

## § 553.39

for reconsideration without further proceedings. In the event he determines to reconsider any rule, he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or information and data as he deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

### § 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner, and not as to other interested persons. For the petitioner, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

[60 FR 63651, Dec. 12, 1995]

## APPENDIX A TO PART 553—STATEMENT OF POLICY: ACTION ON PETITIONS FOR RECONSIDERATION

It is the policy of the National Highway Traffic Safety Administration to issue notice of the action taken on a petition for reconsideration within 90 days after the closing date for receipt of such petitions, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is ex-

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pected to be substantial, notice of that fact, and the date by which it is expected that action will be taken, will be published in the FEDERAL REGISTER.

## APPENDIX B TO PART 553—STATEMENT OF POLICY: RULEMAKINGS INVOLVING THE ASSESSMENT OF THE FUNCTIONAL EQUIVALENCE OF SAFETY STANDARDS

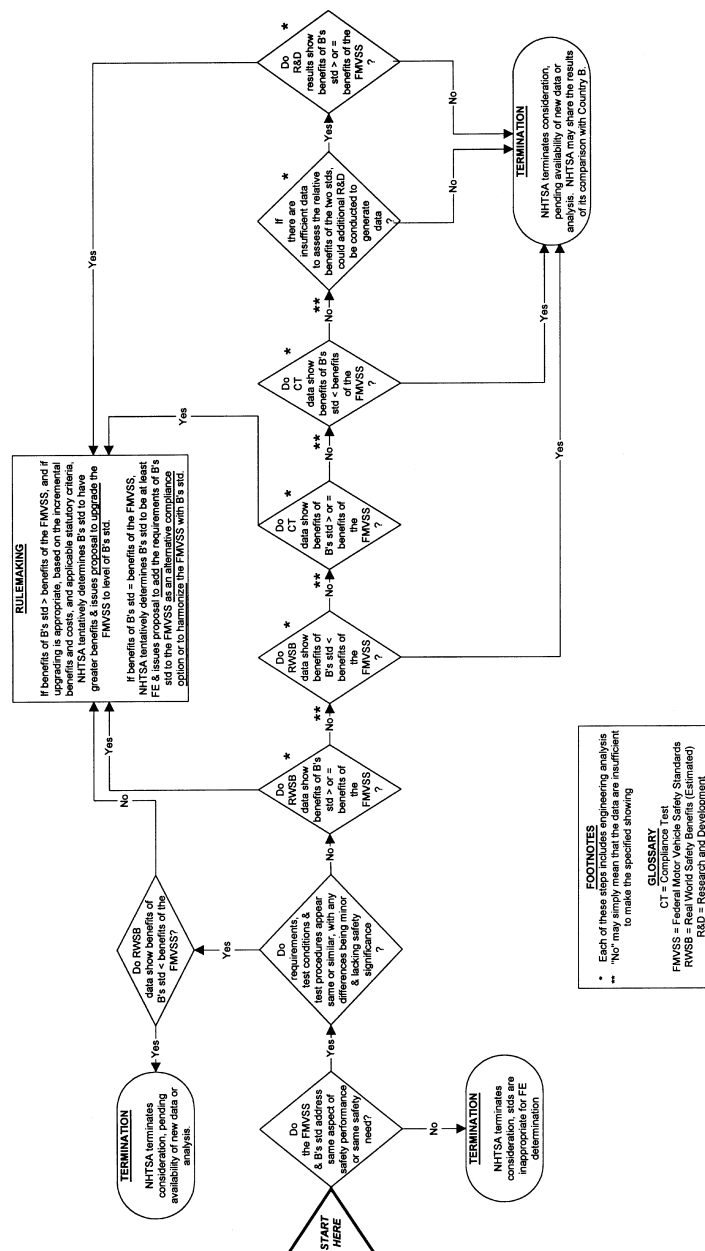
(a) Based on a comparison of the performance of vehicles or equipment, the National Highway Traffic Safety Administration (NHTSA) may tentatively determine that a foreign motor vehicle safety standard is better than or at least functionally equivalent to a Federal Motor Vehicle Safety Standard (FMVSS), either on its own motion or in connection with a petition for rulemaking by any interested party under 49 CFR Part 552. Such determinations will be made in accordance with the process described in the flowchart in Figure 1 of this Appendix.

(b) Under the process, if NHTSA decides that there is reason to believe that a foreign standard is better than or at least functionally equivalent to a FMVSS in accordance with the process, it will commence a rulemaking proceeding that may lead to the issuance of a proposal to add the foreign standard as an alternative compliance option to the FMVSS, to harmonize the FMVSS with the foreign standard or to upgrade the FMVSS to the level of the foreign standard, as appropriate. Such a proposal will request comment on the agency's tentative determination regarding relative benefits and functional equivalence as well as the proposed amendment. Final determinations regarding these matters will also be made in accordance with the analytical criteria in the flowchart.

(c) As used in this appendix, the term “standard” refers to mandatory requirements and thus has the same meaning given the term “technical regulation” in Annex 1 to the World Trade Organization Technical Barriers to Trade Agreement.

## FUNCTIONAL EQUIVALENCE ASSESSMENT

FIGURE 1



## EXPLANATION OF FLOWCHART

*A. Ultimate Goal*

The ultimate goal in comparing standards is to assess the real world safety performance of the covered vehicles or equipment. Particularly in the case of crashworthiness standards, the most reliable basis for making that assessment is fatality and injury data directly drawn from actual crashes. Accordingly, NHTSA will make appropriate efforts to ensure the availability of such data regarding crashes in the U.S.

*B. Guiding Principles**Best Practices*

NHTSA pursues a “best practices” policy in comparing U.S. and foreign safety standards, i.e., NHTSA will propose to upgrade its standards if it tentatively concludes that a Country B standard offers greater benefits than the counterpart FMVSS, and if upgrading appears appropriate, considering the incremental costs and benefits and applicable statutory criteria. (For a discussion of another type of rulemaking proposal that may be considered in these circumstances, see the paragraph below on comparisons that indicate that a foreign standard’s safety benefits are greater than those of the counterpart FMVSS.)

*Conservatism*

1. NHTSA places priority on preserving the safety benefits of the FMVSSs.

2. NHTSA can best preserve those benefits by being conservative in reaching any conclusion that a Country B standard is better than or at least functionally equivalent to the counterpart FMVSS. One reason for conservatism is that differences from vehicle model to vehicle model and manufacturer to manufacturer in margins of compliance may confound efforts to assess the relative benefits of two standards. Further, there may be circumstantial differences, such as special environmental conditions, driver demographics, driver behavior, occupant behavior (e.g., level of safety belt use), road conditions, size distribution of vehicle fleet (e.g., proportion of big versus small vehicles and disparity between extremes), that could influence real world safety benefits. These differences may result in a particular standard having a safety record in a foreign country that would not necessarily be repeated in the United States.

*Best Available Evidence*

1. NHTSA will base its comparison of standards on the best available evidence. If available, estimates of real world safety benefits based on fatality and injury data directly drawn from actual crashes are the best evidence. If such data are not available,

then estimates based on other information, such as compliance test data, may be used, although increased caution needs to be exercised in making judgment based on those estimates. If sufficient crash data regarding real world safety benefits are available, and a comparison of those benefits shows that the Country B standard is less beneficial than the counterpart Federal Motor Vehicle Safety Standard (FMVSS), NHTSA would avoid wasting resources making comparisons on the basis of less probative types of evidence.

2. The types of benefits examined in comparing two standards might differ depending on whether the standards are crash avoidance standards or crashworthiness standards. Translating differences in performance (an input measure) into numbers of crashes or numbers of deaths and injuries (output measures) is more difficult in the case of crash avoidance standards. As a result, while the relative benefits of two crashworthiness standards would typically be assessed in terms of their impacts on deaths and injuries in crashes, the relative merits of two different crash avoidance standards might well be assessed in terms of their impact on vehicle or equipment performance.

*Sufficiency of Evidence*

1. Many types of data are available for a comparison of two standards. Often there is an abundance of one type of data and little or no data from other sources. If insufficient data are available, and such data either cannot be generated through engineering analysis (e.g., real world safety benefits estimates), or conducting additional research and development is not cost effective, then NHTSA will stop consideration of such data and consider the other available data instead.

2. The essentially horizontal, left-to-right path through the flowchart is intended to illustrate the sources of data that will be considered and provide a rough idea of the priority they will receive. Each step branches independently to the tentative determination of relative benefits and functional equivalency by its “yes” path. This may seem to preclude later steps once any “yes” path is encountered. In practice, however, all data sources will be considered to the extent that they are available before a final determination regarding these matters is made.

*Reciprocity*

1. NHTSA will take steps to encourage reciprocity by other countries in the making of functional equivalence determinations.

2. When NHTSA’s comparison of standards indicates that one of the FMVSSs has benefits equal to or greater than the counterpart Country B standard, NHTSA may forward the results of that comparison to Country B

and request that consideration be given by Country B to determining that the FMVSS is better than or at least functionally equivalent to the counterpart Country B standard, and to subsequently amending its standard accordingly.

*C. Agency Decisions in Which Flowchart Is Used*

This flowchart guides agency decisions in connection with a rulemaking proceeding that involves the issue of relative benefits and functional equivalence.

1. *Decision whether to grant a rulemaking petition.* If the agency receives a petition for rulemaking based on a claim that one of Country B's standards is better than or at least functionally equivalent to one of the Federal Motor Vehicle Safety Standards (FMVSSs), the agency will consider the merits of the petition in accordance with 49 CFR Part 552, Petitions for rulemaking, defect, and noncompliance orders, and with the functional equivalence process set forth in the flowchart. If it appears that there is reason to believe that Country B's standard provides safety benefits are greater than or at least equal to those of the FMVSS, the agency will likely grant the petition and commence a rulemaking proceeding.

The agency emphasizes that its priority with respect to international harmonization is identifying and adopting those foreign safety standards that represent best practices. Accordingly, if resource limitations make it necessary to choose between competing petitions in granting or processing them, the agency would give priority to petitions asking the agency to upgrade one of its standards to the level of a superior foreign standard over petitions simply asking the agency to add a compliance alternative.

2. *Decision whether to issue a notice of proposed rulemaking.* If NHTSA grants the petition, it will proceed, as in any other rulemaking regarding the FMVSSs, to determine whether amending an FMVSS would be appropriate under the applicable statutory criteria in chapter 301 of title 49, U.S.C. Following the process set forth in the flowchart, the agency will use data submitted by the petitioner, supplemented by data from other sources, to compare performance and tentatively determine whether Country B's standard specified in the petition is better than or at least functionally equivalent to the FMVSS specified in the petition.

This comparison could have a variety of possible outcomes:

a. *The comparison may indicate that the foreign standard's safety benefits are less than those of the counterpart FMVSS.* If NHTSA determines that the foreign standard results in fewer safety benefits than the counterpart FMVSS, it will terminate the rulemaking proceeding.

b. *The comparison may indicate that the foreign standard's safety benefits are approximately equal to those of the counterpart FMVSS.* If the agency tentatively determines that the safety benefits of a foreign standard are approximately equal to those of a FMVSS, it will take one of two steps in most instances. One possibility is that it will develop a notice of proposed rulemaking (NPRM) proposing to amend the FMVSS by adding the foreign standard as an alternative to the existing requirements of the FMVSS. The other possibility is that the agency will develop an NPRM proposing to harmonize the FMVSS with the foreign standard. This second approach would enable NHTSA to maintain a single set of requirements and test procedures in its standard, thereby minimizing any drain on its enforcement resources. An additional possibility that might be considered in some instances would be "qualified functional equivalence." Under this third approach, the agency would regard Country B's standard to be functionally equivalent if it is supplemented by a specified requirement in the counterpart FMVSS.

c. *The comparison may indicate that the foreign standard's safety benefits are greater than those of the counterpart FMVSS.* If NHTSA tentatively determines that the foreign standard results in greater safety benefits than the counterpart FMVSS, and if upgrading is appropriate, based on the incremental benefits and costs and applicable statutory criteria, the agency issues an NPRM proposing to upgrade the FMVSS to the level of Country B's std. If upgrading is not appropriate, NHTSA considers issuing an NPRM proposing to add the requirements of Country B's std to the FMVSS as an alternative compliance option. The proposal to add the compliance option would set forth the basis for the agency's conclusion that upgrading the FMVSS is inappropriate.

If NHTSA issues an NPRM, it would request comment on the tentative determination and the proposed amendment.

3. *Decision whether to issue a final rule.* Any final decision to make a determination regarding relative benefits and functional equivalency and to amend the FMVSS will be made in accordance with the process in the flowchart and applicable law and only after careful consideration and analysis of the public comments.

[63 FR 26514, May 13, 1998]