement to list all the FMVSS from which the replica motor vehicle was exempt on the permanent label, stating that such a requirement would be unwieldy and unfeasible. As an alternative, ElectroMeccanic and an individual suggested a simpler label that directed the reader elsewhere for more information, such as to the owner's manual, the manufacturer's website, or a location like the underside of the vehicle hood. Morgan Motor Company (Morgan), VSCI and SEMA suggested an option of an alternative statement indicating that the vehicle is exempt from all FMVSS except those specifically identified by the manufacturer.

NHTSA Response

49 U.S.C. 30114(b)(3)(A) specifically states that a replica motor vehicle must be permanently affixed with a label "that identifies the specified standards and regulations for which such vehicle is exempt from section 30112(a)." Since NHTSA is not provided with discretion to avoid this disclosure, the Agency is adopting the permanent labeling requirement as proposed, with minor revisions. Identifying the standards and regulations from which the vehicle is exempt is consistent with the statute, whereas allowing replica manufacturers to list

only the standards with which a replica motor vehicle complies is not. The former makes clear to the prospective purchaser the universe of FMVSSs with which the replica vehicle does not comply, as required by the FAST Act. NHTSA does not believe that allowing the label to direct customers to the manufacturer's website is consistent with the statutory language, since (a) such information would not be permanently affixed on a label; and (b) a website might not be maintained, or may have service interruptions. Referring readers to an owner's manual also does not meet the FAST Act requirement that the information be disclosed on a permanent label. A label on the underside of the hood is unacceptable because such a disclosure is not placed prominently.

That said, NHTSA agrees that this final rule should permit the label to be separate from the certification label. While the information described in 49 U.S.C. 30114(b)(3)(A) must be permanently affixed on a single label ("a label"), it need not be combined with the certification label. Accordingly, NHTSA has revised the labelling requirement in this final rule to allow replica motor vehicles to permanently affix the information in 49 U.S.C. 30114(b)(3)(A) to either the certification label, or a separate label located adjacent to or near the certification label.

b. Written notice to dealers and first purchasers; temporary label

The FAST Act permits NHTSA to require registrants to provide "written notice of the exemption" to dealers and first purchasers of replica vehicles.²⁸ NHTSA proposed to require a written disclosure to dealers and first purchasers of the vehicles consisting of a list of the FMVSS and regulations from which the vehicle is exempt. The written notice was to be in the owner's manual or on a separate document. The written disclosure was to include a "purpose statement" for each standard and regulation from which the vehicle is exempt. Such statements

²⁸ 49 U.S.C. 30114(b)(3)(B).

were intended to assist consumers in understanding the safety implications of the exemptions. The Agency proposed the purpose statements and envisioned including such statements in a Table 1 to part 586. In addition, NHTSA proposed replica vehicles must have a temporary label attached to a location on the dashboard or the steering wheel hub warning prospective purchasers that the replica vehicle is exempt from the vehicle FMVSSs, theft prevention and bumper standards.

Comments Received

NADA explicitly supported the idea of providing information to purchasers, but believed that manufacturers should have the option of providing the information in Table 1 or the temporary label, provided it also pointed to a reference website where consumers could find more information on the exemption. SEMA and Edelbrock disagreed with requiring manufacturers to provide consumers with the information in Table 1. SEMA compared potential purchasers to kit car owners – car enthusiasts who know what they are purchasing. SEMA also claimed that new car purchasers are not provided with a list explaining what the FMVSS do, but instead rely on the Agency’s New Car Assessment Program to understand the value of the FMVSS.

NHTSA sought comment on whether information warning prospective purchasers about the replica vehicles’ nonconformance with applicable standards should be provided advertisements and other marketing materials for the vehicles. Morgan stated this would be unnecessary in its view, since such warnings would be seen at the point of sale when the vehicle was viewed.

NHTSA Response

NHTSA concurs with the commenters' arguments about the redundancy of the proposed requirements and has decided against adopting some aspects of the proposed disclosures.

NHTSA believes that a temporary label in the passenger compartment would be sufficient to meet the purpose of the proposed requirements for written disclosure to the dealer and the first purchaser²⁹ and that providing both the temporary label and a written disclosure is unnecessary.

NHTSA concludes that a temporary label is a more effective way of communicating that the vehicle is exempt from the FMVSS because it would be in a prominent visible location and the consumer would need to affirmatively handle and remove the label. NHTSA agrees not to require that purpose statements be disclosed to consumers. Listing the specific standards and regulations from which the replica vehicle is exempt should be sufficient to convey to the consumer the extent to which the standards do not apply to the FMVSSs, and NHTSA does not have reason to believe that a disclosure of the purpose behind each standard would affect the purchasing decisions of prospective replica vehicle purchasers.

VIII. Reporting

Under 49 U.S.C. 30114(b)(3)(C), NHTSA must require replica manufacturers to submit an annual report providing the number and description of motor vehicles exempted as replica motor vehicles, including a list of the exemptions included on the mandatory label described above. NHTSA proposed that annual reports must be submitted within 60 days of the end of the calendar year. Because these vehicles would be produced in limited quantities, NHTSA believed that the information for the report could be entered after each vehicle is manufactured, and that a 60-day deadline for submitting the report at the end of the calendar year is therefore reasonable.

²⁹ 49 U.S.C. 30114(b)(3)(B)(i) and (ii).

NHTSA proposed that annual reports include: the manufacturer's legal name; the manufacturer's address, phone number and e-mail address; the calendar year for which the annual report is submitted (replica model year), and the total number of replica vehicles manufactured during that year; a list of the different versions of replica motor vehicles produced by make, model, and original model year of replicated vehicle; a list of the FMVSS and regulations from which each version of replica vehicle (by make, model, and original model year of replicated vehicle) is exempt; images of the front, rear, and side views of the original vehicle(s) replicated, of both the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle; and a full complete descriptive information, views, and arguments sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle. The reports would also be required to include: a statement of whether the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year, and, if so, an estimate of the number of vehicles would be manufactured. NHTSA proposed the annual report include a list of the complete VINs of all replica vehicles to be included in the annual report. These requirements would assist NHTSA in enforcing the annual limit of 325 replica vehicles per manufacturer. NHTSA believed that, as manufacturers already maintain lists of all VINs manufactured in a given year, the burden should be minimal.³⁰

The NPRM proposed that manufacturers intending to continue to manufacture replica motor vehicle(s) must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of

³⁰ Although manufacturers keep lists for business purposes, it is also required by 49 CFR part 573, Defect and Non-Compliance Responsibility and Reports.

motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration. The reports would also include a statement as to whether the replica vehicle contains any of the following vehicle safety features—air bags, seat belts, advanced safety systems/passive safety systems (listed with locations), electronic stability control, rear visibility camera system, and ejection mitigation.

NHTSA proposed that the annual report must be submitted using vPIC. NHTSA believed that the use of the online portal would be less burdensome than requiring manufacturers to submit their annual reports by mail. Online submission of the annual reports would also assist NHTSA in complying with the FAST Act requirement that NHTSA maintain a list of manufacturers on its website of replica motor vehicles and the make and model of exempted vehicles being produced.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed in the NPRM.

IX. Termination of exemptions

a. Revocation

49 U.S.C. 30114(b)(5) specifies that NHTSA has the authority to revoke a registration based on a failure to comply with requirements or a finding of a safety-related defect or unlawful conduct. NHTSA proposed that NHTSA may require registrants to provide information at any time demonstrating compliance with the requirements of part 586, and that the Agency may revoke an existing registration, or deny a registration, based on a failure to comply with part 586, or on a finding of either a safety-related defect or unlawful conduct under the Safety Act that poses a significant safety risk. The proposed section provided that NHTSA would provide a

registrant a reasonable opportunity to correct deficiencies, if such are correctable, based on the sole discretion of NHTSA.

Comments Received and NHTSA Response

The only views received on this issue supported the Agency's position and noted that NHTSA has authority to revoke a "deemed approved" registration later found not to meet requirements. NHTSA adopts the proposal as discussed in the NPRM.

b. Expiration

49 U.S.C. 30114(b)(5) provides that an exemption granted to a low-volume manufacturer may not be transferred to any other person, and that the 325-vehicle production authorization is limited to the calendar year in which the exception is granted, and unused production capacity (i.e., the difference between the 325-vehicle authorization and actual vehicle production) does not accrue and carry forward into subsequent calendar years, but expires at the end of the calendar year in which it was granted. NHTSA interpreted 49 U.S.C. 30114(b)(5) in the NPRM as referring to unused production capacity under an exemption in a calendar year, and not as requiring that manufacturers must re-register (renew their registrations) annually. NHTSA proposed that registrants may carry forward their registration by informing NHTSA in an annual report (discussed above) of their intent to continue manufacturing the vehicles covered by the approved registration, and need not formally re-register annually at the end of the calendar year concerning those covered vehicles.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed in the NPRM.

X. List of Registrants

49 U.S.C. 30114(b)(5) specifies that NHTSA must maintain an up-to-date list of registrants and a list of the make and model of exempted motor vehicles on at least an annual basis and publish such list in the Federal Register or on a website operated by NHTSA. NHTSA proposed it would post such a list on NHTSA's website where it can be easily accessed and updated.

Comments Received and NHTSA Response

No significant comments were received on this issue. NHTSA adopts the proposal for the reasons discussed in the NPRM.

XI. Overview of Benefits and Costs

NHTSA prepared a regulatory evaluation for the NPRM that requested comment on the framework for the benefit cost analysis and preliminary estimates included in the analysis. No significant comments were received on the evaluation.

For this final rule, NHTSA has developed a Final Regulatory Evaluation (FRE) that discusses the potential costs, benefits and other impacts of this regulatory action. The FRE is available in the docket for this final rule and may be obtained by downloading it or by contacting Docket Management at the address or telephone number provided at the beginning of this document.

The table below provides a summary of the various benefits and costs that may accrue from this rule, as well as the various factors that define the range of possible outcomes.

Table 1: Ranges of Outcomes for Benefit and Cost Categories

Benefits		
Element	Low Case	High Case
Incremental consumer surplus	Not estimated: Incremental consumer surplus would be low if substitutes such as luxury sports cars and kit cars are viable alternatives for consumers.	Not estimated: If replicas manufactured under the rule differ greatly in price and/or transaction cost from luxury sports cars and kit cars - thus behave more like a unique product- incremental consumer surplus could be high.

Incremental fatalities, injuries and property damage	Estimated: Fatalities would be lower if: voluntary compliance with safety standards is high; production of replicas is on the low end; and VMT by replicas is also low. Not Estimated: Fatalities will be lower if replicas primarily function as a substitute for kit cars.	Estimated: Fatalities would be higher if: voluntary compliance is low; production is high; and if VMT is high. Not Estimated: Fatalities would be higher if replicas function as a new market that attracts new consumers - implying substitution from more compliant vehicles - or, if replica vehicle drivers choose to increase their VMT specifically to enjoy the replica vehicle, rather than as a substitute for mileage driven in substitute vehicles
Incremental fuel use	Not Estimated: Reflects low VMT.	Not Estimated: Reflects high VMT.
Innovation	Not Estimated: The proposed rule is primarily used to replicate old technology.	Not Estimated: Manufacturers producing under the proposed rule seek to incorporate some newer technologies into replica vehicles. Could lead to innovation to make technology fit into older designs. (e.g., miniaturization).
Incremental employment impacts	Not Estimated: Job losses from contractors and small businesses that assemble kit cars are around or equal to the job gains for small replica manufacturers	Not Estimated: If kit car production remains relatively stable and replica car production increases significantly (consistent with case where replicas are a new and separate product category), employment effects would be greater.

Costs

Element	Low Case	High Case
Reduced compliance costs	Estimated: Captures the cost of installing required safety technologies on an average modern car.	Not Estimated: Would consider the avoided costs of forcing required safety technologies into older vehicle designs.
Reporting costs	Estimated: Reflects low bound of production.	Estimated: Reflects high bound of production.

NHTSA calculated the impact of the final rule on benefits by analyzing the change in safety impacts related to increased fatalities, injuries and property costs due to eliminating compliance with vehicle FMVSS and bumper standards. The primary impact on benefits of this final rule would be an expected increase in fatalities and injuries for drivers and occupants in both replica vehicles and some portion of their crash partners due to reducing FMVSS requirements. Per-vehicle benefit and cost impacts are presented by vehicle type and discount rate in Table 2:

Table 2: Summary of Benefit and Cost Impacts (per Vehicle, 2017 Dollars)

Impact	Passenger Cars	LTVs
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Benefits – 3% Discount Rate	-\$8,449 to -\$1,068	-\$9,514 to -\$744
Benefits – 7% Discount Rate	-\$6,314 to -\$794	-\$7,039 to -\$548
Costs – 3% Discount Rate	-\$2,215 to -\$827	-\$1,935 to -\$664
Costs – 7% Discount Rate	-\$2,174 to -\$812	-\$1,899 to -\$652
Net Benefits – 3% Discount Rate	-\$6,233 to -\$241	-\$7,579 to \$80
Net Benefits – 7% Discount Rate	-\$4,139 to \$18	-\$5,140 to \$104

There is considerable uncertainty in the degree of regulatory relief replica vehicle manufacturers would incorporate into the vehicle manufacturing process under the final rule. That is, although the final rule would eliminate compliance requirements with all vehicle FMVSS and bumper standards, at least some replica vehicle manufacturers may comply voluntarily with at least some FMVSS and bumper standards. At a minimum, NHTSA assumes that replica vehicle manufacturers to provide three-point seat belts voluntarily. The Agency notes that in the NPRM this assumption was based, at least in part, on NHTSA's view that States could still require vehicle safety features as part of the registration and titling requirements. As discussed further below, NHTSA has reconsidered this view and now believes that State laws related to safety features, regardless of whether the laws are fashioned as requirements for registration or titling, are preempted. However, NHTSA continues to believe that it is reasonable that belts will be installed in at least many replica vehicles because consumers will demand seat belts and that insurance companies would be likely to either require seat belts in replica vehicles or charge prohibitively high premiums for replica vehicles without seat belts. Thus, even in the absence of any State requirement, NHTSA believes it would be unrealistic to expect replica vehicle manufacturers to attempt to sell replica vehicles that would be manufactured without belts. In this analysis, NHTSA investigates the implications of seat belt requirements by presenting benefit and cost impacts under a baseline in which all replica vehicle manufacturers provide three-point seat belts voluntarily (referred to as the *Voluntary Seat Belts* scenario).

However, NHTSA believes it is realistic to expect at least some replica vehicle manufacturers to avoid complying voluntarily with standards that would impair the resemblance of replica vehicles to the corresponding original vehicles. NHTSA represents the implications of appearance constraints by presenting benefit and cost impacts under a baseline in which all replica vehicle manufacturers comply with all relevant standards except for those assumed to have the strongest effect on vehicle appearance: all air bags (affecting the appearance of steering wheels, dashboards, and the lining of the interior), roof crush resistance (affecting the appearance of pillars), and bumper standards. This scenario is referred to as the *Appearance Constraint* scenario).

We present estimates under the *Voluntary Seat Belts* and *Appearance Constraint* scenarios as upper and lower bounds, respectively, of the scope of impacts that would likely be observed under the final rule. NHTSA estimates that involvement in the final Part 586 exemption program would save low-volume manufacturers of replica passenger cars and LTVs between \$3.4 million and \$17.2 million at a three-percent discount rate (between \$3.3 million and \$16.9 million at a 7% discount rate) annually, resulting from the elimination of the requirement to certify compliance of their vehicles with the vehicle FMVSS, fuel economy standards, bumper standards, and labeling requirements. NHTSA estimates that annual impact on benefits associated with the final rule would be between -\$68.4 million and -\$4.1 million at a 3% discount (between -\$51.1 million and -\$3.1 million at a 7% discount rate) annually, resulting from incremental property damage, injury, and fatality costs.

**Table 1: Total Annual Discounted Net Benefits
(Millions of 2017 Dollars, 3% Discount Rate)**

Scenario	Annual Production	VMT	Total Benefit Impact	Total Cost Impact	Net Benefits
Appearance Constraint	3,600 Cars, 400 LTVs	Low Case	-\$4.1	-\$3.4	-\$0.8
Appearance Constraint	3,600 Cars, 400 LTVs	High Case	-\$9.6	-\$3.4	-\$6.2
Appearance Constraint	7,200 Cars, 800 LTVs	Low Case	-\$8.3	-\$6.5	-\$1.8
Appearance Constraint	7,200 Cars, 800 LTVs	High Case	-\$19.3	-\$6.5	-\$12.8
Voluntary Seat Belts	3,600 Cars, 400 LTVs	Low Case	-\$14.6	-\$8.7	-\$5.8
Voluntary Seat Belts	3,600 Cars, 400 LTVs	High Case	-\$34.2	-\$8.7	-\$25.5
Voluntary Seat Belts	7,200 Cars, 800 LTVs	Low Case	-\$29.2	-\$17.2	-\$12.0
Voluntary Seat Belts	7,200 Cars, 800 LTVs	High Case	-\$68.4	-\$17.2	-\$51.2

**Table 2: Total Annual Discounted Net Benefits
(Millions of 2017 Dollars, 7% Discount Rate)**

Scenario	Annual Production	VMT	Total Benefit Impact	Total Cost Impact	Net Benefits
Appearance Constraint	3,600 Cars, 400 LTVs	Low Case	-\$3.1	-\$3.3	\$0.3
Appearance Constraint	3,600 Cars, 400 LTVs	High Case	-\$7.2	-\$3.3	-\$3.8
Appearance Constraint	7,200 Cars, 800 LTVs	Low Case	-\$6.2	-\$6.4	\$0.2
Appearance Constraint	7,200 Cars, 800 LTVs	High Case	-\$14.3	-\$6.4	-\$8.0
Voluntary Seat Belts	3,600 Cars, 400 LTVs	Low Case	-\$10.9	-\$8.6	-\$2.3
Voluntary Seat Belts	3,600 Cars, 400 LTVs	High Case	-\$25.5	-\$8.6	-\$17.0
Voluntary Seat Belts	7,200 Cars, 800 LTVs	Low Case	-\$21.8	-\$16.9	-\$4.9
Voluntary Seat Belts	7,200 Cars, 800 LTVs	High Case	-\$51.1	-\$16.9	-\$34.2

The estimated net benefits for replica passenger cars under the final rule are negative in all cases except in the *Appearance Constraint* scenario under the low VMT assumption at a seven-percent discount rate, in which case net benefits are positive but very close to zero (\$0.2 to \$0.3 million). At a three-percent discount rate, net benefits are negative but near zero (-\$1.8 million to -\$0.8 million) in the *Appearance Constraint* scenario under the low VMT assumption. Net benefits are negative in the *Voluntary Seat Belts* scenario under the high VMT assumption at both discount rates (-\$51.2 million to -\$2.3 million). These results indicate that the final rule is expected to: (1) generate safety impacts exceeding the corresponding production cost savings across most combinations of key assumptions in the analysis; and (2) generate safety impacts similar in magnitude to the corresponding production cost savings under the most conservative assumptions in the analysis.

XII. Effective Date

This final rule is effective immediately upon publication in the Federal Register. The Administrative Procedure Act (APA) states that a rule cannot be made effective less than 30 days after publication, unless the rule falls under one of three exceptions. One of these exceptions is for a rule that “grants or recognizes an exemption or relieves a restriction.”³¹ This rule would fall under this exception because it would create a process through which manufacturers could obtain exemptions to manufacture replica vehicles.

The only comment on the Agency’s proposed immediate effective date was from SEMA, which concurred with the proposal. NHTSA adopts the effective date as proposed.

XIII. Regulatory Notices and Analyses

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

The Agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's administrative rulemaking procedures set forth in 49 CFR part 5, subpart B. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866. The amendments adopted by this final rule implement an exemption program mandated by § 24405 of the FAST Act for low-volume manufacturers involving a relatively small number of motor vehicles. There will be costs avoided by low-volume manufacturers when producing replica vehicles because the vehicles will not be required to meet all the Federal regulations and FMVSS applicable to new motor vehicles. Potential benefits could also include increased consumer surplus, reduced barriers to innovation, and increased incremental employment impacts among small manufacturers. Safety impacts could result from crashes if replica vehicles do not meet the

³¹ 5 U.S.C. 553(d)(1).

vehicle safety standards, but NHTSA believes the vehicles will be equipped with critical safety equipment such as seat belts for reasons that include meeting conditions of insurance carriers and consumer demand. The program will not have a significant effect on the national economy, in part because of the small number of vehicles affected by this program.

Regulatory Reform (E.O. 13771 and E.O. 13783)

NHTSA has reviewed this final rule for compliance with E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”), which requires Federal agencies to offset the number and costs of new regulations through the repeal, revocation, and revision of existing regulations. As provided in OMB Memorandum M-17-21 (“Implementing E.O. 13771”), a “regulatory action” subject to E.O. is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. This final rule is not a significant regulatory action under E.O. 12866.

Details on the estimated costs of this final rule are presented in the Final Regulatory Evaluation (FRE) that has been placed in the docket for this final rule. The document evaluates the economic impact, in terms of benefits and costs, on Federal, State, and local governments, as well as private entities regulated under this action and the public, as required by E.O. 12866 and E.O. 13563.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the action.³² The FAST Act requires NHTSA to establish an exemption program for replica

³² 42 U.S.C. 4332(2)(C).

vehicles, and this action implements that exemption program and the procedural mandates in the Act. The aspects of the program under the jurisdiction of NHTSA that could have environmental impacts include the exemption from the FMVSS (including those that affect the weight of the vehicle and thereby influence motor vehicle fuel economy) and the exemption from average fuel economy standards, both of which are specifically prescribed by statute. Although the FRE considers the impacts of this rule, NHTSA does not have the authority to consider alternatives that would subject replica vehicles covered under this program to the vehicle FMVSS or the average fuel economy standards in 49 U.S.C. 32902. Therefore, NHTSA is precluded from considering the environmental and safety impacts of those aspects of the replica vehicle exemption program in its rulemaking and is not required to address them in its Environmental Assessment.³³

When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500–1508) require it to “[b]riefly discuss the purpose and need for the proposed action, alternatives [...], and the environmental impacts of the proposed action and alternatives, and include a listing of agencies and persons consulted.”³⁴ This section serves as the Agency’s Final Environmental Assessment (Final EA) for those aspects of the program for which NHTSA may exercise discretion.

This document sets forth the purpose of and need for this action. The purpose of this rulemaking is to implement the exemption program and the procedural mandates described in

³³ See 40 CFR 1501.1(a)(5) (“In assessing whether NEPA applies or is otherwise fulfilled, Federal agencies should determine: ... (5) Whether the proposed activity or decision, in whole or in part, is a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process...”).

³⁴ 40 CFR 1501.5(c)(2). The Draft Environmental Assessment (Draft EA) included as part of the NPRM quoted from and cited to the CEQ NEPA implementing regulations prior to their revision earlier this year. 85 FR 43304 (Jul. 16, 2020) (eff. Sep. 14, 2020). Citations and references to the CEQ NEPA implementing regulations have been updated as appropriate to reflect these revisions.

Section 24405 of the FAST Act, which directs NHTSA to exempt annually a limited number of replica motor vehicles manufactured or imported by low-volume manufacturers from the FMVSS that apply to motor vehicles, but not standards that apply to motor vehicle equipment. In addition, replica vehicles will be exempt from the requirements of 49 U.S.C. 32304, 32502, and 32902, as well as from section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). This action is needed to implement a program to grant the exemptions directed by the FAST Act for the manufacture of replica vehicles. NHTSA is also establishing labeling, consumer disclosure, and registration requirements to ensure adequate public awareness and Agency oversight over these vehicles.

The labeling, registration, and other procedural requirements of this final rule are not anticipated to have anything other than *de minimis* environmental impacts. These aspects of the program are largely ministerial in nature for replica vehicle manufacturers and importers and are not likely to change sales volumes. Any environmental impacts that could occur as a result of the manufacture or operation of these motor vehicles will occur as a function of the statute requiring exemption from the applicable FMVSS and average fuel economy standards, and NHTSA does not have sufficient discretion to alter these impacts meaningfully. Further, NHTSA assumes that 40 low-volume manufacturers will produce between 4,000 and 8,000 replica vehicles annually, and the vehicles are expected to be driven, on average, no more than 2,280 miles per year. With regard to all aspects of the replica vehicle exemption program (including the exemption from the FMVSS and average fuel economy standards), these vehicles represent an extremely small fraction of overall motor vehicle sales and on-road vehicle miles traveled that will be disbursed throughout the country. As a result, they are unlikely to cause environmental impacts that could rise to any level of significance.

NHTSA invited public comments on the contents and tentative conclusions of the Draft EA. No public comments addressing the Draft EA were received. Furthermore, none of the public comments that were received addressed any issues related to the human environment that would be relevant to the Final EA.

Based on the foregoing, NHTSA concludes that the final rule will have nothing more than *de minimis* impacts on the quality of the human environment. Based on the Final EA, NHTSA concludes that implementation of any of the alternatives considered in this notice, including the final regulations, will not have a significant effect on the human environment and that a “finding of no significant impact” is appropriate. This statement constitutes the Agency’s “finding of no significant impact,” and an environmental impact statement will not be prepared.³⁵

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an Agency is required to publish an NPRM or final rule, generally it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). A regulatory flexibility analysis is not required if the head of the Agency certifies that the action would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis

³⁵ 40 CFR 1501.6(a).

for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this final rule on small entities and has prepared a Final Regulatory Flexibility Analysis (FRFA).

This final rule will impact low-volume manufacturers that choose to produce replica vehicles and that would fall under North American Industry Classification System (NAICS) Nos. 336111, 336112, and 336120 for Automobile Manufacturing, Light Truck and Utility Vehicle Manufacturing, and Heavy Duty Truck Manufacturing. Pursuant to 13 CFR 121.201, which establishes size standards regulations to define small businesses, entities in these industries with 1,500 or fewer employees are considered small business concerns. NHTSA expects that most, if not all, replica manufacturers will have 1,500 or fewer employees. NHTSA estimates that up to 40 manufacturers will register as low-volume manufacturers of replica vehicles. However, since the Small Business Administration's regulations limit Regulatory Flexibility Act applicability to small businesses that operate primarily within the United States, foreign manufacturers that participate in the replica vehicle program are not covered by the Act.³⁶ Of the expected 40 total replica manufacturers, 10 are assumed to be foreign replica manufacturers.³⁷ Therefore, this final rule is expected to impact 30 small entities.

Until the FAST Act was enacted, all low-volume manufacturers of replica vehicles were subject to virtually the same Safety Act requirements as the largest manufacturers when producing new motor vehicles. Occasionally, in FMVSS rulemaking, small manufacturers are

³⁶ 13 CFR 121.105(a).

³⁷ This assumption is based on the percent of all passenger cars sold in the US but are manufactured outside the US. Between January and August 2018, 76.1% of vehicles sold in the U.S. were produced domestically and 23.9% were imported. "U.S. light-vehicle sales by nameplate, August & 8 months." Automotive News. September 10, 2018, pp. 56-7.

given more time to comply with new FMVSS requirements, such as by having longer phase-in timelines to comply with new requirements, and can also petition for exemptions from certain FMVSS for limited periods of time on certain specific grounds.³⁸ However, notwithstanding the flexibility regarding compliance dates and limited-period exemptions, until the FAST Act, low-volume manufacturers of replica vehicles had the same responsibilities as larger manufacturers to certify their vehicles as complying with all applicable FMVSS. These FMVSS comprise standards applying to “equipment” and standards applying to the “vehicle” as a unit.

The FAST Act allows registered in the replica vehicle manufacturers to manufacture vehicles that are exempt from meeting the “vehicle” FMVSS. NHTSA estimates that involvement in the part 586 exemption program will save low-volume manufacturers of replica passenger cars and light trucks, MPVs, and buses (LTVs) between \$3.4 million and \$17.2 million at a three-percent discount rate (between \$3.3 million and \$16.8 million at a seven-percent discount rate) annually resulting from the elimination of the requirement to comply with the vehicle FMVSS, fuel economy standards, bumper standards, and labeling requirements.³⁹ This means that each replica vehicle manufacture would, on average, experience cost savings of between \$85,000 and \$430,000 annually at a three-percent discount rate and between \$82,000 and \$420,000 annually at a seven-percent discount rate.⁴⁰ NHTSA expects this cost savings to have a significant positive economic impact on the 30 regulated small entities.

³⁸ Pursuant to 49 CFR part 555, a manufacturer may petition for a temporary exemption on the bases of substantial economic hardship, making easier the development or field evaluation of new motor vehicle safety or impact protection, or low-emission vehicle features, or that compliance with a standard would prevent it from selling a vehicle with an overall level of safety or impact protection at least equal to that of nonexempted vehicles.

³⁹ Additional detail on these estimates is provided in the Final Regulatory Evaluation.

⁴⁰ NHTSA divided the total cost savings by 40 because these estimates are based on NHTSA’s assumption that there will be a total of 40 replica manufacturers producing, on average, 200 vehicles per year. In addition to the 30 replica manufacturers that NHTSA expects to be considered small businesses by SBA, the total cost savings also include savings to an estimated 10 replica manufacturers that would be manufacturers not operating primarily in the U.S.

According to guidance provided by the SBA's Office of Advocacy, to determine whether the number of small entities significantly impacted is substantial, an agency may need to look not only at the number of significantly impacted entities, but also at the percentage of affected small entities so impacted.⁴¹ Since the rule is expected to significantly economically impact 100 percent of the 30 regulated small entities, this would be a substantial number. Therefore, the replica vehicle program is expected to significantly economically impact a substantial number of small entities. Accordingly, NHTSA has prepared this final Regulatory Flexibility Act analysis.

Overview of the objectives of and legal basis for the final rule

NHTSA is issuing this final rule to implement a program mandated under the National Traffic and Motor Vehicle Safety Act (Safety Act), as amended by the Fixing America's Surface Transportation Act (the FAST Act). The FAST Act directs the NHTSA by delegation to establish a program to exempt not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer. The exemption is limited to the FMVSS applicable to motor vehicles, not motor vehicle equipment.

NHTSA is issuing this final rule to establish 49 CFR part 586 to implement the replica motor vehicle exemption program.⁴² Part 586 establishes the requirements and procedures for the registration of low-volume manufacturers as replica motor vehicle manufacturers and establishes the duties of the manufacturers.

Description and estimate of the number of small entities to which the rule will apply; compliance impacts

⁴¹ U.S. Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, 21-22 (August 2017), available at <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf> (last accessed Oct. 15, 2018).

⁴² The FAST Act replica motor vehicle provision is not self-executing. That is, the Secretary must take steps to implement it.

This final rule would affect manufacturers who have a total annual worldwide production of 5,000 vehicles or less. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, vehicle manufacturers would fall under North American Industry Classification (NAICS) No. 336111, Automobile Manufacturing, which has a size standard of 1,500 employees. Using the size of 1,500 employees or fewer, NHTSA estimates that most, if not all, of the manufacturers that will produce replica vehicles will be small businesses. NHTSA estimates that there will be approximately 40 manufacturers (30 operating primarily in the U.S.) that will take advantage of this program and manufacture replica vehicles under the replica vehicle exemption program. Although this final rule would affect small manufacturers, we do not anticipate that the rule would have a significant negative economic impact. Instead, this final rule will reduce compliance costs for the small businesses that produce replica vehicles under the exemption program. NHTSA estimates that manufacturers will save between \$3.4 million and \$17.2 million at a three-percent discount rate (between \$3.3 million and \$16.8 million at a seven-percent discount rate) annually. The cost savings result from low-volume manufacturers no longer having to conform their vehicles to the "vehicle" FMVSS.

A description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule contains reporting, record keeping and other compliance requirements to implement the replica vehicle program. All the reporting and record keeping requirements discussed below are mandated or contemplated by the FAST Act or are necessary to carrying out the statute.

First, in accordance with the FAST Act, low-volume manufacturers wishing to qualify for an exemption must register with NHTSA in accordance with part 586. The FAST Act mandates this registration requirement in § 30114(b)(1)(B)(2), specifying that “a low-volume manufacturer shall register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate.” NHTSA estimates that it would take each manufacturer 10 hours to draft and compile the submission. At an estimated cost of \$48.47 per hour,⁴³ this burden would cost each manufacturer \$484.70 one time for each original vehicle the manufacturer seeks to replicate.

Second, in accordance with the FAST Act, manufacturers of replica vehicles are required to submit annual reports. The annual reports are required by §30114(b)(1)(C), which specifies that the annual report include the number and description of the motor vehicles exempted and a list of the exemptions described on a permanent label required by § 30114(b)(3)(A) (described below). The final rule requires that the annual report be submitted online. In lieu of a requirement that registrants renew their registrations, the final rule only requires registrants to report to NHTSA if they will be producing the same replica motor vehicles the following calendar year. NHTSA estimates that compiling and submitting the annual report will take two hours and involve primarily administrative skills. NHTSA estimates that labor to compile the report will cost \$48.47 per hour, for a total cost to compile the report of \$96.94.⁴⁴

⁴³ The hourly wage is estimated to be \$33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2018, https://www.bls.gov/oes/current/naics4_336100.htm#47-0000, last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation – March 2019. <https://www.bls.gov/news.release/ecec.t04.htm>, last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be \$48.47.

⁴⁴The hourly wage is estimated to be \$33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2018, https://www.bls.gov/oes/current/naics4_336100.htm#47-0000, last accessed July 1, 2019. The Bureau of Labor

Third, in accordance with the FAST Act, the final rule requires the registrants to disclose information to consumers. Because the replica vehicles would be exempt from complying with current FMVSS, it is important that the consumer understand the reduced level of safety provided by the vehicle. Pursuant to § 30114(b)(3)(A), the final rule requires registrants to affix a permanent label to the vehicle identifying the specified standards and regulations from which the vehicle is exempt, stating that the vehicle is a replica, and designating the model year such vehicle replicates. Pursuant to § 30114(b)(3)(B), the final rule requires registrants to provide written notice of the exemption to the dealer and the first purchaser of the vehicle for purposes other than resale. NHTSA estimates that the consumer disclosures would cost \$1 per vehicle and the temporary labels would cost \$1 per vehicle. If each manufacturer manufactures 200 vehicles, the total cost per manufacturer would be \$400 for both the consumer disclosures and the temporary labels.

An identification, to the extent practicable, of all the relevant Federal rules which may duplicate, overlap, or conflict with the final rule.

NHTSA does not know of any Federal rules which duplicate, overlap, or conflict with this final rule.

A description of any significant alternatives to the rule that accomplish the stated objectives of the applicable statutes and minimize any significant economic impact of the final rule on small entities.

The FAST Act provision directing the establishment of the replica exemption program prescribes specific requirements that limit NHTSA's discretion to adopt regulatory approaches.

Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation – March 2019. <https://www.bls.gov/news.release/ecec.t04.htm>, last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be \$48.47.

However, for the purpose of evaluating regulatory alternatives under the requirements of the Regulatory Flexibility Act, NHTSA considered alternatives to lessen the economic impact of the final rule on small entities.

First, in the NPRM, NHTSA considered limiting the exemption program to replica vehicles that are built in one stage or, alternatively, allowing replica vehicles to be manufactured in two or more stages, if they are produced under a registration that was jointly submitted to NHTSA by all (low-volume) manufacturers involved with the production of the vehicle. For the final rule, NHTSA decided not to prohibit the manufacture of replica vehicles built in more than one stage, nor require that all multistage manufacturers must be low-volume manufacturers or that there must be joint submissions by all manufacturers involved in the multistage manufacturing process. The Agency decided these limitations are unnecessary because commenters indicated that most replica vehicles are produced in one stage from an assemblage of parts. NHTSA also determined that, if an incomplete vehicle were used in the multistage manufacture of a replica vehicle, the final-stage manufacturer can work with the incomplete vehicle manufacturer to ensure the VIN is properly encoded without NHTSA's requiring a joint registration.

Second, NHTSA decided against requiring that replica motor vehicles resemble not only the original vehicle's exterior, but also its interior (as proposed in the NPRM). NHTSA has not quantified the impact of this approach in the final rule, but has concluded that it would decrease the burden on small entities.

Third, NHTSA proposed to require registrants to submit images with each registration and documentation confirming that the replica vehicle will have the same dimensions (height, width, and length) as the original vehicle. NHTSA decided (1) to provide a 10 percent leeway in

the dimensions, and (2) to require only a declaration that the registrant has all IP rights to produce the replica vehicle. NHTSA believes the rule strikes an appropriate balance between ensuring that the program is limited to vehicles that resemble previously-made vehicles, while not unduly burdening low-volume manufacturers. The rule also allows manufacturers to incorporate modern amenities and safety features in the interior.

Fourth, this final rule reduces the amount of information replica manufacturers must disclose to members of the public, compared to the NPRM's proposal.

Accordingly, NHTSA has concluded this final rule minimizes burdens on small entities to the extent consistent with safety and the FAST Act, and that there are no further alternative approaches that would further minimize burden on small entities.

E.O. 13132 (Federalism)

NHTSA has examined this final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This is because, although the Agency has changed its interpretation of the scope of the preemption provision, that interpretation is merely an interpretive rule and does not have the force and effect of law. Thus, the fact that NHTSA now views the preemption issue differently does not, in itself, preempt any State law, which would only occur as a result of a judicial proceeding.

The FAST Act provision directing NHTSA to allow registered low-volume manufacturers to produce replica vehicles contains two unique provisions that have preemption implications.⁴⁵ Although the Agency did not explicitly request comment on its interpretation of these provisions in the NPRM, NHTSA received comments on the second provision, which the Agency, for the reasons discussed below, has found persuasive. As noted above, the Agency's statements on this issue are an interpretive rule that lacks the force and effect of law and, thus, although NHTSA did discuss the issue in the NPRM and received comment on it, the Agency was not required to undergo notice and comment for its view on this issue.

The first preemption issue is implicated by 49 U.S.C. § 30114(b)(6), which provides protection to the original manufacturer, its successor or assignee, or current owner, who grants a license or otherwise transfers rights to a low-volume manufacturer to produce replicas of vehicles. The Act states that such persons shall incur no liability to any person or entity under Federal or State statute, regulation, local ordinance, or under any Federal or State common law for such license or assignment to a low-volume manufacturer. This legislative directive is set forth in the FAST Act and this final rule has no effect on that directive. The Agency received no comment on this issue.

NHTSA received five comments related to the second preemption issue – its interpretation of the FAST Act provision which states that “nothing in [the exemption for low-volume manufacturers subsection of the Act] shall be construed to preempt, affect, or supersede any State titling or registration law or regulation for a replica motor vehicle, or exempt a person from complying with such law or regulation.”⁴⁶ In the NPRM, NHTSA proposed to interpret this provision to mean that NHTSA's requirements for replica motor vehicles are intended to be

⁴⁵ NHTSA does not believe regulation is necessary to implement those provisions.

⁴⁶ 49 U.S.C. § 30114(b)(9).

minimum safety requirements only, and that States would be permitted to have their own replica motor vehicle safety standards for vehicles titled or registered in their State.⁴⁷ That is, the Agency interpreted the provision to mean that “nothing” about the program would preempt “any State titling or registration law or regulation,” even if those laws concerned the safety performance of the vehicle. All comments addressing this issue disagreed with the Agency’s proposed interpretation of this provision, although, as noted above, NHTSA did not explicitly request comment on this issue and did not receive comment from any State or organization representing States.

The comments on this issue, submitted by the Specialty Equipment Market Association (SEMA), Vehicle Services Consulting, Inc. (VSCI), the National Automobile Dealers Association (NADA), Edelbrock LLC, and Morgan Motor Company, are largely consistent in their approach.⁴⁸ Each takes the position that the FAST Act creates an exemption from the FMVSS for covered replica vehicles and that NHTSA’s NPRM incorrectly interpreted the FAST Act to create a minimum standard. An exemption, they contend, preempts State statutes and common law tort obligations for the covered vehicles; therefore, due to the exemption, States may not create safety standards for replica vehicles through their titling and registration laws. Interpreting the FAST Act otherwise, they argue, would frustrate Congress’s intent to provide compliance relief for replica vehicle manufacturers.

After consideration of the comments, NHTSA agrees that the FAST Act amendments preempt State safety standards for replica vehicles. Section 24405 of the FAST Act directs NHTSA, by delegation, to create an annual exemption for certain replica motor vehicles from the

⁴⁷ 85 FR 809.

⁴⁸ See Docket No. NHTSA-2019-0121-0016; NHTSA-2019-0121-0011; NHTSA-2019-0121-0024; NHTSA-2019-0121-0023; NHTSA-2019-0121-0013.

FMVSS applicable to motor vehicles. Upon further consideration, NHTSA has decided that this statutory exemption is not intended to simply impose minimum safety requirements for these vehicles; rather, it provides that they are not subject to certain legal requirements (the FMVSS).

In the NPRM, the Agency did not adequately consider how the preemption provision in the replica vehicle program interacts with the more general approach to preemption embodied in the Safety Act and relevant case law. According to the Safety Act:

When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

The Safety Act further contains a savings clause which provides that “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.”⁴⁹ Interpreting a substantially similar but earlier version of the same provision, the Supreme Court found that the savings clause potentially permitted State common law tort liability, absent a conflict with Federal law.⁵⁰ Where common law tort liability imposes a standard similar to or stricter than the FMVSS, ordinary preemption principles should be applied to determine preemption.⁵¹ Specifically, “a state law that ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives’ of a federal law is pre-

⁴⁹ *Id.*

⁵⁰ *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 868 (2000); *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 329 (2011).

⁵¹ *Williamson*, 562 U.S. at 329.

empted.”⁵² To allow otherwise would frustrate the express purpose of the Safety Act to create a uniform national framework.

After further considering these principles in line with the replica vehicle exemption and specific preemption provision at hand, NHTSA concludes that the replica exemption is not a minimum standard as described in the NPRM. Rather, the exemption is an explicit directive that certain replica motor vehicles are not subject to the FMVSS, and, as a corollary, cannot be subject to State safety standards through regulation or common law. Here, State laws that would impose safety standards on replica vehicles expressly exempted from the FMVSS directly conflict with Federal law.⁵³ Such State laws stand as an obstacle to the objective of the Federal law, which is to exempt certain low-volume vehicles from the requirement to meet vehicle safety standards.

Upon further consideration, NHTSA is therefore revising its interpretation of the FAST Act subsection providing that “[n]othing in this subsection shall be construed to preempt, affect, or supersede any State titling or registration law or regulation for a replica motor vehicle, or exempt a person from complying with such law or regulation.” That is, NHTSA does not believe the intent of the preemption provision was to create a substantial difference between the preemptive effects of an exemption for replica vehicles versus the preemptive effect of an exemption under Part 555. Instead, the provision was intended to clarify that obtaining an exemption from NHTSA is not a replacement for State and registration and titling, but simply one step among others an entity must pursue in order to place its vehicles on public roads. States may enforce titling and registration laws or regulations for replica vehicles and, thus, mere fact

⁵² *Id.* at 330.

⁵³ *See Geier* at 874-86 (The Safety Act “foresees the application of ordinary principles of pre-emption in cases of actual conflict. Hence, the tort action is pre-empted.”).

that a manufacturer has received an exemption does not mean that they can begin selling their vehicles in a State without regard to any State titling or registration requirement. However, the creation of safety standards for replica vehicles through titling and registration laws is not permissible due to the exemption. Interpreting this section to allow States to use their titling and registration regulations and laws to create safety standards would create an “obstacle to the accomplishment and execution of the full purposes and objectives’ of” the Safety Act⁵⁴ far beyond what the amendments in the FAST Act were intended to accomplish. State safety requirements for replica vehicles would, therefore under NHTSA’s interpretation, be preempted, though, as noted, actual preemption would only occur result of a further judicial process.

Under E.O. 13132,⁵⁵ an agency may not promulgate a regulation that preempts State law, unless the agency complies with certain requirements. Those requirements, however, do not apply to the present regulation as the Agency did not promulgate a regulation that preempts State law. That was accomplished by the FAST Act and, in any event, this final rule contains no regulatory text on preemption and the Agency’s interpretation here lacks the force and effect of law.

As noted above, Section 24405 of the FAST Act directs NHTSA by delegation to create an annual exemption for certain replica motor vehicles from the FMVSS applicable to motor vehicles. Such an exemption necessarily results in preemption. This regulation does not preempt State law, but merely carries out a Federal statute that does so. Therefore, NHTSA concludes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process.

E.O. 12988 (Civil Justice Reform)

⁵⁴ *Williamson*, 562 U.S. at 330.

⁵⁵ 64 FR 43255, August 10, 1999.

When promulgating a regulation, E.O. 12988, “Civil Justice Reform” (61 FR 4729; February 7, 1996), specifically requires that the Agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes that the preemptive effect of this rule is discussed above in connection with E.O. 13132. NHTSA has also considered whether this rulemaking would have any retroactive effect, and concludes that it does not. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E.O. 13609: Promoting International Regulatory Cooperation

Under E.O. 13609 (77 FR 26413, May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent

unnecessary differences in regulatory requirements. Sections 3 and 4 of E.O. 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule.

NHTSA has analyzed this action under the policies and Agency responsibilities of E.O. 13609, and has determined that this action would have no effect on international regulatory cooperation.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. NHTSA did not find any voluntary consensus standards that would apply to this rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal

governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Agency publishes with the final rule an explanation why the Agency did not adopt the alternative.

This rule is not anticipated to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of 100 million (\$154 million when adjusted for inflation), annually.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The Information Collection Requests (ICR) for a proposed new information collection and proposed revisions to the existing information collections were forwarded to the Office of Management and Budget (OMB) for review and comment when the NPRM was published. As OMB deferred review while NHTSA reviewed the comments to the NPRM, NHTSA has resubmitted the ICR for this final rule.

OMB has tentatively assigned the following control numbers. Approval of the control numbers are subject to OMB's review of NHTSA's ICR addressing public comments on the NPRM.

- a. OMB Control No: 2127-0043, Title: Manufacturer Identification -- 49 CFR part 566;
- b. OMB Control No: 2127-0510, Title: Consolidated Labeling Requirements for 49 CFR parts 565 and 567;
- c. OMB Control No: 2127-0746, Title: 49 CFR part 586, Replica Motor Vehicles.

NHTSA's ICR describes the nature of the information collections and their expected burden. As described in the NPRM, the FAST Act mandated many registration, labeling and reporting requirements. This final rule establishes new collection of information requirements to implement those FAST Act provisions, requiring registrants to provide information to NHTSA and to dealers and consumers pertaining to registration, annual reporting, labeling, and written notification to dealers and owners. This final rule also makes changes to existing information collections for manufacturer identification, VIN requirements, and certification labeling. NHTSA has submitted supporting statements to OMB explaining how the final rule's collections of information respond to the comments received from the public. None of the changes made in this final rule affect the estimates in the NPRM of these requirements.

Plain Language

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

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please send them to the NHTSA officials listed in the “For Further Information” section at the beginning of this document.

Regulation Identifier Number (RIN)

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

Privacy Act

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

List of Subjects

49 CFR Part 565

Motor vehicle safety, Reporting and recordkeeping requirements; incorporation by reference.

49 CFR Part 566

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 586

Motor vehicle safety, Reporting and recordkeeping requirements, Labeling, Replica motor vehicles.

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

PART 565 – VEHICLE IDENTIFICATION NUMBER (VIN) REQUIREMENTS

1. The authority citation for part 565 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.95.

2. Revise § 565.12 to read as follows:

§ 565.12 Definitions.

(a) *Federal Motor Vehicle Safety Standards Definitions.* Unless otherwise indicated, all terms used in this part that are defined in 49 CFR 571.3 are used as defined in 49 CFR 571.3.

(b) *Other definitions.* As used in this part—

Body type means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo carrying features and the roofline (*e.g.*, sedan, fastback, hatchback).

Check digit means a single number or the letter X used to verify the accuracy of the transcription of the vehicle identification number.

Engine type means a power source with defined characteristics such as fuel utilized, number of cylinders, displacement, and net brake horsepower. The specific manufacturer and make shall be represented if the engine powers a passenger car or a multipurpose passenger vehicle, or truck with a gross vehicle weight rating of 4,536 kg (10,000 lb) or less.

High-volume manufacturer, for purposes of this part, means a manufacturer of 1,000 or more vehicles of a given type each year.

Incomplete vehicle means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors, or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

Line means a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.

Low-volume manufacturer, for purposes of this part, means a manufacturer of fewer than 1,000 vehicles of a given type each year.

Make means a name that a manufacturer applies to a group of vehicles or engines.

Manufacturer means a person—

- (1) Manufacturing or assembling motor vehicles or motor vehicle equipment; or
- (2) Importing motor vehicles or motor vehicle equipment for resale.

Manufacturer identifier means the first three digits of a VIN of a vehicle manufactured by a high-volume manufacturer, and the first three digits of a VIN and the twelfth through fourteenth digits of a VIN of a vehicle manufactured by a low-volume manufacturer.

Model means a name that a manufacturer applies to a family of vehicles of the same type, make, line, series and body type.

Model year means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Plant of manufacture means the plant where the manufacturer affixes the VIN.

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

Series means a name that a manufacturer applies to a subdivision of a “line” denoting price, size or weight identification and that is used by the manufacturer for marketing purposes.

Trailer kit means a trailer that is fabricated and delivered in complete but unassembled form and that is designed to be assembled without special machinery or tools.

Type means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, low speed vehicles, and motorcycles are separate types.

VIN means a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes.

3. In § 565.15(b), amend Table 1—Type of Vehicle and Information Decipherable by adding an entry for “Replica motor vehicle” after the entry for “Low speed vehicle” to read as follows:

§ 565.15 [Amended]

(b) * * *

Table I—Type of Vehicle and Information Decipherable

* * * * *

Replica motor vehicle: the make, model, and model year of the original replicated vehicle; and the information listed in this table for the vehicle’s type classification (e.g., if the replica meets the definition for passenger car in 49 CFR 571.3, the following information is required: make, line, series, body type, engine type, and all restraint devices and their locations).

4. In § 565.26, revise paragraph (d), as follows:

§ 565.26 Reporting requirements.

(d) The information required under paragraph (c) of this section shall be submitted at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information, or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. The information shall be submitted to <https://vpic.nhtsa.dot.gov/> or to: Administrator, National Highway Traffic Safety Administration, ATTN: VIN Coordinator, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Manufacturers of replica motor vehicles shall furnish the information by using the portal at <https://vpic.nhtsa.dot.gov/>.

PART 566 – MANUFACTURER IDENTIFICATION

5. The authority citation for part 566 is revised to read as follows:

Authority: National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30114(b), 30166) and Sec. 24405(a) of the Fixing America’s Surface Transportation Act (Pub. L. 114-94); delegation of authority at 49 CFR 1.95.

6. Amend § 566.5 by revising the introductory text and adding paragraph (c)(4) to read as follows:

§566.5 Requirements

Each manufacturer of motor vehicles, and each manufacturer of covered equipment, shall furnish the information specified in paragraphs (a) through (c) of this section to <https://vpic.nhtsa.dot.gov/> or to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Manufacturers of replica motor vehicles shall furnish the information by using the portal at <https://vpic.nhtsa.dot.gov/>.

* * * * *

(c) * * *

(4) In the case of replica motor vehicles, the manufacturer shall include, in the description of each type of motor vehicle it manufactures, a designation that the vehicle is a replica motor vehicle.

PART 567 –CERTIFICATION

7. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30166, 32504, 33101-33104, 33108 and 33109; delegation of authority at 49 CFR 1.95.

8. Revise § 567.1 to read as follows:

§567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label to be affixed to motor vehicles as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30114 and 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act) (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist them in determining which of the Federal motor vehicle safety standards (part 571 of this chapter), bumper standards (part 581 of this chapter), and Federal theft prevention standards (part 541 of this chapter), are applicable to the vehicle.

9. Amend § 567.3 by adding in alphabetical order a definition for “replica motor vehicle,” to read as follows:

§ 567.3 Definitions

* * * * *

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

10. Revise § 567.4(a) to read as follows:

§567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except replica motor vehicles and vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (g) of this section.

* * * * *

11. Add § 567.8 to read as follows:

* * * * *

§567.8 Requirements for manufacturers of replica motor vehicles.

(a) Each manufacturer of a replica motor vehicle shall affix to each vehicle a label, of the type and in the manner described below, containing the statements specified in paragraph (e) of this section.

(b) The label shall be riveted or permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(c) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations is practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(d) The lettering on the label shall be of a color that contrasts with the background of the label.

(e) The label shall contain the following information and statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) Name of manufacturer: Except as provided in paragraphs (e)(1)(i) and (ii) of this section, the full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents, and

the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by the words “Manufactured By” or “Mfd By.”

(2) Month and year of manufacture: This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as “June 2000,” or expressed in numerals, as “6/00.”

(3) “Gross Vehicle Weight Rating” or “GVWR” followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions.

(4) “Gross Axle Weight Rating” or “GAWR,” followed by the appropriate value in pounds, for each axle, identified in order from front to rear (e.g., front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of combined ratings: GAWR:

(i) All axles—2,400 kg (5,290 lb.) with LT245/75R16(E) tires.

(ii) Front—5,215 kg (11,500 lb.) with 295/75R22.5(G) tires.

First intermediate to rear—9,070 kg (20,000 lb.) with 295/75R22.5(G) tires.

(5) The following statement: “This vehicle is a replica motor vehicle that replicates a [insert make and model of the replicated motor vehicle] originally manufactured in model year [insert year].”

(6) Either:

(i) The statement: “This replica motor vehicle is exempt from the following Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica’s type of motor vehicle (e.g., passenger cars)]: [insert a list of all standards from which the vehicle exempt pursuant to 49 U.S.C. 30114(b)].” (The expression “U.S.” or “U.S.A.” may be inserted before the word “Federal.”); or

(ii) The statement: “This replica motor vehicle is exempt from the Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica’s type of motor vehicle (e.g., passenger cars)] that are listed on the label found in [insert location of label listing standards from which the vehicle is exempt under 49 U.S.C. 30114(b)]”; and

(7) Vehicle identification number.

(f) If the label required under paragraph (a) includes the statement found in paragraph (e)(6)(ii) of this section, the manufacturer must affix to the replica motor vehicle a second label that meets the following criteria:

(1) The label shall be riveted or permanently affixed to the vehicle in such a manner that it cannot be removed without destroying or defacing it;

(2) The label shall be affixed to the location identified in paragraph (e)(6)(ii).

(3) The lettering on the label shall be of a color that contrasts with the background of the label.

(4) The label shall contain the following statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high: “This replica motor vehicle is exempt from the following Federal motor vehicle safety, theft prevention, and

bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica's type of motor vehicle (e.g., passenger cars)]: [insert a list of all standards for which the vehicle is exempt pursuant to 49 U.S.C. 30114(b)].”

12. Add part 586, to read as follows:

PART 586 – REPLICA MOTOR VEHICLES

Sec.

586.1 Scope

586.2 Purpose

586.3 Applicability

586.4 Definitions

586.5 General Requirements

586.6 Registration

586.7 Processing of Registrations

586.8 Incomplete Registrations

586.9 Deemed Approved Registrations

586.10 Updating Existing Registrations

586.11 Temporary Label

586.12 Annual Report

586.13 Revocation of Registrations.

Authority: 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

§ 586.1 Scope

This part specifies requirements and procedures under 49 U.S.C. 30114(b) for the registration of low-volume manufacturers as replica motor vehicle manufacturers and establishes the duties of the manufacturers.

§ 586.2 Purpose

The purpose of this part is to implement 49 U.S.C. 30114(b) to exempt not more than 325 replica motor vehicles per year that are manufactured or imported by low-volume manufacturers from existing requirements for motor vehicles. This part specifies eligibility requirements for low-volume manufacturers that wish to register with NHTSA as a replica motor vehicle manufacturer, procedures for the registration of such manufacturers, content and format requirements for registration submissions, and requirements for updating registrations. This part also provides for the revocation of registrations and sets forth the duties required of replica motor vehicle manufacturers. Manufacturers are not exempted under 49 U.S.C. 30114(b) unless they register with NHTSA pursuant to this part 586.

§ 586.3 Applicability

This part applies to low-volume manufacturers that wish to register with NHTSA as a replica motor vehicle manufacturer, and to manufacturers registered as replica motor vehicle manufacturers.

§ 586.4 Definitions

All terms in this part that are defined in 49 U.S.C. 30102 and in 49 CFR 571.3 are used as defined therein.

Low-volume manufacturer means a motor vehicle manufacturer, other than a person who is registered as an importer under 49 U.S.C. § 30141, whose annual worldwide production,

including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 vehicles.

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Replica motor vehicle means a motor vehicle that —

(a) Is produced by a manufacturer meeting the definition of replica motor vehicle manufacturer under part 586 that has not manufactured 325 replica motor vehicles in the current calendar year; and

(b) Is intended to resemble the body of another motor vehicle that was manufactured for consumer sale not less than 25 years before the manufacture of the replica motor vehicle; and

(c) Is either:

(i) Manufactured under a license for all of the intellectual property rights of the motor vehicle that is intended to be replicated, including, but not limited to, product configuration, trade dress, trademark, and patent, from the original manufacturer, or its successors or assignees; or,

(ii) Manufactured by a current owner of such intellectual property, including, but not limited to, product configuration trade dress, trademark, and patent rights.

Replica motor vehicle manufacturer means a low-volume manufacturer, or a wholly owned subsidiary thereof, that is registered as a replica motor vehicle manufacturer pursuant to the requirements in this part.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

§ 586.5 General requirements

(a) Each manufacturer wishing to register as a replica motor vehicle manufacturer must have a calendar year, worldwide production, including any by a parent or subsidiary of the manufacturer, of not more than 5,000 motor vehicles, and must not be a registered importer under 49 CFR part 592. Only one registration is permitted for manufacturers sharing common ownership. If a manufacturer wishes to manufacture replica motor vehicles and share common ownership with a registered replica motor vehicle manufacturer, it may only do so after the registered replica vehicle manufacturer submits an updated registration submission indicating that the exemption for 325 replica vehicles will be divided between the manufacturers. Replica manufacturers sharing common ownership will be limited to a total of 325 replica vehicles. An update to a registration to add a manufacturer under common ownership shall allocate the exemption for 325 replica vehicles between the manufacturers. An update to the registration to adjust the allocation must be made pursuant to § 586.9.

(b) Each manufacturer wishing to manufacture replica motor vehicles under this program must be registered, according to the requirements in 49 CFR §586.6, as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured.

(c) Each replica motor vehicle manufacturer shall meet all statutory and regulatory requirements applicable to motor vehicle manufacturers, except:

(1) 49 U.S.C. 30112(a) regarding the Federal motor vehicle safety standards applicable to vehicles in effect on the date of manufacture of the replica motor vehicle; and

(2) 49 U.S.C. 32304, 32502, 32902 and 15 U.S.C. 1232.

(d) Each replica motor vehicle manufacturer shall:

(1) meet all the requirements set forth in this part;

(2) not manufacture more than 325 replica motor vehicles in a calendar year; and,
(3) meet 49 U.S.C. 30112(a) regarding the Federal motor vehicle safety standards applicable to equipment items installed on the vehicle.

(e) Each replica motor vehicle, as manufactured, shall resemble the original replicated vehicle.

(f) An exemption granted by NHTSA may not be transferred to any other person, and shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the replica motor vehicle manufacturer to vehicles built during that calendar year.

§ 586.6 Registration

(a) A manufacturer may register under this part as a manufacturer of replica motor vehicles if:

- (1) The manufacturer is not registered as an importer under 49 CFR part 592;
- (2) The manufacturer's annual worldwide production, including any by a parent or subsidiary of the manufacturer, is not more than 5,000 motor vehicles;
- (3) The manufacturer has submitted manufacturer identification information pursuant to part 566.

(b) To register as a replica motor vehicle manufacturer, a manufacturer must submit, using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (<https://vpic.nhtsa.dot.gov/>) its name, address, and email address, and the following:

- (1) Information sufficient to establish:
 - (i) That the manufacturer's annual world-wide production, including any by a parent or subsidiary of the manufacturer, is not more than 5,000 motor vehicles, and a statement certifying

to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration; and,

(ii) That the manufacturer is not registered as an importer under 49 CFR part 592;

(2) A statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year;

(3) Information sufficient to establish that the replica vehicle(s) the manufacturer will replicate is intended to resemble the body of the original vehicle, including:

(i) The images of the front, rear, and side views of the exterior of the original vehicle;

(ii) If the manufacturer has previously replicated the original vehicle(s), images of the front, rear, and side views of the exterior of a representative replica motor vehicle;

(iii) If the manufacturer has not previously replicated the original vehicle(s), design plans for the replica vehicles;

(iv) Information to show that the replica motor vehicle will have a height, width, and length within 10 percent of the original motor vehicle and,

(v) If the replica motor vehicle deviates from the height, width, or length of the original motor vehicle by more than 10 percent, an explanation of why such deviations were necessary.

(4) A certification that the manufacturer has determined the intellectual property rights required, and that the manufacturer has obtained all licenses and permissions necessary to legally produce the replica motor vehicle described in the application, or is the owner of such intellectual property.

(5) A statement certifying that the manufacturer will not manufacture more than the number of replica motor vehicles covered by the requested exemption, a number not more than 325 replica motor vehicles in a calendar year; and,

(6) All information required by part 566 to identify itself to NHTSA as a motor vehicle manufacturer.

(c) A manufacturer is not considered registered under this part 586 unless:

(1) The registration is approved; or,

(2) The registration is deemed approved under § 586.9.

(d) A replica motor vehicle manufacturer shall submit an updated registration submission prior to beginning manufacture of any replica vehicle model(s) not covered by their existing registration and will not begin manufacturing those additional replica vehicle model(s) until the registration is either approved or deemed approved as specified under § 586.9.

(e) A registrant need not reapply annually if the registrant seeks to manufacture the same replica vehicles (make, model and model year) for which it received approval. The registrant must provide notification, by way of its annual report pursuant to § 586.12, of its intent to continue manufacturing replica vehicles to which an approved registration applies.

§ 586.7 Processing of Registrations

Upon receipt of a registration submitted on vPIC, NHTSA will automatically notify the registrant by email within 90 days of the receipt whether the registration is approved, denied, or incomplete. This notification will be sent to the email address provided in the manufacturer's original submission. If an application is approved, the registrant's name will automatically be added to the list of approved registrants on NHTSA's website. NHTSA will deny a registration if:

(a) NHTSA determines that the registrant does not meet the requirements of this part 586;

(b) The registration is incomplete, and the registrant has failed to provide the missing information within 60 days after being notified by NHTSA pursuant to 586.8; or,

(c) The registration relies on the same facts and circumstances as a previously denied registration.

§ 586.8 Incomplete registrations

(a) If NHTSA determines that a submission is incomplete, NHTSA will notify the registrant, by email, within 90 days, that there is missing information. The registrant shall have 60 days to submit the missing information. This notification will be sent to the email address provided in the manufacturer's original submission.

(b) If NHTSA receives the missing information within 60 days of notifying the registrant that its submission is incomplete, NHTSA will approve or deny the registration within a period of time equivalent to the number of days that were remaining in the original 90-day period at the time NHTSA sent the notification, plus an additional 30 days.

(c) If a registrant does not respond to NHTSA's notification that its submission is incomplete within 60 days, or the registrant responds within 60 days but the additional information submitted is not sufficient to complete the registration, the registration may be denied.

§ 586.9 Deemed approved registrations

(a) If NHTSA does not act on a registration within 90 days of NHTSA's receipt of the submission, NHTSA will notify a registrant by email on or after the 90th day that the registration has been deemed approved. Registrants that have been deemed approved will be included on NHTSA's list of approved replica motor vehicle manufacturers.

(b) A manufacturer that has not received an email notification from NHTSA about NHTSA's decision on the application following 90 days from submission of the registration should contact NHTSA's Manufacturers Helpdesk to determine the status of its registration

(Email: manufacturerinfo@dot.gov; Telephone: 1-888-399-3277). Manufacturers may also contact the helpdesk for information about the status of their registrations at any time, or may themselves check the status using the key provided them when they submitted their registration application. A manufacturer that has not received an email confirmation from NHTSA that its registration has been deemed approved may be subject to enforcement action by NHTSA for violating 49 U.S.C. 30112(a) if NHTSA finds that the registration was incomplete or denied, and that an email notification had been sent to the email address provided in the manufacturer's submission.

(c) If NHTSA determines that a registration that had been deemed approved is incomplete or fails to meet the requirements for registrants in this part 586, NHTSA may request additional information from the registrant in writing, which includes by email. A manufacturer shall have 60 days to respond to a request for additional information. If the manufacturer fails to respond within the 60 days or submits information that does not support that it meets the requirements of this part 586, NHTSA may revoke the registration.

§ 586.10 Updating existing registrations

A registered replica manufacturer shall submit updated registration information prior to commencing manufacture of a new model of replica vehicle or reallocating the number of replica vehicles to be made by two or more replica manufacturers under common ownership. The manufacturer shall submit updated registration information pursuant to § 586.6. The manufacturer may not begin producing the new model of replica vehicle or reallocate replica vehicles until its registration is either approved by NHTSA or is deemed approved.

§ 586.11 Temporary label

Each replica motor vehicle shall have a temporary label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label shall meet the following requirements:

(a) The label shall include a heading area in yellow with an alert symbol consisting of a solid black equilateral triangle with a yellow exclamation point and the word “WARNING” in black block capitals in a type size that is larger than that used in the remainder of the label and the alert symbol in black.

(b) The label shall include a message area in white with black text in at least 20-point font stating: “This vehicle is a replica motor vehicle and is exempt from complying with all current Federal motor vehicle safety standards that apply to motor vehicles, and with theft prevention and bumper standards in effect on the date of manufacture. [The expression “U.S.” or “U.S.A.” may be inserted before the word “Federal”.] See the certification label for a list of the standards from which this replica motor vehicle is exempt.”

(3) The message area shall be not less than 30 cm² (4.7 in²).

§ 586.12 Annual report

Each manufacturer of a replica motor vehicle shall furnish the following information to <https://vpic.nhtsa.dot.gov/> no later than March 1 following the end of a calendar year in which the manufacturer produced at least one (1) replica motor vehicle:

- (a) Full individual, partnership or corporate name of the manufacturer.
- (b) Residence address of the manufacturer, phone number and e-mail address.
- (c) Year to which the report applies (reporting year).
- (d) The complete Vehicle Identification Number (VIN) of each replica vehicle manufactured.

(e) Vehicle make(s) and model(s).

(f) Replica model year.

(g) Original model year of the replicated vehicle(s).

(h) Total number of replica motor vehicles manufactured during the reporting year.

(i) Images of the front, rear, roof, and side views of the original vehicle(s) replicated, of the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle. Submit also information sufficient to establish that the replica motor vehicle, as manufactured, resembles the body of the original vehicle.

(j) State whether the replica vehicles contain any of the following vehicle safety features: front or side air bags; lap or lap and shoulder belts; advanced safety systems/passive safety systems (listed with locations); electronic stability control; rear visibility camera system; ejection mitigation.

(k) If the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year, a notification to NHTSA of which replica motor vehicle(s) will be produced, and a certification that the registrant will produce no more than 325 replica motor vehicles in total. If the manufacturer intends to continue manufacturing replica motor vehicle(s), the manufacturer must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

§ 586.13 Revocation of registrations

NHTSA may require registrants to provide information related to compliance with the requirements of this part at any time. NHTSA may revoke an existing registration or deny a

registration based on a failure to comply with requirements of this part or a finding of a safety-related defect or unlawful conduct under 49 U.S.C. Chapter 301 et seq. that poses a significant safety risk. Prior to the revocation of the registration, NHTSA will provide the registrant a reasonable opportunity to correct deficiencies, if such are correctable, based on the sole discretion of NHTSA.

**PART 591 – IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO
FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS**

1. Revise 49 CFR 591.5(b) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchases for purposes other than resale are not attached), and bumper and theft prevention standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or by the manufacturer to the equipment item or its delivery container, in accordance with, as applicable, parts 541, 555, 567, 568, and 581, or 571 (for certain equipment items) of this chapter, or the vehicle is a replica motor vehicle eligible for an exemption under part 586.

* * * * *

Issued in Washington, D.C. under authority delegated in 49 CFR part 1.95 and 49 CFR 501.4.

James Clayton Owens
Deputy Administrator

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