required by the regulations and standards to benefit motor vehicle manufacturers and consumers. Primarily, these labeling requirements (49 CFR parts 569 & 574) help ensure that tires are mounted on appropriate rims; and that the rims and tires are mounted on vehicles for which they were intended.

Description of the need for the information and proposed use of the information—The agency has not considered methods of collecting the required information and providing it to consumers and tire dealers other than permanently labeling motor vehicles, tires, and rims. The safety information provided on the labels is needed throughout the useful life of the motor vehicle, tire, or rim. The permanent vehicle, tire, and rim labels are required by the federal standards for tires and rims. These standards are legal obstacles to reducing the burden of the labeling requirements. The labeling requirements apply to all motor vehicle tires and rims intended for use on the nation's highways regardless of the size of the manufacturer or retreader. The burden to small manufacturers and entities resulting from these labeling requirements cannot be adjusted or minimized since all tires and rims must be labeled with this information.

The estimated number of respondents totals is 6,673.

Annual estimate total burden: 264,444 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 2, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–18066 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–014; Notice 3]

Accuride Corporation; Grant of Application for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction to a notice.

SUMMARY: The Docket No. 96–119; Notice 2, as it appeared in the **Federal Register** on June 26, 1997, on pages 34492–34494 is incorrect. It should appear as Docket 97–014; Notice 2.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 7, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–18110 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–027; Notice 2]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correction to a notice.

SUMMARY: The Docket No. 97–028; Notice 1, as it appeared in the **Federal Register** on April 22, 1997, on page 19651 is incorrect. It should appear as Docket 97–027; Notice 1.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 7, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–18111 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Civil Penalty Policy Under the Small Business Regulatory Enforcement Fairness Act

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

ACTION: Notice of enforcement policy for small entities.

SUMMARY: This document announces NHTSA's civil penalty policy for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: This policy statement takes effect July 12, 1997.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 Seventh St. S.W., Washington, D.C. 20590 (tel. 202–366–5263).

SUPPLEMENTARY INFORMATION:

Background

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA or the Act) was enacted on March 29, 1996 (Pub. L. 104–121, 5 U.S.C. § 601 note). One of the purposes of the Act is to provide ''small entities with a meaningful opportunity for redress of excessive enforcement activities.'' (Section 203(7)).

Subtitle B of the Act, entitled REGULATORY ENFORCEMENT REFORMS, specifically Section 223, *Rights of small entities in enforcement actions,* addresses how this statutory goal is to be accomplished. For purposes of Subtitle B, a ''small entity'' has ''the same meaning as in section 601 of title 5, United States Code''; in turn, 5 U.S.C. § 601.6 states that a ''small entity'' has the same meaning as ''small business concern'' under section three of the Small Business Act. As explained in that Act (15 U.S.C. § 632), a ''small business concern'' is one that is independently owned and operated and not dominant in its field of operation. The Small Business Administration (SBA) has adopted additional criteria that include the concern's number of employees or the dollar volume of its business. 13 CFR Part 121, *Small business size standards.* Section 121.201 specifically identifies as ''small entities'' manufacturers of motor vehicles, passenger car bodies, and motor homes that employ 1,000 people or less, and manufacturers of motor vehicle parts and accessories that employ 750 people or less. See 61 FR 3280 (January 31, 1996).

Under the previous version of SBA's regulation (13 CFR § 121.601, as in effect before March 1, 1996), ''Major Group No. 37'' also specifically covered manufacturers of truck and bus bodies, truck trailers, travel trailers and campers, motorcycles and parts, and classified the manufacturers of these vehicles as ''small entities'' if they employed not more than 500 persons. Although these manufacturers are no longer identified by their products in new section 121.201, they are encompassed in the general specification that manufacturing entities, unless otherwise excepted (i.e., those with up to 750 or 1000 employees), are small businesses if they employ no more than 500 persons. Revised section 121.201 also considers as ''small entities'' dealers in new and used motor vehicles whose annual receipts do not exceed $21,000,000; dealers in used vehicles whose annual receipts do not exceed $17,000,000; and automobile dealers not otherwise classified whose annual receipts do not exceed $5,000,000. 61 FR 3292.

Section 223(a) of the SBREFA requires NHTSA, as an agency regulating small entities, to establish a policy ''to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.'' The Act allows NHTSA, ''under appropriate circumstances'', to ''consider ability to pay in determining penalty assessments on small entities.''

Section 223(b) requires every agency's small entity civil penalty policy to contain conditions and exclusions. These may include, but are not limited to, the following:

(1) Requiring the small entity to correct the violation within a reasonable correction period;

(2) Limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

(3) Excluding small entities that have been subject to multiple enforcement actions by the agency;

(4) Excluding violations involving willful or criminal conduct;

(5) Excluding violations that pose serious health, safety or environmental threats; and

(6) Requiring a good faith effort to comply with the law.

Section 223(b), Public Law. 104–121.

Civil Penalties Under Statutes Enforced by NHTSA

NHTSA's primary civil penalty enforcement actions arise under 49 U.S.C. Chapter 301—MOTOR VEHICLE SAFETY (formerly known as Title I of the National Traffic and Motor Vehicle Safety Act of 1966, incorporating the Imported Vehicle Safety Compliance Act of 1988). Under Chapter 301, a violator is liable for a civil penalty of up to $1,100 for each violation, up to a maximum of $880,000 for a continuing series of violations (These amounts recently were raised from $1,000 and $800,000, respectively, pursuant to the Federal Civil Monetary Penalty Act of 1990 (P. L. 101–410), as amended by the Debt Collection Improvement Act of 1996, (P. L. 104–134). See 62 FR 5167).

Liability for a civil penalty is authorized for violations of ''any of sections 30112, 30115, 30117–30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of [title 49] or a regulation prescribed under any of those sections. * * *'' 49 U.S.C. 30165(a). These include the manufacture, sale, introduction into interstate commerce, or importation into the United States of motor vehicles and motor vehicle equipment that fail to conform to all applicable Federal motor vehicle safety standards (Section 30112(a)), or whose certification of compliance is false and misleading in a material respect (Section 30115). In addition, violations occur upon failure to provide notification of safety-related defects or noncompliances within a reasonable time and to conduct remedial campaigns, as well as upon making required safety equipment inoperative (Sections 30117–30122), failure to comply with regrooved tire regulations (Section 30123(d)), failure of a manufacturer to test-drive a school bus before introduction in commerce when required to do so by regulation (Section 30125(c), failure to comply with requirements for automatic occupant crash protection and seat belt use (Section 30127), failure to comply with the importation conformance and documentation requirements (Sections 30141–30147), and failure to keep required records or make required reports to NHTSA (Section 30166).

When a violation occurs, the statute provides that ''[i]n determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.'' 49 U.S.C. § 30165(c).

Historically, NHTSA has reached civil penalty settlements with companies that violated Chapter 301 which would be termed ''small entities.'' These penalties have ranged over the years from $250 to $10,000 for small entities, and represent amounts well below the statutory maximum.

NHTSA has also collected penalties for violations of 49 U.S.C. Chapter 327—ODOMETERS. Under Chapter 327, a violator is liable for a civil penalty of up to $2,200 for each violation, to a maximum of $110,000 for a related series of violations (also recently increased from $2,000 and $100,000 respectively. 62 FR 5167.)

Civil penalties under this provision may be incurred for tampering with odometers and for failing to provide a prescribed mileage disclosure statement at the time a vehicle is transferred. To date, all known violators who have been subjected to civil penalties under Chapter 327, with one possible exception, have been ''small entities.'' The penalties imposed have ranged from $250 to $32,500, with most of them $1,000 or less.

Finally, NHTSA collects civil penalties for violations of 49 U.S.C. Chapter 329—AUTOMOBILE FUEL ECONOMY. Under Chapter 329, a manufacturer is subject to civil penalties for failure to meet the Corporate Average Fuel Economy (CAFE) requirements in effect for each model year. These penalties are calculated according to a statutory formula. As the prescribed penalty formula is based upon the total number of vehicles manufactured in a given model year, the resulting penalty is often small for small manufacturers. Some past CAFE violators appear to have been small entities, such as Sun International, which paid a penalty of $45; Vector Aeromotive Corporation, which paid three separate penalties of $1,740, $1,740 and $870; Panoz Auto Development Corporation ($3,080); Autokraft, Ltd. ($2,590); and Consulier Industries, Inc. ($150). However, NHTSA's authority under the CAFE legislation to compromise or remit a civil penalty for violation of a CAFE standard is extremely limited. Under 49 U.S.C. § 32913(a), such a penalty may be reduced only to the extent ''(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles; (2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or (3) the Federal Trade Commission certifies under subsection (b)(1) of [section 32913] that a reduction in the penalty is necessary to prevent a substantial lessening of competition.'' These provisions also could afford a measure of relief to small manufacturers.

NHTSA'S Existing Civil Penalty Policy

NHTSA has had an unwritten policy in force for some years with respect to civil penalties against small entities. This policy originated in the statutory directive in the Vehicle Safety Act that, in determining the amount of a civil

penalty or compromise, NHTSA must consider ''the appropriateness of the penalty or compromise to the size of the business charged * * * '', (now codified at 49 U.S.C. § 30165(c)). When NHTSA's Office of Chief Counsel considers appropriate civil penalty action, it tries to determine the size of the manufacturer or other violator, often on the basis of the violator's position within its particular industry. If the number of employees and/or the amount of gross sales in the previous year are known, this information is also considered. When the Chief Counsel asks a violator to show cause why a penalty should not be imposed, the violator is informed of the statutory provision and asked to address the size of its business in its response.

Chapter 301 affords a defense of reasonable care to a violator of Section 30112(a). 49 U.S.C. § 30112(b)(2)(A). When the agency concludes that a manufacturer has a ''reasonable care'' defense, no penalty is imposed. If a violator is unable to establish that it exercised ''reasonable care'' in its response to the show cause letter, the Chief Counsel proposes a penalty figure that appears appropriate under the circumstances. In addition to the size of the business, the agency must also consider ''the gravity of the violation'' in setting this figure (49 U.S.C. § 30165(c)). The violator is then informed by a settlement letter that the proposed amount appears appropriate under the circumstances and that NHTSA would be willing to accept this sum to settle the matter if the violator wishes to offer it in compromise. In setting the suggested amount, the Chief Counsel attempts to be realistic about the financial capabilities of individual violators. While most violators accept the agency's proposed terms, NHTSA occasionally has accepted the offer of a smaller sum, or permitted payment of the sum originally suggested in installments to accommodate the financial needs of the violator.

Although NHTSA's past policy has not provided expressly for the reduction or waiver of civil penalties for small businesses, in practice NHTSA believes that it has been sensitive to the finances of small entities, and that its enforcement policy meets the intent of the Small Business Regulatory Enforcement Fairness Act. However, to more fully implement this new legislation, effective immediately, NHTSA will modify its policy by including in its civil penalty settlement letters a statement that informs violators who may be small entities of the definition of ''small entity.'' Upon a showing by a violator that it is a small entity, NHTSA will make appropriate adjustments to the suggested settlement amount, except for violations of CAFE standards, where NHTSA does not suggest a settlement but informs the violator of the penalties calculated under the statutory formula.

From time to time, a violator has made the argument to NHTSA that no penalties should be imposed because it is in compliance with other NHTSA standards and regulations. NHTSA has discounted this argument in civil penalty deliberations on the grounds that a person should not be rewarded for doing what it is legally obligated to do. NHTSA sees no justification for modifying this policy.

Exclusions From the Enforcement Policy

As discussed above, the SBREFA legislation sets forth six categories which may form the basis of exclusion from the small business enforcement policy, and permits the establishment of additional such categories as well. Each of the six statutory categories is discussed below, in the context of both past and future policy. In addition, this policy will not apply to civil penalties imposed under 49 U.S.C. § 32921(b) (failure to comply with fuel economy standards), due to the statutory limitations set out in 49 U.S.C. § 32913(a).

(1) Requiring the small entity to correct the violation within a reasonable correction period:

On a numerical basis, by far the greatest number of violations of Chapter 301 involve the manufacture and sale of noncomplying vehicles. These faults are required to be corrected ''within a reasonable time.'' 49 U.S.C. 30120(c)(1). Failure to repair a motor vehicle adequately not later than 60 days after its presentation for repair ''is prima facie evidence of failure to repair within a reasonable time.'' 49 U.S.C. 30120(c)(2). Thus, a manufacturer is required by statute to correct a violation within a reasonable period. Therefore, NHTSA cannot say to a small entity that it will not impose a penalty if the noncompliance is corrected within a reasonable time, since this would reward conduct that is already required.

Historically, the penalties that NHTSA imposes under Chapter 301 are almost always those for violations that the agency uncovers in the course of its testing and investigations. There have been two situations in which the agency has regularly chosen not to impose penalties for violations. The first is the case in which a manufacturer, independently of a NHTSA investigation, makes its own determination that it has failed to comply with a safety standard or regulation or has identified a safety related defect, and reports it to the agency in a timely manner. The reason for this policy is to encourage manufacturers to make their own determinations and file their own reports without the fear that they will be penalized for the violations.

The second situation in which NHTSA generally does not impose penalties is the case in which the agency has decided that a noncompliance is inconsequential to safety, and the manufacturer is therefore exempted from the statutory obligation to notify and remedy (see 49 U.S.C. §§ 30118, 30120). This waiver of the agency's right to impose a penalty is based upon the de minimis aspect of the violation.

NHTSA has a longstanding policy of considering the facts that a company, large or small, has been diligent in determining the existence of a noncompliance or safety related defect and reporting it to the agency, and has remedied it in a timely manner, as mitigating factors in deciding whether to seek civil penalties from violators. In response to the SBREFA, NHTSA will initiate a policy under which it will waive penalties when a noncompliance is determined to exist following a test failure in the product of a first offender small business, provided that the violation is not a knowing one, and that the manufacturer formally notifies the agency that it has made a noncompliance determination by the deadline for its response to OVSC's initial letter regarding the test failure.

(2) Limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State:

NHTSA has no compliance assistance or voluntary audit programs, either by itself or in conjunction with a state. Thus, it will not limit its policy to such situations.

(3) Excluding small entities that have been subject to multiple enforcement actions by the agency:

It has been NHTSA's practice to sharply increase penalties for repeated violations of the same standard or regulation, whether the violator is large or small. NHTSA plans to continue this practice.

(4) Excluding violations involving willful or criminal conduct:

NHTSA is unsure how ''criminal conduct'' could result in a ''civil'' penalty and not a criminal one. With the exception of the odometer legislation,

violations of NHTSA statutes are not defined as criminal offenses. The odometer legislation does prescribe criminal penalties for knowing and willful violations of its requirements, and civil penalties for other violations.

However, NHTSA agrees with the apparent idea behind this exclusion, *i.e.*, that enforcement relief should not be extended to small entities that willfully violate the law. In fact, a violator may not be found to have exercised reasonable care when it knows that its products failed to comply with an applicable Federal motor vehicle safety standard. In the agency's opinion, a company that acts, knowing that it is violating the law, is acting willfully, as that term is used in the SBREFA.

(5) Excluding violations that pose serious health, safety or environmental threats:

As stated above, 49 U.S.C. § 30165(c) already requires NHTSA to consider the ''gravity of the violation'' in compromising civil penalties. The agency will continue its present policy of doing so. Excluding violations that pose serious safety threats from a mitigation policy appropriately reflects current agency practice.

(6) Requiring a good faith effort to comply with the law:

The 1996 SBREFA legislation contemplates as a matter of policy that penalties may be waived or reduced against small entities that have made a good faith effort to comply with the law. This policy, in essence, is already in effect for violations of 49 U.S.C. § 30112. If a violator can demonstrate that it had no reason to know in the exercise of reasonable care that the motor vehicle or item of equipment involved failed to conform, the violator will be held not to have violated Section 30112. 49 U.S.C. § 30112(b)(2)(A). Where there is no violation, no penalty can be imposed.

Authority: Sec. 223(a), Pub. L. 104–121.

Issued on: July 3, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–18065 Filed 7–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Underground Storage of Natural Gas or Hazardous Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing an advisory bulletin to operators of gas and hazardous liquid underground storage facilities. The bulletin advises the industry about available design and operating guidelines and applicable state and RSPA regulations. Elsewhere in this issue of the **Federal Register**, RSPA concludes its proposed rule proceeding on underground gas and hazardous liquid storage facilities.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-4595.

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 1992, an uncontrolled release of highly volatile liquids from a salt dome storage cavern in the Seminole Pipeline System near Brenham, Texas, formed a large, heavier-than-air gas cloud that exploded. Three people died from injuries sustained either from the blast or in the fire. An additional 21 people were treated for injuries at area hospitals. Damage from the accident exceeded $9 million.

During its investigation of this accident, the National Transportation Safety Board (NTSB) found several deficiencies in the design of Brenham station, the most important of which was the lack of a fail-safe cavern shutdown system. In addition, a comprehensive safety analysis of the station had not been conducted to identify potential points of failure and product release.

Following its accident investigation, NTSB published pipeline safety recommendation No. P–93–9 regarding underground storage. Recommendation P–93–9 asks RSPA to develop safety requirements for storage of highly volatile liquids and natural gas in underground facilities, including a requirement that all pipeline operators perform safety analyses of new and existing underground geologic storage systems to identify potential failures, determine the likelihood that each failure will occur, and assess the feasibility of reducing the risk. The recommendation also suggests that RSPA require operators to incorporate all feasible improvements.

In response to the recommendation, RSPA held a public meeting on underground storage of gas and hazardous liquids on July 20, 1994, in Houston Texas (Docket PS–137; 59 FR 30567; June 14, 1994). The purpose of the meeting was to gather information on the extent of current regulation, and to help determine the proper action for RSPA to take regarding regulation of underground storage of gas and hazardous liquids. At the meeting, representatives of industry, state governments, and the public presented statements on safety issues, industry practices, the status of state underground storage regulations, and the need for additional federal regulations. While different views were expressed on whether RSPA should begin to regulate ''down hole'' pipe and underground storage, most persons spoke favorably of industry safety practices and state regulation, and did not recognize an immediate need for federal regulatory action.

After the meeting, RSPA surveyed a cross section of underground storage facilities in the U.S. to learn their existing safety systems, potential safety and environmental problems, staff expertise, and the extent of state regulation. A report [1] of the survey says that while all surveyed facilities train personnel in operating and emergency safety, operational procedures was the leading safety concern of both operators and state regulators. The report further says that about 85 percent of surveyed facilities are under some sort of state regulation. In addition, the report gives pros and cons of federal regulation and notes that additional data and site investigations would be needed to correlate increased safety with increased regulation.

Since the accident, RSPA has actively participated with the Interstate Oil and Gas Compact Commission (IOGCC) to develop standards. The IOGCC represents the governors of 36 states—29 members and seven associate states—that produce virtually all the domestic oil and natural gas in the United States. The mission of IOGCC is to promote conservation and efficient recovery of domestic oil and natural gas resources while protecting health, safety, and the environment through sound regulatory practices. Regulatory coordination and government efficiency are chief interests of IOGCC.

IOGCC formed a subcommittee composed of federal and state regulators, including representatives from the Department of Energy, the National Association of Regulatory Utility Commissioners, American Gas Association, National Gas Supply Association, and Gas Research Institute. The subcommittee developed a report entitled ''Natural Gas Storage in Salt

[1] LRL Sciences, Inc., Underground Hydrocarbon Storage Facility Survey Summary, October 1996, Volume I and Volume II (Report No. DTRS–56–95-C–0001 available from National Technical Information Service, Springfield VA 22161)