To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

12. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The Cable Services Bureau contacts for this proceeding are Daniel Hodes, Kiran Duwadi, Ava Holly Berland, and Andrew Wise at (202) 418–7200, TTY (202) 418–7365, or at *dhodes@fcc.gov, kduwadi@fcc.gov, hberland@fcc.gov and awise@fcc.gov.*

13. Parties who choose to file by paper must also file one copy of each filing with other offices, as follows: (1) Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; and (2) Ava Holly Berland, Cable Services Bureau,445 12th Street, SW., 3–A832, Washington, DC, 20554. In addition, five copies of each filing must be filed with Linda Senecal, Cable Services Bureau,445 12th Street, 3–A729, Washington, DC 20554.

Ordering Clause

14. This *FNPRM* is issued pursuant to authority contained in sections 2(a), 4(i), 303, 307, 309, 310, and 613 of the Communications Act of 1934, as amended.

List of Subjects

47 CFR Parts 21 and 73

Television.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–25479 Filed 10–10–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–10773; Notice 1]

RIN 2127–AI26

Reporting of Information About Foreign Safety Recalls andCampaigns Related to Potential Defects

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

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: *Comment closing date:* Comments must be received on or before December 10, 2001. The effective date of a final rule based on this proposal would be 30 days after publication of the final rule.

ADDRESSES: All comments on this notice should refer to the docket and notice number set forth above and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The docket room hours are from 9:30 a.m. to 5:00 p.m., Monday through Friday.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Ford's Foreign Campaigns Involving Firestone Tires

On May 2, 2000, NHTSA's Office of Defects Investigation (ODI) opened an investigation into an alleged safety defect in ATX and Wilderness tires manufactured by Bridgestone/Firestone, Inc. (Firestone). Many of these tires had been manufactured for use as original equipment on Ford Explorer sport utility vehicles.

During that investigation, ODI became aware that in August 1999, Ford Motor Company (Ford) commenced an ''Owner Notification Program'' in which it offered to replace the P255/70R16 Firestone Wilderness AT tires installed as original equipment on its model year (MY) 1995 and 1996 Ford Explorer and Mercury Mountaineer models in use in the Persian Gulf region. In its letter to owners, Ford explained that it was offering to replace the tires because ''Firestone 'Wilderness A/T' brand tires may experience interior tire degradation and tread separation, due to unique Gulf Coast usage patterns and environmental conditions, resulting in a loss of vehicle control.'' Ford did not notify NHTSA that it was taking this action, because, as it explained later, there was no regulation requiring it to do so.

Similarly, late in February 2000, Ford launched an ''Owner Notification Program'' in Malaysia and Thailand covering ''certain 1997 Explorers equipped with P235/75R15 Firestone 'All Terrain' Brand Tires'' (Wilderness AT tires). In its letter to owners, Ford claimed it was offering to replace the tires because they ''may experience interior degradation and tread separation, due to unique regional usage patterns and environmental conditions, potentially resulting in a loss of vehicle control.'' As in the case of the Gulf Region vehicles, Ford did not notify NHTSA that it had taken this action until after the agency had opened its investigation covering these tires.

Also, on May 20, 2000, Ford began an ''Owner Notification Program'' in Venezuela covering MY 1996 through 1999 Explorers equipped with P235/75R15 or P255/70R16 Firestone tires. In its letter to owners, Ford included the same rationale as in the Malaysia/Thailand action. Again, Ford did not notify NHTSA of this action until after it was commenced.

B. Federal Defect Reporting Requirements Before the TREAD Act

Title 49, United States Code, Chapter 301, ''Motor Vehicle Safety,'' is the basic motor vehicle safety statute administered by NHTSA (the ''Safety

Act''). It establishes requirements that manufacturers of motor vehicles and motor vehicle equipment built or sold in the United States (and other persons) must meet.

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

Ford has stated that it did not tell us of the campaigns in other countries referred to above because it did not believe that it was required to. Until the TREAD Act, a manufacturer's self-reporting obligations, other than defect and noncompliance notifications, generally were established by 49 U.S.C. 30166(f), Providing copies of communications about defects and noncompliance, as implemented by 49 CFR 573.8, Notices, bulletins, and other communications. Section 30166(f) provides that:

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

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

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

This regulation does not specifically address manufacturer communications about defects occurring in vehicles and equipment in use outside the United States.

C. The TREAD Act (P.L. 106–414).

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) was enacted on November 1, 2000. An underlying House Report (H. Rpt. 106–954) observed, at p. 7:

> First, it is clear that the data available to NHTSA regarding the problems with the Firestone tires was insufficient. While testimony showed that the agency had received some complaints about the tires, both from consumers and from an automobile insurance company, they did not receive data about Ford's foreign recall actions * * * The Committee believes that the provisions of this legislation are an initial step toward correcting these problems.

The remedial provisions of the legislation that the Committee referred to became Section 3(a) of the TREAD Act. Section 3(a) amended 49 U.S.C. 30166 to add a new subsection (l) which reads as follows:

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

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

Because manufacturers have been required to report determinations of foreign campaigns to us since November 1, 2000, regardless whether NHTSA has prescribed the contents of the notification, we are proposing that manufacturers provide us with reports of all relevant determinations between November 1, 2000, and the effective date of the final rule. This would assure that we receive information on recalls and campaigns that include the information specified in the final rule, pertaining to substantially similar vehicles and equipment within the meaning specified in the final rule. Reports would be due within 30 days of the effective date of the final rule. However, the requirement would not require resubmission of information pertaining to foreign campaigns that a manufacturer had reported to NHTSA between November 1, 2000, and the effective date of the final rule.

We note that in Section 3(b) of the TREAD Act, Congress adopted

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

provisions requiring manufacturers of vehicles and equipment to submit a wide variety of information to NHTSA that could provide an ''early warning'' of defects or noncompliances in their products (49 U.S.C. 30166(m)). NHTSA issued an Advance Notice of Proposed Rulemaking (ANPRM) on January 22, 2001 (66 FR 6532) regarding these ''early warning'' provisions. Because some of the terms and elements of those requirements are applicable or relevant to Section 30166(l), we have considered the comments submitted in response to that ANPRM in developing this notice.

II. Scope and Terms

A. Manufacturer

As defined before the enactment of the TREAD Act, a manufacturer is ''a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale.'' 49 U.S.C. 30102(a)(5). The Safety Act requires foreign manufacturers offering vehicles or vehicle equipment for import to designate an agent on whom service may be made (49 U.S.C. 30164).

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

At the time that the TREAD Act was under consideration in the Congress, the Alliance of Automobile Manufacturers (the Alliance), whose members are BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volvo and Volkswagen, noted that information about safety recalls that are conducted in foreign countries on automobiles or items of automotive equipment that are also offered for sale in the United States would be useful to NHTSA. The Alliance stated on behalf of its members that they will voluntarily report to NHTSA their safety recalls and other safety campaigns that are conducted in a foreign country on a vehicle or component part that is also offered for sale in the United States. See letter from Josephine Cooper to NHTSA Administrator Sue Bailey, dated September 15, 2000, which has been placed in the docket. Notwithstanding this voluntary action, Congress imposed mandatory reporting requirements in Section 30166(l).

It is clear on its face that Section 30166(l) has extraterritorial effect. In its comments on the early warning ANPRM, the Alliance recognized that the TREAD Act was clearly written by Congress to apply to persons and activities outside of the United States, and it is therefore a clear assertion of extraterritorial jurisdiction by the United States (Alliance comment, Attachment 10, p. 9). The Alliance went on to state that the early warning rule could reasonably require reports from foreign companies manufacturing vehicles for sale in the United States as long as the required reports relate to issues that could arise in those vehicles (p. 11).

This leaves the question of who must and who may report. In view of the definition of manufacturer and in further view of the specific provisions of Section 30166(l), we believe that the agency has authority to require a report (1) from the foreign entity that has received notice from or provided notice to a foreign government; (2) from the fabricating manufacturer; and (3) from the importer of the identical or substantially similar vehicle or equipment. However, we are proposing to apply the reporting requirements for foreign campaigns in the same manner as we currently utilize for reporting noncompliance and defect determinations to NHTSA under Part 573. Thus, under today's proposal, the report may be filed by either the fabricating manufacturer or by the importer of the vehicle (see section 573.3(b)).

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

B. Safety Recall or Other Safety Campaign

1. Determination by a Manufacturer (Section 30166(l)(1))

This paragraph requires that a manufacturer of motor vehicles or motor vehicle equipment report to us when it has decided to conduct ''a safety recall or other safety campaign'' outside the United States that involves vehicles or equipment that are identical or substantially similar to products sold in the United States. Neither 49 U.S.C. 30102 nor the TREAD Act defines ''safety recall or other safety campaign.'' Further, NHTSA does not have comprehensive information about the laws of jurisdictions outside the United States relating to recalls of motor vehicles and motor vehicle equipment, and thus does not have detailed knowledge of the terminology or specific practices used in foreign countries to address potential safety problems. For example, some countries may not differentiate defects from noncompliances with safety standards or with safety guidelines. Accordingly, we cannot presume that a procedure abroad will follow that specified in 49 U.S.C. 30118–30120, e.g., a notification to a government agency within 5 days after the manufacturer determines that its product contains a safety-related defect or noncompliance, followed by notification to owners, purchasers, and dealers containing an offer to remedy through repair, repurchase, or replacement.

In the United States, the elements of a ''safety recall'' are established by 49 U.S.C. 30118–30120. In general, these elements are (1) a determination by a manufacturer of motor vehicles or motor vehicle equipment, or by NHTSA, that a safety-related defect or noncompliance exists, (2) notification by the manufacturer to NHTSA within a reasonable time (defined in 49 CFR 573.5(b) to be within 5 business days of its determination), and (3) notification by the manufacturer to owners, purchasers, and dealers advising of the determination and potential safety consequences, and offering a free remedy.

We propose to characterize a ''safety recall'' abroad as involving a determination by a manufacturer or one of its affiliates or subsidiaries (or a foreign government) that there is a problem with specific motor vehicles or motor vehicle equipment that relates to motor vehicle safety (e.g., a defect or noncompliance with a local safety standard or governmental guideline), followed by an offer by the manufacturer to provide remedial

action. The offer could be made either by notifying the owner directly or through notifying dealers, who would then contact owners. Such safety recalls would have to be reported, whether or not the problem at issue would constitute a safety-related defect or noncompliance under U.S. law.

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

2. Determination by a Foreign Government (Section 30166(l)(2))

We are proposing that a manufacturer be required to report to NHTSA whenever it has been notified that the government of a foreign country (which includes a political subdivision of such a country), has determined that it should or must conduct a safety recall or other safety campaign involving covered vehicles or equipment, whether or not the subject of the campaign would be a safety-related defect or noncompliance under U.S. law. For example, if the foreign government moves to prohibit further sales of a vehicle for reasons relating to motor vehicle safety, we would consider that action to be the equivalent of a ''safety recall.''

There may be occasions when the manufacturer will contest the foreign government's action. In the United States, NHTSA may make an initial decision that a defect or noncompliance exists, affording the manufacturer and public an opportunity to present data, views and arguments. Then NHTSA may make a final decision that a defect or noncompliance exists and order a recall (49 U.S.C. 30118). NHTSA may also order a manufacturer to provide a provisional notification if a civil action has been brought by NHTSA under 49 U.S.C. 30163 if the manufacturer fails to follow NHTSA's order to recall (49 U.S.C. 30121). We are not fully conversant with the administrative practices of countries other than the United States, but we include in ''determination'' any determination by a foreign government that a safety recall or other safety campaign should be conducted, regardless of whether the determination is final, initial, or conditional.

We are interested in receiving comments on the vehicle and equipment safety recall laws and practices of countries other than the United States as they relate to implementation of Section 30166(l)(2).

3. Exceptions for Identical Recalls or Campaigns Conducted in the United States

We recognize that manufacturers may conduct identical recalls in the U.S. and abroad. If a manufacturer is conducting a safety recall abroad, or has been ordered by a foreign government to conduct a safety recall, it would not be required to report such a recall to NHTSA if it has filed a Part 573 report covering the same safety defect in substantially similar products offered for sale or in use in the United States, provided that the manufacturer's remedy in the foreign recall is identical to that provided in the U.S. recall, and the scope of the foreign recall is not broader than the U.S. recall.

C. Identical or Substantially Similar Motor Vehicles or Motor Vehicle Equipment

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

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

In response to the ANPRM on the early warning reporting requirements, we received comments on the meaning and scope of this phrase. These include comments from the Automotive Occupant Restraint Council (the Council), TRW Automotive (TRW), Truck Manufacturers Association (TMA), Volvo of North America, Inc. (Volvo), ArvinMeritor USA, International Truck and Engine Corporation (International Truck), Mack Truck, Breed Technologies (Breed), DaimlerChrysler Corporation, Harley-Davidson Motor Corporation, Nissan North America (Nissan), the Truck Trailer Manufacturers Association, the law firm of Arent Fox on behalf of the Motor and Equipment Manufacturers Association and the Original Equipment Suppliers Association (the Associations), Delphi Automotive Systems (Delphi), Ford, Osram Sylvania, AmSafe, and the Alliance.

1. The Meaning of Identical

The TREAD Act early warning ANPRM asked:

''1. Is the word 'identical' understood internationally, or do we need to define it? If so, how?''

There was a wide range of comments, some of which took a narrow view. In TRW's opinion, the word ''identical'' is probably not understood internationally, ''or even nationally.'' A possible definition could be ''the exact same design or part number used in different applications.'' ArvinMeritor finds the word ''identical'' to be ambiguous when applied to foreign products. A part may appear to be identical but differ in significant ways. For example, manufacturers may make subtle design variations to meet regional specifications, applications, or exposure requirements. Constituent components are frequently sourced from local suppliers and while they may appear identical, they may vary ''somewhat in certain characteristics.'' This commenter prefers to describe ''near-like components as 'substantially similar' and leave the distinction of defining which components are 'substantially similar' to the judgment of the manufacturer.'' International Truck cautions that ''to the extent the term 'identical' may be of use, it should not be applied to vehicles, but should be limited to specific components manufactured by the same entity.'' Breed argues that the focus should not be on ''identical or substantially similar *vehicles or equipment,* but rather on identical or substantially similar *defects*'' (emphasis in original). Alliance submits that ''identical'' is understood and does not have to be defined for

TREAD Act rulemaking purposes. Delphi believes that the word must be understood in the context in which it is used. It noted that two bolts could have the identical part number but be used in different applications of lesser and greater safety consequence.

After reviewing these comments, NHTSA has decided to propose a rule that does not contain a separate definition of ''identical,'' because we believe that one is not needed. If there were good faith doubts whether a vehicle or equipment item is exactly ''identical'' to one that is sold in the United States, it is likely that the vehicle or equipment would be ''substantially similar'' to the U.S. vehicle or equipment, and therefore be covered by the reporting requirement in any case.

2. Substantially Similar Motor Vehicles

The phrase ''substantially similar'' also appears in 49 U.S.C. 30141(a)(1)(A), which was added to the Safety Act by the Imported Vehicle Safety Compliance Act of 1988. This section provides that a Registered Importer (RI) may import a motor vehicle not originally manufactured to comply with the Federal motor vehicle safety standards (FMVSS) if NHTSA decides that the vehicle is ''substantially similar to a motor vehicle of the same model year that was certified for sale in the United States.'' [2] Except for vehicles of Canadian origin, which the agency decided were substantially similar to American counterparts, virtually all these decisions have been made pursuant to petitions by RIs. A list of non-U.S.-certified vehicles that are eligible for importation under this program is published as an appendix following 49 CFR part 593, and is updated each fiscal year to reflect additional eligibility decisions. We have not found it necessary to define ''substantially similar'' under Section 30141 because an eligible foreign vehicle must have as an analogue ''a motor vehicle of the same model year that was certified for sale in the United States.'' Thus, the ''substantially similar'' foreign vehicles on the Part 593 list are easily identifiable without the need for a definition.

We have tentatively decided that any vehicle model that appears in the Part 593 list would be ''substantially similar'' to a U.S. vehicle for purposes of Sections 30166(l) and (m). However, there are limitations to the usefulness of this list with reference to implementation of the foreign defect and early warning reporting requirements. The list does not constitute the entire universe of ''substantially similar'' motor vehicles subject to these requirements because it includes only vehicles for which eligibility petitions have been filed and granted. Thus, we need to develop a definition of the term ''substantially similar'' that is not wholly dependent on whether a RI has sought to import a particular vehicle.

From an operational perspective, we believe that the TREAD Act requirements warrant the development of a definition of ''substantially similar'' that would apply to the foreign recall and campaign requirements as well as the foreign early warning reporting requirements.

In the early warning ANPRM, we asked:

''2. How should a manufacturer determine if a vehicle sold in a foreign country is 'substantially similar' to vehicles sold in the United States? Is it enough that the vehicles share the same platform and/or engine family? If not, why not?''

Some manufacturers producing vehicles for sale domestically indicated that that there was little or no difference in the vehicles that they produce for sale abroad. Harley-Davidson said that it ''sells substantially the same product lines in every nation in which it does business,'' leaving unsaid what, if any, features are changed to comply with local laws or customer tastes. DaimlerChrysler said that most of its vehicles sold abroad ''are substantially similar to vehicles sold in the United States (with some exceptions).'' No other vehicle manufacturer asserted that the vehicles it produces in the United States for sale abroad are *not* substantially similar to models it produces and sells in the United States. These comments indicate that, in general, vehicles manufactured in the United States for sale abroad are likely to be substantially similar to vehicles manufactured and sold domestically.

We asked if it would be appropriate to consider vehicles ''substantially similar'' if they shared the same platform and/or engine family. Nissan thought it more accurate to say that a substantially similar motor vehicle is ''a motor vehicle in substantial compliance with the federal safety standards that has the same platform and body shell, same engine displacement, and an engine within the same engine family.'' It believes that this definition is consistent with the agency's determinations in the admission of gray market vehicles where ''decisions turn on whether the petitioner can demonstrate that the foreign vehicle is substantially similar to its U.S. counterpart in the way that the two vehicles comply with the federal safety standards.'' However, this is not an accurate statement of the Part 593 determination process. The issue before NHTSA in that context is whether a candidate vehicle ''is capable of being readily altered to comply'' with the FMVSS (Section 30141(a)(1)(A)(iv)). Precisely because the candidate vehicle does *not* comply with the FMVSS, we cannot say that it is ''substantially similar to its U.S. counterpart in the way that [it complies].'' Further, we believe that the phrase ''in substantial compliance with the federal safety standards'' is too vague to be used for definitional purposes. Finally, the agency considers ''same engine displacement'' to be too restrictive, in that some foreign models are essentially identical to their U.S. counterparts in all relevant respects other than engine family and displacement.

The Alliance stated that the Part 593 list provides a ''useful starting point.'' The Alliance further suggested that important criteria for a ''substantially similar'' determination would be ''same platform and body shell, same engine family, same engine displacement, compliance'' or ''substantial compliance'' with ''specified FMVSS requirements such as S105/135, 203/204, 208 (except the automatic protection provisions), 209, 214, and 301.'' We note again our view that the phrase ''substantial compliance'' with the FMVSS is too vague and too subjective to serve as a definitional criterion, and that requiring the same engine family and displacement would be too restrictive.

The Alliance also recommended that each vehicle manufacturer submit to NHTSA annually, at the beginning of each model year, a list of the vehicles that the manufacturer intends to sell abroad that the manufacturer has determined are ''substantially similar'' to a vehicle certified for sale in the United States. Ford concurred with this recommendation. We have reviewed this suggestion and believe that it has merit, in that it could help both manufacturers and NHTSA in determining whether foreign recalls and other campaigns need to be reported. We note, however, that to the extent that such a list is based on whether vehicles use a common platform, as advanced by the Alliance, such a list would not be determinative, since our proposed criteria would go beyond common platforms. However, we are proposing

[2] The agency must also decide that the vehicle is capable of being readily altered to comply with all applicable FMVSS. This authority extends only to motor vehicles and not to motor vehicle equipment.

that manufacturers identify not later than each November 1 of each year any vehicles they sell abroad, or plan to sell abroad, in the next year that they believe to be substantially similar to vehicles sold or offered for sale in the United States or planned for sale in the U.S. during the next year.

Some commenters suggested that the determination be based upon commonality of components or systems. TMA said that ''vehicles that share identical component parts are 'substantially similar,' '' and that substantially similar with respect to medium and heavy duty trucks ''needs to be defined around major component systems of the vehicle not the vehicle make/model itself.'' International Truck contended that '' 'substantially similar' '' means ''the same component or component system' '' regarding bus and medium/heavy truck markets. Under this approach, apparently disparate vehicles could nevertheless be deemed to be '' 'substantially similar' '' for purposes of foreign recall reporting on the basis that, as TMA stated, ''vehicles that share identical component parts are ''substantially similar. '' According to these commenters, the components in question should be limited to engines, braking, axle, and suspension systems.

Several commenters believe that NHTSA should take a different approach with respect to medium and heavy duty trucks from that applied to lighter vehicles.[3] TMA stated that medium and heavy duty truck manufacturers produce highly customized products for which buyers ''can specify nearly every major component on the vehicle.'' These manufacturers are ''assemblers and systems integrators,'' employing the components specified by the end user, whether the end user is in the United States or a foreign country. Under this view, unless they are part of a fleet order, medium and heavy duty trucks sold in the U.S. and in foreign countries might rarely be identical or substantially similar to each other. While the TMA was of the view that generally trucks would not be substantially similar, it expected reporting of foreign recalls involving components substantially similar to those in the U.S. Volvo said that ''rarely will there be a large group of heavy trucks that are substantially similar in every way.'' We believe that these comments miss the point, since the statute is designed to provide a broad range of relevant information to NHTSA not just information about vehicles that are ''substantially similar in every way.''

Volvo and others also made similarly restrictive arguments about regulatory environment and parts application. Volvo argued that, ''while the heavy trucks in each country may have similar parts, the application of the parts in the differing regulatory environments make comparison particularly complex and potentially misleading.'' In Europe, according to Volvo, the regulatory scheme for brakes on heavy trucks ''focuses on the balance across the vehicle when braking,'' while NHTSA focuses on stopping distance. ArvinMeritor noted that ''a certain type and model of brake may be used through a variety of vehicle models,'' and, for heavy trucks, the ''component may be used through a range of vehicle ratings and chassis models.'' However, ArvinMeritor warned that ''a component may share some attributes that make it ''substantially similar to a [sic] one family of parts but have other attributes that would make it 'substantially dissimilar' from that same family.'' It used as an example a heavy duty foundation brake used with a standard brake drum up to a prescribed axle weight rating or application severity, 'at which a heavier brake drum may be recommended.' In this instance, 'the foundation brake would remain 'substantially similar' throughout the range of use whereas the associated brake drums would be 'substantially dissimilar' though they could be installed on similarly-appearing vehicles.' Mack Truck pointed out that ''vehicles sold in foreign countries often incorporate systems or components of local origin which are not comparable to components or systems incorporated in the manufacturer's vehicles sold in the United States and Canada.''

After our review of the comments in response to the ANPRM and our own assessment, we are proposing that a vehicle sold or operated in a foreign country would be viewed as ''substantially similar'' to one offered for sale in the United States if it meets one or more of a number of tests. To begin, we are proposing to consider all motor vehicles manufactured to comply with the Canadian Motor Vehicle Safety Standards, and all motor vehicles determined to be eligible for importation pursuant to 49 CFR part 593, as ''substantially similar'' (if not identical) to motor vehicles sold in the United States. As for vehicles not so identified, we are further proposing that all vehicles manufactured in the United States for sale in other countries be considered as substantially similar (if not identical). This presupposes that some modifications are made to comply with foreign standards or for other purposes. The Ford Explorers manufactured in the U.S. and sold in Saudi Arabia would be an example. In addition, we would include vehicles assembled in foreign countries that are counterparts of United States models. An example would be Ford Explorers assembled outside the United States, such as those assembled in Venezuela. We would appreciate comments on whether this latter class of vehicles needs to be defined with greater specificity. We caution commenters that in our view the term ''substantially similar'' sweeps with a broad brush and is not to be defeated by persons bent on finding or inventing distinctions to evade reporting.

As a practical matter, the vehicles remaining are those that have been manufactured outside the United States but which do not appear on the part 593 eligibility list. These remaining vehicles sold outside the U.S. may or may not be substantially similar to those sold in the U.S. With respect to recalls or campaigns covering these vehicles, we begin with the premise that, although the vehicle is usually the subject of a recall or safety campaign, the vehicle in its entirety is not defective; instead, a vehicle will be recalled because of a defect or problem in one or more of its components or systems that may or may not be used in other vehicles built by the manufacturer.

This raises two related questions: (1) Whether we should require a manufacturer to report a foreign campaign involving a vehicle generally substantially similar to one offered for sale in the United States if the defective component or system is different (e.g., substantially dissimilar in design or manufacture) from the component or system used on or installed in the vehicles sold in the U.S.; and (2) whether we should require a manufacturer to report a foreign campaign in which the defective component or system is substantially similar to the component or system the manufacturer used on a vehicle sold in the U.S., but the vehicle itself is on a different platform or would not otherwise be considered similar.

[3] These commenters did not explain what they mean by ''heavy truck.'' The truck industry has adopted terminology of Classes numbered 1 through 8 that distinguish vehicles of different gross vehicle weight ratings (GVWRs). NHTSA has never adopted this terminology for regulatory purposes but does use GVWR (expressed in either kg or lbs, depending on the FMVSS) to establish differing requirements within some of the FMVSS. For example, Standard No. 105 does not apply to vehicles with a GVWR of 3,500 kg or more. Standard No. 121 does not apply to trailers with a GVWR of more than 120,000 lbs. Standard No. 201 does not apply to buses with a GVWR or more than 3,860 kg. Standard No. 208 establishes different requirements for vehicles with a GVWR between 8,500 and 10,000 lbs.

We have tentatively decided not to require reporting under the first situation because the vehicles are not substantially similar in a material respect that is relevant to section 30166(l); i.e., the defect is unlikely to exist or occur in a vehicle manufactured for or sold in the U.S. market if it does not have the problematic component or system used in vehicles covered by a foreign campaign. We have tentatively decided to require reporting under the second situation because the defect may exist or occur in a vehicle manufactured for or sold in the U.S. market, even if such a vehicle were built on a different platform.

For example, assume that a seat belt buckle assembly, used in many models of vehicles, cracks and will not hold under force. Assume that a manufacturer recalls a small vehicle on a platform not sold in the United States that contains the buckle. Under today's proposal, if an identical or substantially similar buckle assembly is used on a vehicle built by that manufacturer that was or is offered for sale in the United States, the manufacturer of the vehicle would have to report the campaign to NHTSA.

We are aware that some manufacturers have argued that, in view of vehicle integration issues, a defective component or system on a foreign vehicle may not be defective if installed on a different vehicle platform sold in the United States. For example, it has been argued that a system on a United States model would encounter a less demanding operating environment than in some foreign countries. This is not dispositive. A report of a foreign recall or campaign is not equivalent to an admission that a safety defect exists in the U.S. or that a recall is needed in this country. Rather, the purpose of the report is to allow NHTSA to consider it, often along with other information, in deciding whether to open a defect investigation. The manufacturer could indicate in a communication to the agency the reasons why it believes that the problem covered by the foreign campaign is unlikely to occur in the United States.

In view of the above concerns, we are proposing an additional alternative test of whether a vehicle is substantially similar for reporting purposes. We would deem foreign and U.S. motor vehicles as ''substantially similar'' for reporting purposes if they both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems are installed. Moreover, the fact that part numbers may be different in the U.S. and in foreign countries or on different models would not be dispositive of whether parts are identical. In addition, we specifically request comment on a formulation based on the concept that the foreign and U.S. vehicles would be substantially similar for reporting under section 30166(l) if they shared a platform and/or a body shell.

We request comments on the appropriate formulation of test(s) for substantially similar motor vehicles and, depending on the comments, may make adjustments to the criteria for characterizing a vehicle as substantially similar.

3. Substantially Similar Motor Vehicle Equipment

Section 30166(l) also requires reports of foreign recalls and safety campaigns pertaining to motor vehicle equipment. Motor vehicle equipment comprises two categories: original equipment and replacement equipment. ''Motor vehicle equipment'' is defined by 49 U.S.C. 30102(a)(7). For purposes of the defect and noncompliance provisions of the Safety Act, the terms ''original equipment'' and ''replacement equipment'' are defined in 49 U.S.C. 30102(b)(1)(C) and (D). Pursuant to 49 U.S.C. 30102(b)(2), NHTSA has the authority to prescribe regulations changing the relevant definitions in section 30102(b)(1). The agency has implemented this authority in 49 CFR 579.4(a) and (b).

Sec. 579.4(a) defines ''original equipment'' as ''an item of motor vehicle equipment (other than a tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser if—

(1) The item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution; or

(2) The item of equipment was installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.''

Sec. 579.4(b) defines replacement equipment as:

''(1) Motor vehicle equipment other than original equipment as defined in [Sec. 579.4(a)]; and

(2) Tires.''

Recalls and other safety campaigns involving problems with original equipment (OE) components or systems abroad, as here in the U.S., are likely to be conducted by the manufacturer of the vehicle in which they were installed (although under certain circumstances an OE manufacturer is required to notify NHTSA of the defect. See 49 CFR 573.5(e) and (f)). Nevertheless, in those instances in which an OE manufacturer decides to conduct a recall or safety campaign, it would have the duty to report that campaign to us. Similarly, if a foreign government notified an OE manufacturer that it was required to conduct a safety recall or other campaign, the OE manufacturer would be obligated to provide notice to us under section 30166(l)(2). However, under today's proposal, if all of the vehicle manufacturers using the item in question timely provide us with a report of a foreign safety recall or other safety campaign under section 30166(l)(1), the OE component manufacturer would not be obligated to provide notice under this provision.

Recalls and other safety campaigns involving problems with replacement equipment, abroad or in the United States, ordinarily would be conducted by the replacement equipment manufacturer. Examples of replacement equipment recalls conducted in the United States are those involving defects and noncompliances in tires, child restraints, lighting equipment, brake hoses and brake fluids.

The early warning ANPRM asked ''how should 'substantially similar' motor vehicle equipment be defined? * * * Other than tires and off-vehicle equipment (such as child seats), should the definition be restricted to replacement equipment for substantially similar motor vehicles?'' A related question is what replacement equipment would be covered. We received only a limited amount of information in response, which provided some insights into concerns of manufacturers of some specific types of equipment.

One common item of replacement equipment is light sources. Many of these items, if not identical, are substantially similar, regardless of where in the world they are sold. Osram Sylvania, in fact, commented in response to the early warning ANPRM that ''[m]ost of the Automotive Lighting Products sold worldwide are similar to the products sold in the United States.''

With regard to restraints, the Automotive Occupants Restraint Council (Council) and Breed observed that there are two situations when it would be reasonable to impose a reporting requirement on suppliers. The first situation would address instances where a vehicle is recalled overseas that is not sold in the U.S. Assuming that the vehicle manufacturer would not have a reporting obligation, the Council recognized that the recall could involve restraint systems that are substantially similar to those sold in the U.S., but

cautioned that the supplier could report only after it learns that a recall has been initiated. The second situation would be if a supplier discovers a potential safety defect in a production run of parts. These comments recognize that restraint systems such as seat belts and air bags could be substantially similar in a variety of different vehicles. We request comments on the matters raised by the Council and Breed (See Docket Entries Nos. 6 and 21), particularly where the vehicle manufacturer would not have a reporting obligation.

As with motor vehicles, we are proposing to deem motor vehicle equipment sold or in use outside the United States to be identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to part number.

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

With regard to tires, under today's proposal, foreign recalls and campaigns involving tires of the same model name and size designation would have to be reported to us regardless of brand name, manufacturing plant, or mold. We recognize that many tire manufacturers use the same model name for tires that may be substantially different from one another, such as Goodyear Wrangler tires. However, the agency needs to receive information about recalls of tires with common model names so that we can assure ourselves whether tires covered are truly similar or different from those sold in the U.S. Of course, the manufacturer can accompany the submission with a discussion of the reasons why it believes the tires are not substantially similar to U.S. tires.

It is also possible that a manufacturer could use a different model name or names in foreign countries for tires identical to those sold in the U.S. Recalls and other campaigns involving tires that would also have to be reported to us under this rule. We request comments on whether we have proposed an appropriate basis for identifying similar foreign tires.

In the early warning ANPRM, we asked whether the definition of substantially similar equipment should be restricted to replacement equipment to be used on substantially similar vehicles. International Truck stated that ''the definition should not be restricted.'' Others focused on application. In an example given by Delphi, a bolt with a given part number may perform in substantially dissimilar ways depending on how and where it is used, and use of the bolt in a seat belt anchorage requires a higher standard than its use in a less critical safety application. Equipment suppliers noted that often conditions under which the part operates are beyond the suppliers' control and can only be judged by the vehicle manufacturer. Delphi added, on the other hand, that ''dissimilar components can be substantially similar'' because they ''may be susceptible to similar failure modes if one of the components that may be common to all were to have a defect.''

We expect that the scope of reporting under section 30166(l) will be broader than the ultimate scope of defect determinations in the U.S. It would vitiate the purpose of the reporting requirements of the TREAD Act to allow manufacturers to avoid reporting requirements based on a claimed difference in the operating environment for vehicles or equipment.

We request comments on the appropriate formulation of test(s) for determining whether foreign motor vehicle equipment is substantially similar to U.S. equipment.

III. Contents of Notification to NHTSA

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

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

As indicated above, we are proposing to require that all the information that currently must be submitted in connection with domestic recalls be submitted for all foreign safety campaigns covered by section 30166(l). We recognize that this is more information than is currently required in connection with campaigns in the United States that do not constitute safety recalls; under 49 CFR 573.8, manufacturers must merely submit the

documents that they send to owners and dealers, regarding vehicle and equipment malfunctions, and they need not provide all the information set out in 49 CFR 573.5(c). We have proposed to require more complete information, in part, because of the difficulty in distinguishing between ''safety recalls'' and ''other safety campaigns'' in foreign countries. However, we welcome comments on whether and how the level of detail can be reduced for certain type of foreign safety campaigns.

Consistent with 49 CFR 573.5(b), which applies to defect and noncompliance reports, any information required to be submitted to NHTSA under this rule that is not available at the time the initial report is due must be submitted as it becomes available.

IV. Timing

Section 30166(l) requires that manufacturers notify NHTSA ''not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country'' on substantially similar vehicles and equipment, or after receiving notification from a foreign government that such a campaign must be conducted. This 5-day period appears to have been adopted based upon the time period in regulations adopted to implement the notification provisions of the Vehicle Safety Act. Section 30119(c)(2) of the Vehicle Safety Act states in pertinent part that notification to the Secretary under Section 30118 ''shall be given within a reasonable time after the manufacturer first decides that a safety related defect or noncompliance exists.'' After notice and comment, we adopted a regulation specifying that ''not more than 5 working days'' is a ''reasonable time'' for notifying NHTSA of decisions that will lead to domestic remedy campaigns (49 CFR 573.5(b)).

Consistent with the statute, we are proposing that the time period for reporting foreign safety recalls or other safety campaigns is 5 working days from the date that the manufacturer, including one of its subsidiaries or affiliates, decides to conduct, or is notified by a foreign government (including by a foreign governmental unit) that it must conduct, the recall or other campaign. The 5-day period in Section 30166(l) is very achievable in those cases in which the decision to conduct the recall or other campaign is made by, or with the concurrence of, the manufacturer's headquarters and there is little doubt that the foreign vehicles or equipment in question are identical or substantially similar to vehicles offered for sale in the U.S. It is reasonable to assume that, in most cases, local subsidiaries or affiliates of multinational manufacturers are not authorized to decide to conduct safety recalls or other safety campaigns without the concurrence of the corporate headquarters, or at least without contemporaneously advising such headquarters of the action. Thus, the headquarters will have at least basic information on the recall or campaign. As a practical matter, we would expect few difficulties when a foreign government provides notification of its determination that a recall or other campaign must be conducted. There have been very few recalls ordered by foreign governments. We would expect that there would be communications between the foreign government and foreign affiliate of a manufacturer before a government directed recall, so that any formal notification would not be a surprise to the manufacturer. In any event the notification would be in the form of a written communication to the manufacturer or its local entity. The addressee would be deemed to ''receive'' the notification when it is delivered by mail, facsimile or other mechanism to the addressee. This document could readily be forwarded to a manufacturer's headquarters.

To the extent that manufacturers do not have such processes in place today, they would be required to implement procedures to assure that the relevant information is provided promptly to the reporting entity (presumably through a corporate headquarters) so that the required notifications can be made to NHTSA in a timely manner. Similarly, manufacturers would be required to implement procedures to assure that notifications from foreign governments about safety recalls or other safety campaigns are transmitted to NHTSA in a timely manner.

We recognize that it may be difficult for a local subsidiary or affiliate to know, whether the vehicles or equipment covered by the recall or other campaign in its country are substantially similar to products offered for sale in the U.S. However, this lack of awareness cannot justify a manufacturer's failure to provide relevant information to NHTSA. Thus, manufacturers would need to assure that all recalls and campaigns in foreign countries be brought to the attention of appropriate persons at the company's headquarters, who will be able to make the determination as to whether they must be reported to NHTSA. We request comments on any issues posed by this approach to timing and how, in the view of the commenter, they should be addressed.

V. Revision of Part 579 To Accommodate Section 3 of the TREAD Act

At present, 49 CFR Part 579 is titled ''Defect and Noncompliance Responsibility.'' As part of a reorganization of its regulations to respond to the TREAD Act, we are planning to amend Part 579 to transfer its subject matter to a revised Part 573, and rename Part 579 as ''Reporting of Information and Communications About Potential Defects.'' The revised regulation would include both the foreign defect and early warning reporting requirements of Sections 3(a) and (b) respectively of the TREAD Act. The current specifications for notice, bulletins, and other communications specified in section 573.8 would be transferred to section 579.6. While today's proposal restates section 573.8 in its proposed new location, we are not reproposing it and do not request comment on it.

VI. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This document was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. We estimate that fewer than 500 reports of foreign recalls and other safety campaigns will be submitted annually; some of these would involve parallel campaigns in multiple countries. There would be costs in determining whether vehicles or equipment that are covered by a foreign recall or campaign are identical or substantially similar to vehicles and equipment sold in the United States. There will be costs to manufacturers to prepare and submit reports of these recalls and campaigns to the agency. Where a determination has been made in a language other than English, a manufacturer will also have the cost of translating the determination before supplying it to us, unless a notice had been filed in the United States. Another cost would be involved with preparing and submitting any annual list of similar vehicles and equipment. Finally, there may be costs involved in searching out and filing reports with NHTSA that are related to foreign determinations made between November 1, 2000 and the effective date of the final rule. The costs would appear to be principally those of man-hours. We estimate that the costs will be less than one million dollars per year. We seek comments from manufacturers on the estimated

costs of meeting a final rule based on this proposal.

Regulatory Flexibility Act

We have also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action does not have a significant economic impact upon a substantial number of small entities. The basis for this certification is that manufacturers of motor vehicles and motor vehicle equipment that operate internationally are not small entities. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' A final rule based upon this NPRM, would regulate the manufacturers of motor vehicles and motor vehicle equipment, would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform

A rule based on this NPRM would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, 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. A final rule based on this proposal would not result in any expenditure by State, local, or tribal governments. The final rule would be based upon and implement P.L. 106–414. It would impact the private sector, specifically manufacturers of motor vehicles and motor vehicle equipment. Under the proposal, these manufacturers would have to report to NHTSA (presumably by letter) if they are conducting, or have been ordered to conduct, a campaign outside the United States on vehicles and equipment substantially similar to those sold in the United States. The reporting manufacturer would be obliged to have a communications system in place in order to provide this information to NHTSA in a timely manner, which could be the same system that reports domestic campaigns to NHTSA. If a manufacturer conducts no foreign campaigns, the final rule will not require any expenditures associated with reporting. If a manufacturer conducts a foreign campaign, the cost to the manufacturer to report the campaign should be minimal. NHTSA has therefore concluded that a rule based on this NPRM would not have a $100 million effect, and it has not prepared an Unfunded Mandates assessment.

Paperwork Reduction Act

The final rule will require a manufacturer of motor vehicles and motor vehicle equipment to report information and data to NHTSA if it decides to conduct, or if it is informed by a foreign government that it must conduct, a safety recall or other safety campaign in a country outside the United States. These provisions are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329. Accordingly, if not already encompassed by Part 573 they will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit 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 at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. 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 our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a proposed rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

List of Subjects in 49 CFR Part 579

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

In consideration of the foregoing, 49 CFR part 579 is proposed to be revised to read as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

Subpart A—General

Sec.
579.1 Scope.
579.2 Purpose
579.3 Application.
579.4 Definitions.
579.5 Address and manner for submitting reports and other information.
579.6 Notices, bulletins, and other communications
579.7–10 [Reserved].

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Countries Other Than the United States

579.11 Additional definitions for subpart B.
579.12 Identical or substantially similar vehicles and equipment.
579.13 Reporting responsibilities.
579.14 Contents of reports.
579.15 Who may submit reports.
579.16–20 [Reserved]

Subpart C—Early Warning Reports

579.21–30 [Reserved]

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

§ 579.1 Scope.

This part sets forth the responsibilities of manufacturers of motor vehicles and motor vehicle equipment for reporting of information, including data, that may indicate the existence of safety-related defects or noncompliances with Federal motor vehicle safety standards, and for reporting foreign recalls and other safety-related campaigns conducted outside the United States.

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information, including data, that manufacturers of motor vehicles and motor vehicle equipment must report to NHTSA that may indicate the existence of a potential safety-related defect or a noncompliance with a Federal motor vehicle safety standard in their products before the manufacturer or NHTSA has decided that a defect or noncompliance exists, including the reporting of safety recalls and other safety campaigns that the manufacturer conducts outside the United States.

§ 579.3 Application.

This part applies to all manufacturers of motor vehicles and motor vehicle equipment.

§ 579.4 Definitions.

For purposes of this part:

Equipment comprises original equipment and replacement equipment: *Original equipment* means motor vehicle equipment (other than a tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser if the item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution, or installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer. *Replacement equipment* means motor vehicle equipment other than original equipment and a tire.

§ 579.5 Address and manner for submitting reports and other information.

Reports required to be submitted to NHTSA pursuant to this part must be submitted to the Associate Administrator for Safety Assurance, National Highway Traffic Safety Administration (NHTSA), 400 7th Street, S.W., Washington, DC 20590. Submissions must be made by a means that permits the sender to verify that the report was in fact received by NHTSA and the day it was received by NHTSA.

§ 579.6 Notices, bulletins, and other communications.

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

§§ 579.7–10 [Reserved]

Subpart B—Reporting of Safety Recalls and Other Safety Campaigns in Countries Other Than the United States.

§ 579.11 Additional definitions for subpart B.

For purposes of this subpart:

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

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

§ 579.12 Identical or substantially similar vehicles and equipment.

For purposes of this subpart:

(a) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if:

(1) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(2) Such a vehicle is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593;

(3) Such a vehicle is manufactured in the United States for sale in a foreign country,

(4) Such a vehicle is a counterpart of a vehicle sold or offered for sale in the United States or

(5) Such a vehicle and a vehicle sold or offered for sale in the United States both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, without regard to the vehicle platform on which the components or systems is installed and regardless of whether the part numbers are identical.

(b) Motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States are the same component or system, or both contain the component or system that gave rise or contributed to a safety recall or other safety campaign in a foreign country, regardless of whether the part numbers are identical.

(c) Tires sold or in use outside the United States are substantially similar to tires sold or offered for sale in the United States if they have the same model name and size designation, or if they are identical except for the model name.

§ 579.13 Reporting responsibilities.

(a) Not later than 5 working days after a manufacturer, including any of its subsidiaries and affiliates, determines to conduct a safety recall or other safety campaign in a country other than the United States covering a motor vehicle or motor vehicle equipment that is identical or substantially similar to a vehicle or equipment sold or offered for sale in the United States, the manufacturer of the vehicle or equipment covered by the recall or other campaign shall report the determination to NHTSA.

(b) Not later than 5 working days after a manufacturer, including any of its subsidiaries and affiliates, receives notification that the government of a country other than the United States, including a political subdivision of such country, has determined that a safety recall or other safety campaign must be conducted in that country with respect to a motor vehicle or motor vehicle equipment that is identical or substantially similar to a vehicle or equipment sold or offered for sale in the United States, the manufacturer of the vehicle or equipment covered by the campaign shall report the determination to NHTSA.

(c) Not later than 30 days after [the effective date of the final rule], a manufacturer, including its subsidiaries and affiliates, that has made a determination to conduct a recall or other safety campaign in a country other than the United States, or who has received notification that the government of a country other than the United States, including a political subdivision of such country, has determined that a safety recall or other safety campaign must be conducted in that country, in the period between November 1, 2000 and [the date of the effective date of the final rule], and who has not reported such determination or notification of determination to NHTSA as of [the effective date of the final rule], shall report such determination or notification of determination to NHTSA if the safety recall or other safety campaign covers a motor vehicle or equipment that is identical or substantially similar to a vehicle or equipment sold or offered for sale in the United States.

(d) Notwithstanding paragraphs (a), (b) and (c), of this section, the manufacturer need not report the safety recall or other safety campaign to NHTSA if the manufacturer:

(1) Has determined that for the same or substantially similar reasons that it is conducting a safety recall or other safety campaign in a country other than the United States, a safety-related defect or noncompliance with a Federal motor vehicle safety standard exists in identical or substantially similar motor vehicles or motor vehicle equipment sold or offered for sale in the United States, and

(2) Has filed a defect or noncompliance information report pursuant to part 573 of this chapter, provided that the remedy of the foreign safety recall or other safety campaign is identical to the remedy of the campaign in the United States and the scope of the foreign recall or campaign is not broader than the scope of the recall campaign in the United States.

(e) Each manufacturer of motor vehicles that sells or offers a motor vehicle for sale in the United States shall identify each model of vehicle that the manufacturer sells or plans to sell in the following year in a foreign country that the manufacturer believes is identical or substantially similar to a motor vehicle sold, offered for sale, of planned for sale in the following year in the United States. The manufacturer shall inform NHTSA in writing no later than November 1 of each year of any such models that it plans to sell in any foreign country during any part of the following year.

§ 579.14 Contents of reports.

(a) Reports made pursuant to § 579.13 shall include the information specified in § 573.5(c)(1) through (7) of this chapter. Each such report shall also identify each foreign country in which the recall or other safety campaign is being conducted, state whether the determination was made by the manufacturer or by a foreign government, specify the date of the determination and the date the recall or other campaign was commenced or will commence in each foreign country, state whether the foreign action was a safety recall or other safety campaign, and identify all motor vehicles and/or equipment that the manufacturer sold or offered for sale in the United States that are identical or substantially similar to the motor vehicles or equipment covered by the foreign recall or campaign. If a determination has been made by the government of a foreign country, the report shall also include copies of the determination by the foreign government in the original language and translated into English.

(b) Information required by paragraph (a) of this section that is not available within the 5-day period specified in § 579.13 shall be submitted as it becomes available.

§ 579.15 Who may submit reports.

Reports under this part may be filed by either the fabricating manufacturer or by the importer of the vehicle or equipment that is identical or substantially similar to that covered by the foreign recall or other safety campaign.

§§ 579.16–20 [Reserved]

Subpart C—Early Warning Reports

§§ 579.21–30 [Reserved]

Issued on: October 4, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–25429 Filed 10–10–01; 8:45 am]

BILLING CODE 4910–59–P