preserving industry'' [8 CCR § 11030(11)–(12)]; the ''professional, technical, clerical, and similar occupations'' [8 CCR § 11040(11)–(12)]; the ''public housekeeping industry'' [8 CCR § 11050(11)–(12)]; the ''laundry, linen supply, dry cleaning, and dyeing industry'' [8 CCR § 11060(11)–(12)]; the ''mercantile industry'' [8 CCR § 11070(11)–(12)]; ''industries handling products after harvest'' [8 CCR § 11080(11)–(12)]; the ''amusement and recreation industry'' [8 CCR § 11100(11)–(12)]; the ''broadcasting industry'' [8 CCR § 11110(11)–(12)]; the ''motion picture industry'' [8 CCR § 11120(11)–(12)]; ''industries preparing agricultural products for market, on the farm'' [8 CCR § 11130(11)–(12)]; ''agricultural occupations'' [8 CCR § 11140(11)–(12)]; ''household occupations'' [8 CCR § 11150(11)–(12)]; ''certain on-site occupations in the construction, drilling, logging and mining industries'' [8 CCR § 11160(10)–(11)]; and ''miscellaneous employees'' [8 CCR § 11170(9)]. The meal and rest break rules for CMV drivers are simply one part of California's comprehensive regulations governing wages, hours and working conditions. Because these rules are in no sense regulations ''on commercial motor vehicle safety,'' they are not subject to preemption under 49 U.S.C. 31141.

Recognizing this problem, petitioners expanded their argument to claim that ''the FMCSA has power to preempt any state law or regulation that regulates or affects any matters within the agency's broad Congressional grant of authority'' (page 22). There is nothing in the statutory language or legislative history of 49 U.S.C. 31141 that would justify reading into it the authority to preempt State laws ''affecting'' CMV safety. Further, if the Agency were to take such a position, any number of State laws would be subject to challenge. For example, it is conceivable that high State taxes and emission controls could affect a motor carrier's financial ability to maintain compliance with the Federal Motor Carrier Safety Regulations (FMCSRs); however, it is doubtful that the Agency would be viewed as thus having the authority to preempt State tax or environmental laws.

Yet petitioners make the equally far-reaching argument that FMCSA can and should preempt the California statutes and rules on wages, hours, and working conditions which prevent carriers from maximizing their employees' driving and on-duty time. In fact, the FMCSRs have for decades required carriers and drivers to comply with all of the laws, ordinances, and regulations of the jurisdiction where they operate [49 CFR 392.2].

FMCSA cannot entertain this petition. Because the California meal and rest break rules are not ''regulations on commercial motor vehicle safety,'' the Agency has no authority to preempt them under 49 U.S.C. 31141. Furthermore, that statute does not allow the preemption of other State or local regulations merely because they have some effect on CMV operations.

Issued on: December 18, 2008.

David A. Hugel,

Deputy Administrator.

[FR Doc. E8–30646 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–26555]

Consumer Information; New Car Assessment Program (NCAP)

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

ACTION: Notice of postponement of the implementation of enhancements to the New Car Assessment Program (NCAP).

SUMMARY: On July 11, 2008, NHTSA published in the **Federal Register** (73 FR 40016) a notice announcing changes to the agency's New Car Assessment Program (NCAP) and stated that these changes would be implemented beginning with model year 2010 vehicles tested as part of the NCAP. This notice announces that implementation of the changes discussed in the July 2008 notice is postponed for one model year. The agency will begin applying the new NCAP testing and safety rating criteria to model year 2011 vehicles, not model year 2010 vehicles as indicated in the July 2008 notice. The agency will continue to utilize the existing NCAP testing and safety rating criteria for the 2010 model year.

DATES: The new NCAP testing and safety rating criteria described in the July 11, 2008 notice will be used for vehicles tested as part of the NCAP beginning with model year 2011 vehicles.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Ms. Jennifer N. Dang, Office of Crashworthiness Standards (Telephone: 202-493–0598). For legal issues, you may contact Mr. Ed Glancy, Office of the Chief Counsel (Telephone: 202–366–2992). You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The National Highway Traffic Safety Administration (NHTSA) established the New Car Assessment Program (NCAP) in 1978 in response to Title II of the Motor Vehicle Information and Cost Savings Act of 1972. Beginning with the 1979 model year, NCAP began rating passenger vehicles for frontal impact safety. Ratings for side impact safety were added beginning with the 1997 model year and for rollover resistance beginning with the 2001 model year. None of the testing or safety rating criteria for frontal crash, side crash, and rollover resistance have been substantially revised since they were first established. On January 25, 2007, NHTSA published a notice announcing a public hearing and requesting comments on an agency report titled, ''The New Car Assessment Program (NCAP) Suggested Approaches for Future Enhancements.'' Following the receipt of written comments and testimony at a March 7, 2007 public hearing, on July 11, 2008 NHTSA published in the **Federal Register** (73 FR 40016) a notice announcing its final decision as to the specific changes the agency is making in the NCAP testing and safety rating criteria, and stating that these changes would be implemented beginning with model year 2010 vehicles tested as part of NCAP.

II. Rationale for Postponing NCAP Enhancements for One Model Year

NHTSA has decided to postpone implementation of the Department's new 5-star Government safety rating program for one year to begin with Model Year 2011. This delay will give manufacturers another year to prepare for what are the most significant changes since the rating program began in 1979 and provide consumers with an additional year to become familiar with the new rating system.

The agency will, at a later date, issue a notice of proposed rulemaking concerning changes to the vehicle safety rating portion of the Monroney label that will need to be made to reflect the changes to the NCAP announced on July 11, 2008.

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on: December 19, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8–30701 Filed 12–19–08; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0113 Notice 2]

Recommended Best Importer Practices To Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment

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

ACTION: Final Notice.

SUMMARY: This notice provides guidance concerning best practices to be followed by importers of motor vehicles and motor vehicle equipment to reduce the likelihood of importing products that contain defects related to motor vehicle safety or do not comply with applicable Federal motor vehicle safety standards.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202–366–5288).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- a. National Highway Traffic Safety Administration
- b. The Interagency Working Group Report—Strategic Framework
- c. Working Group—Action Plan

II. NHTSA's Implementation of the Working Group's Recommendation on Best Importer Practices

III. Comments and Recommendations Requested

IV. Comments Received
- a. Support for NHTSA Guidance
- b. Voluntary Product Marking
- c. Records Maintenance
- d. Methodologies for Product Management and Development
- e. Report Submitted

V. Executive Order 12866 on ''Significant Guidance''

VI. Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment
- a. Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations
- b. Exercise Great Care in Selecting Foreign Fabricating Manufacturers
- c. Inspect Foreign Manufacturing Facilities
- d. Inspect Goods Either Before They Are Exported to or Distributed in the United States
- e. Identify the Product
- f. Establish a Consumer Service Program
- g. Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, Defect Issues, and Regulations
- h. Know How to Obtain General Assistance with Other Federal Regulations

I. Background

a. National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) administers the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act). Under that authority, NHTSA issues and enforces Federal motor vehicle safety standards (FMVSS) that apply to motor vehicles and to certain items of motor vehicle equipment. NHTSA also monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. In recent years, an ever-increasing number of motor vehicles and motor vehicle equipment items sold in the United States have been imported. For example, in 1996 imported tires comprised just 19 percent of the 282 million tires sold that year in the United States. By 2006, imported tires rose to 46 percent of all tire sales, with 140 million tires being imported. Nearly all motorcycle helmets are now imported, as is the case for a large percentage of vehicle lighting equipment and child safety seats sold in this country.

Under the Vehicle Safety Act, fabricating manufacturers (i.e., the actual assemblers) and importers of motor vehicles and motor vehicle equipment are responsible for the safety of their products that they manufacture for sale in or import into the United States. NHTSA has a standard setting and oversight/enforcement role and may issue guidance that provides valuable information to affected industries. U.S. consumers provide valuable feedback to manufacturers and to NHTSA, which has a hotline, 1–888-DASH–2-DOT (1–888–327–4236), for consumers to report safety-related problems with motor vehicles and motor vehicle equipment.[1]

NHTSA's enforcement program has two major elements, compliance testing and defects investigation. As the volume of motor vehicle and equipment imports has increased, NHTSA's scrutiny of those imports through both compliance testing and defect investigations has also grown. However, recent experience has demonstrated that companies importing products regulated by NHTSA, particularly motor vehicle equipment, play an especially important role in ensuring that those items comply with the FMVSS and are not likely to be defective. At the same time, both NHTSA's recent experience and that of other agencies with regulatory authority over the safety of imported goods indicate that the entire importing community could benefit by following best practices that help ensure the safety of imported products and reduce the likelihood of unsafe products entering the United States.

b. The Interagency Working Group Report—Strategic Framework

On July 18, 2007, the President issued Executive Order 13439 to establish the Interagency Working Group on Import Safety (the ''Working Group''). The Department of Transportation (DOT), including NHTSA, participated in the Working Group. As part of its mission, the Working Group identified strategies that could be pursued within existing resources to promote the safety of imported products. To begin identifying best practices for import safety, the Working Group held consultations with the private sector, reviewed current import safety procedures and methods, surveyed the authorities and practices of Federal agencies, and worked with the importing community. The Working Group recognized that U.S. importers are responsible for ensuring the safety of regulated products they import into the United States and should follow best practices to assure safety through methods that include: (1) Selecting foreign manufacturers to produce their products; (2) inspecting foreign manufacturing facilities; (3) inspecting goods produced on their behalf either before export or before distribution in the United States; (4) identifying the product's country of origin; and (5) safeguarding the supply chain.

In September 2007, the Working Group published a report entitled *''Protecting American Consumers Every Step of the Way: A Strategic Framework for Continual Improvement in Import Safety''* (the ''Strategic Framework''), which inaugurated the process of identifying action steps needed to enhance the safety of imported products.[2] The Strategic Framework promotes a cost-effective, risk-based

[1] Consumers may also file an online complaint concerning a motor vehicle, child seat, tire, or motor vehicle equipment item. See *http://www.safercar.gov*.

[2] Interagency Working Group on Import Safety, *''Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety''* (Washington, DC, September 2007) *http://www.importsafety.gov/report/report.pdf*.