DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 591, 592 and 594

[Docket No. NHTSA 2000–8159; Notice 2]

RIN 2127–AH67

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

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

ACTION: Final rule.

SUMMARY: This document amends regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The principal effect of these changes is to clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the statute or regulations governing these activities. Although we had proposed a number of changes to the procedures applicable to importation of vehicles originally manufactured for sale in Canada, based upon the comments from the public, we are not acting on those proposals at this time. We intend to issue a separate notice to propose a different approach for processing importations of those vehicles.

DATES: *Effective Date:* The effective date of this final rule is September 30, 2004. *Petitions for Reconsideration:* Petitions for reconsideration must be received on or before October 15, 2004.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration 400 Seventh Street, SW., Washington, DC 20590.

You may submit a petition by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1] Please also note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202–366–3151); for legal issues contact Michael Goode, Office of Chief Counsel, NHTSA (202–366–5263). NHTSA's address is 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

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[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

I. Background of This Rulemaking Action

This final rule is based upon a Notice of Proposed Rulemaking (NPRM) published on November 20, 2000 (65 FR 69810–38).

Comments on the NPRM were received from a variety of sources. Registered Importers that commented were Autosource dba Trucks Plus, Chariots of Desire, Bisbee Importing, and Auto Enterprises, Inc. Vehicle manufacturers that commented were American Honda Motor Co., Volkswagen (Volkswagen of America, Volkswagen, AG, Audi, AG), and Harley-Davidson Motor Company. Trade organizations commenting were the North American Automobile Trade Association (NAATA), the Coalition of Vehicle Manufacturers, the National Automobile Dealers Association (NADA), the American Association of Motor Vehicle Administrators (AAMVA), and the National Auto Auction Association (NAAA). We had comments from two insurance companies (Avalon Risk Management, Inc. and XL Specialty Insurance Co.), one customhouse broker (BCB International), and the National Insurance Crime Bureau (NICB). We also received comments from Raymond J. Pelletti, Bryan Milazzo, Richard McLaren (Professor of Law, University of Western Ontario, Canada), and the law firm of Hyman & Kaplan P.A.

A. The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)

Since January 31, 1990, the effective date of the Imported Vehicle Safety Act of 1988 (''the 1988 Act''), it has been unlawful to import into the United States vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS)(sometimes referred to as ''gray market vehicles'') unless NHTSA has determined that they are capable of being modified to comply with the FMVSS in effect on the date of their manufacture.[2] Conformity modifications may only be performed by, and nonconforming vehicles intended for resale may only be imported by, a ''registered importer'' (''RI''). Under the 1988 Act, a RI is an entity that NHTSA has recognized as being technically and financially capable of satisfying a number of requirements, including the ability to conform noncomplying vehicles to the FMVSS and to remedy noncompliances and safety-related defects that may exist or arise in the vehicles that they have imported. See generally 49 U.S.C. 30141–30147 and 49 CFR Parts 591–594.

In the middle 1980s, the great majority of imported nonconforming vehicles were manufactured in Europe, due to the favorable rate of exchange of the dollar against European currencies. But as the rate of exchange grew less favorable for the dollar, the volume of gray market vehicle imports from Europe declined also; by 2000, these imports totaled only 1,292 units. In the same period, the Canadian dollar had declined substantially against the American dollar, making it an attractive commercial proposition to import Canadian vehicles. In 2002, the volume of Canadian imports reached 210,292 vehicles, representing 99.2 percent of the total of 212,044 gray market vehicles imported by RIs.

B. Vehicle Eligibility Determinations (49 CFR Part 593)

Before a nonconforming motor vehicle can be imported into the United States, NHTSA must have decided, after public notice and consideration of comments that vehicles of that make, model, and model year are capable of being modified to comply with the FMVSS. Each year, we also publish an updated list of eligible vehicles, as Appendix A to 49 CFR Part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation.*

Most vehicles sold in Canada have counterparts of the same make, model, and model year in the United States that are physically identical to them. The Canadian motor vehicle safety laws are patterned on those of the United States, requiring that motor vehicles be manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSS) and be certified as complying by their manufacturer. Further, the CMVSS are identical to the FMVSS in all but a few respects. To facilitate importation, we decided on our own initiative that most Canadian vehicles certified as complying with the CMVSS were eligible for importation (see 55 FR 32988, August 13, 1990 and that portion of Part 593, Appendix A, entitled ''Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards'' (49 CFR part 593 (2002)). Our decision has facilitated international trade by removing one barrier to the free flow of most Canadian vehicles across the Canadian-American border.

C. Importation of Canadian Vehicles for Personal Use

To address the growing number of importations from Canada, some time ago we simplified the procedures under which some Canadian vehicles could be imported for personal use. Given the congruity of the FMVSS and the CMVSS, we decided that the certification requirement of the Safety Act (49 U.S.C. 30115) could be satisfied by a letter from the original manufacturer of the Canadian vehicle to the importer stating that the vehicle met all applicable FMVSS except for minor labeling requirements. By this we mean requirements such as those established by FMVSS No. 101 (a ''km'' label for an odometer calibrated in kilometers, and the tire information placard required by S4.3 of FMVSS No. 110 for passenger cars, or its counterpart for other vehicles in FMVSS No. 120) (these are referred to as virtual compliance certification letters). On this basis, we have exempted from the RI process Canadian vehicles imported for personal use by individuals who have a virtual compliance certification letter from the vehicle manufacturer. This has expedited traffic at the U.S.-Canadian

[2] The 1988 Act contains several exceptions under which noncomplying vehicles can be imported without going through a registered importer; e.g., vehicles temporarily imported for special purposes, vehicles that are least 25 years old. See 49 U.S.C. 30112(b).

border and relieved a burden on individuals whose Canadian-certified cars comply with all FMVSS except for minor labeling requirements. However, those Canadian vehicles that have not been manufactured to meet the FMVSS that are more stringent than the CMVSS, such as FMVSS No. 208, *Occupant Crash Protection,* and the dynamic crash requirements of FMVSS No. 214, *Side Impact Protection,* obviously cannot be covered by a manufacturer's virtual compliance certification letter. A person wishing to import such a vehicle for personal use must contract with a RI to conform the vehicle as part of the importation process, as required under the 1988 Act. In addition, NHTSA would have to determine such a vehicle to be eligible for importation before it could be lawfully imported.

We proposed to formalize these policies in 49 CFR 591.5(g), which would have covered importations of virtually compliant vehicles by RIs in addition to importations by individuals for personal use. In view of our decision, discussed below, not to extend the virtual compliance concept to vehicles imported by RIs, we are adopting Section 591.5(g) as proposed, but specifying that it applies only to vehicles imported for personal use.

II. Our Efforts To Reduce the Burden on Canadian Vehicles Imported for Resale

In 2000, we preliminarily concluded that some of the current procedures and requirements have resulted in regulatory burdens on the importation of Canadian vehicles for resale that are not necessary to implement the safety purposes of the statute, and we proposed a number of simplifying amendments.

A. The Present Importation Process

Nonconforming vehicles imported for resale can only be imported by a RI. The RI must enter the vehicle under a bond that guarantees that it will bring the vehicle into compliance and certify the vehicle's compliance to us within 120 days after entry. 49 U.S.C. 30141(d); 49 CFR 591.8. The RI must support its certification with appropriate documentation.

Until the bond is released, the RI may not register the vehicle or license it for use on the public roads (or release it from the RI's custody for such purposes). 49 U.S.C. 30146(a). However, if the RI has not heard from us within 30 days after submitting its certification package, it may release the vehicle. But if we advise the RI within the 30-day period that we intend to inspect the vehicle, the RI must retain custody until the inspection is completed. 49 U.S.C. 30146(c).

Failure of the RI to comply with these and other requirements can result in an order that it export the vehicle, forfeiture of the bond, civil penalty liability, and/or suspension or revocation of the RI's registration.

B. The Final Rule Does Not Adopt the Proposal To Establish Different Procedures for Importation From Canada. NHTSA Will Issue a Notice Reflecting a Different Approach

The regulatory scheme that Congress imposed through the 1988 Act was based upon the then-existing composition of the gray market, which was heavily weighted towards European vehicles, and the assumption that vehicle safety standards in other countries afforded less protection than the FMVSS. In that light, we established a regulatory scheme that applied to all gray market vehicles, without regard to the country of origin or the extent to which the vehicle complied with applicable safety standards. However, contemporary realities do not appear to require such a complex scheme in the majority of instances. Today, almost all (99.2 percent in 2001) gray market vehicles are imported from one country, Canada. In general, these vehicles are certified as complying with the CMVSS, which are nearly identical to the FMVSS. Yet the importation procedures established by the statute and our current regulations treat all noncomplying vehicles the same, whether they were manufactured in a country with safety standards virtually identical to the FMVSS or in a country with no vehicle safety standards at all.

In the NPRM, we proposed to make it easier to import for resale Canadian vehicles that are covered by a letter from the original manufacturer indicating that they are in compliance with all applicable FMVSS except for some labeling requirements of Standards Nos. 101, 110 or 120 (and, where applicable, the daytime running lamp (DRL) specifications of Standard No. 108), the same way we have been doing for vehicles imported for personal use. Most manufacturers of Canadian-certified vehicles had informed us which of their late-model vehicles conformed to the FMVSS except in these minor labeling respects, without making reference to DRLs. We proposed to identify these virtually-compliant Canadian vehicles as ''Type 1 motor vehicles.'' We further proposed to require that the manufacturer's letter also include a statement of compliance with U.S. bumper and theft prevention standards. We proposed that a ''Type 1 motor vehicle'' be defined as follows:

> Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards (except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and, if appropriate, S5.5.11 of Standard No. 108 (related to daytime running lamps)).

We proposed to add an Appendix A to Part 592 which would list by make, model, and model year the vehicles that would be Type 1 vehicles, to be revised from time to time to reflect an evolving universe. This list would provide RIs, Customs officials, and customhouse brokers with a ready reference of vehicles eligible to enter the United States as Type 1 vehicles.

Type 1 motor vehicles imported for resale would still have had to be imported by a RI, and the RI would have had to ensure that the vehicles met the DRL requirements of Standard No. 108, and were appropriately labeled to meet Standards Nos. 101 and 110 or 120.

Our proposal was generally supported by eight commenters, including an original vehicle manufacturer. However, the proposal was objected to, on legal, practical, and policy grounds, by ten commenters, including some original vehicle manufacturers, RIs, a customhouse broker, a law firm, an insurer, and the NICB.

The vehicle manufacturer's comment, which generally supported the proposal, recommended that Type 1 vehicle classifications be limited to car lines and models for which equivalent vehicles were available in both the United States and Canada for the same model year. The manufacturer stated that it would not furnish virtual compliance letters for vehicles certified for sale in Canada if it had offered no equivalent vehicles certified for sale in the United States in the same model year.

One commenter was concerned that original vehicle manufacturers might manipulate the importation process by withholding identification of vehicles that are Type 1. To prevent manipulation, this commenter suggested that original manufacturers be required to report to NHTSA the compliance status of their Canadian market vehicles vis-à-vis the FMVSS, and that penalties be imposed for any misrepresentations made in those reports. In our opinion, this approach is not feasible. We do not believe we have authority to impose such a requirement, particularly with respect to vehicle manufacturers outside the United States.

We note that the proposal assumed that most, if not all, vehicle manufacturers would provide letters reflecting virtual compliance. Since publication of the NPRM this assumption has been called into question, as many manufacturers have made it clear that they oppose the importation of their Canadian vehicles into the United States and that they will not do anything to facilitate such importations.

The primary legal issue raised by the commenters was that NHTSA lacks authority to allow importation of gray market vehicles of any sort without requiring a conformance bond. This argument is based upon Section 30141(d)(1), which specifies that ''a person importing a motor vehicle under this section shall provide a bond * * * and comply with the terms [NHTSA] decides are appropriate to ensure that the vehicle—(A) will comply with applicable motor vehicle safety standards * * * within a reasonable time (specified by [NHTSA]) after the vehicle is imported. * * *'' As noted in the comment from the law firm, the bond is required to ensure that all noncomplying vehicles imported by or through a RI are brought into compliance with all applicable FMVSS. Since Type 1 vehicles would be imported by or through a RI and must be conformed to meet applicable FMVSS, the comment asserted that NHTSA's attempts to relax the bonding requirement for one class of vehicle while retaining it for a second class of vehicle would be ''arbitrary and capricious.'' In this commenter's opinion, elimination of the bonding requirement would not withstand judicial scrutiny because it is not supported by substantial evidence. In particular, the comment observed that NHTSA conducted no studies to support its position that Type 1 vehicles will be conformed in the absence of a bond. Another commenter contended that virtual compliance is technically the same as noncompliance.

The proposal was further objected to on the grounds that it would facilitate the importation of vehicles that have been ''cloned.'' NICB identified these as vehicles ''that have been unsafely rebuilt from cars that were 'totaled' in wrecks, or that contain unremedied safety defects, that were stolen from U.S. citizens, illegally exported to Canada, then returned with bogus vehicle identification numbers ('VINs'), or that were stolen from Canadian citizens.'' The commenter reported that ''cloned'' stolen or rebuilt salvage vehicles are already flowing into the United States with the rising tide of gray market imports from Canada. NHTSA's proposal would facilitate these scams, according to NICB. It would have the RI ''keep custody of a 'gray market' vehicle, at least for the few days it would take to verify that the incoming vehicle is safe and not stolen, that it is not a dangerous 'zombie' or a stolen car that soon may be repossessed from an innocent American car buyer.''

Another comment, by a customhouse broker, was that the creation of two categories of imported vehicles, one requiring a bond and the other not requiring a bond, would be confusing and create a burden for brokerage and Customs offices, as it would not be realistic for brokers and officers to know the differences between Type 1 and Type 2 vehicles. This commenter recommended retaining the bond for Type 1 vehicles but waiving the 30-day hold period.

There were also practical and policy objections to the proposed elimination of the bonding requirement. One commenter expressed concern that elimination of the bond may make it more difficult for NHTSA to ensure that safety recall campaigns are being completed on gray market vehicles. The commenter contended that by continuing to require the bond, NHTSA would be able to address the key concerns of whether the vehicle is safe and whether there is a viable RI standing behind the vehicle for 10 years.

After considering these comments, we have decided not to adopt the approach that we proposed. This means that the current bond requirements remain unchanged. We still seek to expedite importations of vehicles from Canada for resale, and intend to issue a notice in the near future reflecting a new approach.

III. The Rule Will Enhance Motor Vehicle Safety by Requiring Greater Accountability of Registered Importers

The second primary goal of this rulemaking is to achieve greater accountability and compliance with legal requirements on the part of RIs. The ability of RIs to capitalize upon the favorable Canadian exchange rate, the availability of vehicle models there that are marketable in the United States, and their desire to release vehicles promptly have resulted in conduct by some RIs that is not explicitly prohibited by Part 592, primarily because it was not contemplated in 1989 when we issued the regulation. We proposed a number of changes to Part 592 and announced several interpretations of the statute and existing regulations, in order to address these situations and to assure that the RI program operates efficiently under the circumstances existing today.

A. What Is Required to Register as a RI and To Maintain the Registration (Section 592.5)?

An entity that wishes to register as a RI must file an application with us as specified in 49 CFR 592.5(a). Moreover, at the time an RI submits its annual fee, as required by 49 U.S.C. 30141(a)(3), it must file a statement in which it affirms that the information provided in its application remains unchanged. 49 CFR 592.5(e).

We have concluded that the present registration procedures must be revised and expanded in order to increase the likelihood that a RI will be technically and financially able to perform its duties. As addressed both in the NPRM and below, based on experience gained over the years, we will require more information from a person seeking to be a RI than was originally required. Moreover, we need to obtain this supplemental information from each existing RI. Because a RI who was registered before the application requirements are amended cannot affirm the continuing correctness of information that it has never furnished, we have concluded that the most appropriate way to ensure that the required information is provided is to require that existing RIs, as a condition of maintaining their existing registration, provide the additional information called for in the final rule not later than November 1, 2004, the first business day that is at least 30 days after the effective date of the amendment.

1. Sec. 592.5(a)(3)–(5): A Post Office Box or Foreign Address Is Not an Acceptable Address for a RI; The Application Must Provide Social Security Numbers for Certain Individuals; The Application Must Identify Officers Authorized To Certify Compliance to NHTSA

Section 592.5(a)(3) currently requires the applicant to provide its ''address,'' among other information. Two issues have arisen with respect to this requirement: whether a RI may give a post office box as its sole address, and whether a Canadian address is acceptable.

We tentatively answered in the negative the question of the sufficiency of a post office box as the sole address for an RI, proposing that the application set forth:

(3) . . . the full name, street address, and title of the person preparing the application, and the full name and street address, e-mail address (if any), and telephone and facsimile (if any) numbers in the United States of the

person for whom application is made (the ''applicant'').

We discussed potential difficulties in dealing with RIs who are located in Canada. We explained that we had not required that principals of a RI be citizens of the United States, and we had registered several RIs who have used mailing addresses in Canada, requiring them to maintain facilities in the United States where conformance work is performed and records are kept. We concluded that if the RI is an entity organized under the laws of any State (*e.g.*, corporation, partnership, sole proprietorship), it may be legally served at the street address of the United States facility it has provided us, even though its principal(s) may reside in Canada. The question of the adequacy of service may differ, however, if the RI is an entity that is not organized under the laws of any State; that is to say, if it is a sole proprietorship, a partnership, or a corporation organized under the laws of Canada.

The Safety Act provides a mechanism to assure that non-resident manufacturers, which includes importers for resale, can be served with orders and other process issued by the agency, by specifying that a manufacturer ''offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made.'' 49 U.S.C. 30164(a), implemented by 49 CFR 551.45, *Service of process on foreign manufacturers and importers.* This regulation requires ''any manufacturer, assembler, or importer of motor vehicles'' to ''designate a permanent resident of the United States upon whom service of all processes, notices, orders, decisions, and requirements may be made for him and on his behalf. * * *'' 49 CFR 551.45(a). As a RI is an ''importer of motor vehicles,'' we proposed to require an applicant organized under the laws of another country to file a designation of agent in the form specified in Section 551.45 before we register it as a RI (proposed Section 592.5(a)(5)(v)).

This would not relieve the RI from maintaining required facilities and records within the United States. To assure our ability to locate those facilities and records, we proposed (Section 592.5(a)(5)(ii)) to require an applicant to include the street address of each of its facilities in the United States, including the location of the records that it is required by this part to keep, and the street address that it designates as its mailing address. We also proposed (Section 592.5(a)(5)(iii)) that an applicant provide a copy of its business license or other similar document authorizing it to do business as an importer, or modifier, or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by such state or local law to have such a license or document).

In addition, we proposed (Section 592.5(a)(5)(iv)) that the applicant provide the name of each of its principals who is authorized to submit conformity certifications to NHTSA, and the street address of the repair, storage, or conformance facility where each identified principal will be located.

Proposed Section 592.5(a)(3), which would require RI applicants to state their street addresses and telephone numbers in the United States, was supported by five commenters. Two commenters were concerned that NHTSA might no longer allow Canadians to serve as RIs. Both these commenters felt that NHTSA would be able to adequately regulate Canadian RIs, either through their designated agents in the U.S. or through rules of civil procedure in all Canadian provinces, which allegedly allow for service by American entities on Canadian persons. We wish to assure these commenters that it is not the intent of this rule to exclude Canadian entities from becoming, or continuing to be, RIs. However, it is imperative that we be able to readily inspect all premises in the United States where RIs are conducting operations under NHTSA's regulations, and be able to mail legal communications to Canadian-based RIs or their designated agents at those premises. Moreover, historically some entities have not designated agents pursuant to 49 CFR 551.45, or have not updated agent addresses.

We will mail notices of proposed suspensions, both automatic and non-automatic, to the address in the United States that the RI provided in its application, and if these notices are returned to us as undelivered or undeliverable, we shall proceed with the suspension. A commenter observed that the enforcement and collection of fines and penalties might be an issue where ownership of a RI is outside the United States. We agree. The administration of the 1988 Act is best served by having all RIs maintain mailing addresses in the United States, which will forestall any question as to NHTSA's extra-territorial inspection, order, and collection authority. We are therefore adopting Section 592.5(a)(3) as proposed.

In Section 592.5(a)(4), we proposed that applicants provide the social security numbers of their principals or partners and persons authorized to sign certification submissions to NHTSA. The purpose of this provision was to allow us to determine whether any person associated with an applicant has ever been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business, such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles. If we discovered that there was such a person associated with an applicant, we could deny the application after considering the severity of the offense and the prospective role of the associate in operating the RI's business. Two commenters supported denying registration to applicants who have a felony record involving motor vehicles or the motor vehicle business. No comments were filed in opposition. Accordingly, we are adopting the requirement for provision of social security numbers with RI applications. If these numbers are not provided, the application will be denied.

In Section 592.5(a)(5)(iii) we proposed that an applicant provide a copy of its business license or other similar document authorizing it to do business, or a statement that it has made a bona fide inquiry and is not required by state or local law to have such a license or document. Three commenters agreed with the proposal, and no one opposed it. One specified that the license should be that of a motor vehicle repair facility and that at least one employee should be a licensed mechanic. Another commented that RIs be required to be licensed as manufacturers if their states license such activity. However, these comments did not include any information or data on the scope of state licensing requirements, and we have no present basis upon which to adopt such requirements.

Upon review, we have concluded that there is an overlap between proposed Section 592.5(a)(5)(iii) and proposed Section 592.5(a)(9)(ii), which, among other things, would require the applicant to provide a copy of a license to do business at each facility that it identifies under that subparagraph. Accordingly, the final rule amends Section 592.5(a)(5)(iii) to specify that the applicant will provide a copy of the business license, or inquiry statement, with respect to each such facility. Section 592.5(a)(9)(ii) will therefore not include such a requirement.

In Section 592.5(a)(5)(iv), we proposed that an applicant provide the name of each principal that would be authorized to sign conformity statements to NHTSA and the street address of the repair, storage, or conformity facility where each such

principal would be located. There was one comment on this proposal, agreeing that conformity statements should be signed and submitted by a principal of a RI. This comment also supported including this requirement as a duty of a RI as we proposed under Section 592.6(d)(3). Accordingly, we are adopting both proposals.

These provisions will ensure that there is a designated person who will be accountable for the veracity of the certification and its submission. It is very important from a safety perspective that imported vehicles meet applicable Federal motor vehicle safety standards and that all recall work be performed. Toward that end, it is critical that a principal assure that these requirements are met. Such a designated person should be fully conversant with NHTSA regulations, such as the FMVSS, recall administration, the prohibitions against affixing a certification label to a vehicle outside the United States and shipping a vehicle to a facility other than the RI's after the vehicle has entered the United States, and the need to retain the vehicle until the bond is released.

In the final rule, in Section 592.4, we are defining ''principal'' to mean, with respect to a RI: If a corporation, an officer; if a partnership, a general partner; and if a sole proprietorship, the individual who is the sole proprietor. In addition, as proposed, the term includes a director of a corporation and any individual whose ownership interest is 10 percent or more.

2. Defining ''Service Insurance Policy'' and ''Independent Insurance Company'' To Best Ensure That Owners Will Be Able To Have Noncompliances and Safety-Related Defects Remedied Without Charge

Under present Section 592.5(a)(8), an application must contain a copy of a contract to acquire, effective upon registration as an importer, a prepaid mandatory service insurance policy underwritten by an independent insurance company (or a copy of such policy) to ensure that the applicant will be able financially to remedy safety-related defects in the vehicles that it imports or conforms.

In the context of Section 592.5(a)(8) we proposed definitions for the terms ''service insurance policy'' and ''independent insurance company'' to address our concerns.

A ''service insurance policy'' would be defined as any policy issued or underwritten by an independent insurance company which covers a specific motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or safety-related defect determined to exist in that vehicle will be remedied without charge to the owner of the vehicle. An ''independent insurance company'' would be defined as an entity that is registered with any State and authorized thereby to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or persons in affinity with such, is employed by, or has a financial interest in or otherwise controls or participates in the business of a RI to which it issues or underwrites such policies. The phrase ''in affinity with such'' includes but is not limited to family members such as spouses, parents, children, or in-laws.

One commenter was of the view that ''the use of terms such as 'backed by,' 'issued by,' 'underwritten by,' and 'reinsured by' can be somewhat ambiguous when used out of context,'' going on to say that ''the nature and extent of the 'backing' or 're-insurance' is not defined.'' (We note that these terms were addressed in the preamble discussion of the issue without specific proposed definitions.) In this commenter's opinion, it would be possible for such backing or reinsurance ''to cover only a portion of the policy limit(s).'' The commenter recommended that ''the underwriter named on each policy actually themselves be an insurance company,'' and that ''NHTSA allow the Department of Treasury to evaluate these insurers as is done with the DOT bond.'' The commenter cited Treasury Circular 570 as containing a list of approved companies. In its view, ''this would ensure that issuers of service insurance policies (where the motoring public is at financial risk) are not held to a lower standard than are issuers of DOT Bonds (where the U.S. Government is at financial risk).'' Although we believe that the comment is well taken, such a requirement would be beyond the scope of our proposal. We will consider addressing this issue in the NPRM mentioned above.

Another commenter suggested that an ''independent insurance company'' not only be registered with a State and authorized to conduct an insurance business in that State, but that it also be authorized to conduct the line of business under which the policy falls. We concur with this recommendation. Such an amendment emphasizes our intent that such policies be honored in the event the insurer is called upon to do so. Accordingly, we are modifying the definition of ''independent insurance company'' to define it in pertinent part as ''an entity that is registered with any State and authorized by that State to conduct an insurance business including the issuance or underwriting of a service insurance policy * * *.''

We did not specifically request comments on whether the amount of coverage presently provided ($2,000 per vehicle) should be increased. One commenter considered the amount adequate. Another thought that the limit should be raised to an amount equal to the ''full retail price of the vehicle,'' to insure that the remedial options of replacement with an equivalent vehicle or refunding the purchase price could be achieved. Such an increase is beyond the scope of the proposal. Moreover, there has been no need demonstrated since 1989 for an increase in the amount of coverage per vehicle, even accounting for inflation.

Only one comment was submitted in response to our question about whether there might be an alternative to the service insurance policy, such as a bond equal to 5 percent of the dutiable value of the vehicle. In the commenter's view, if such a bond were required, original vehicle manufacturers may decline to perform recall remedy work ''for free if they can be paid for it.'' Because most, if not all, manufacturers have authorized their franchised dealers in the United States to perform recall remedial work on vehicles of the same make, imported from Canada, at no charge to the owner, owners have not been experiencing problems related to obtaining recall remedies. For this reason, and the lack of public comment, we have concluded that there is no reason to switch to a different approach.

Three commenters stated that the rule needs to address the importation of vehicles with outstanding Canadian liens because State vehicle registrars are not requiring this information. In the view of one commenter, this creates the potential for cross-border fraud. The solution suggested by the commenter is a Federal regulation requiring RIs to conduct lien searches across Canada and then to provide a statement regarding this research on each vehicle they import. We have concluded that imposing such a duty under Section 592.6 would be beyond the scope of our NPRM, but will consider addressing it in the forthcoming NPRM.

3. Section 592.5(a)(9): An Applicant Must Demonstrate Its Technical Ability To Perform Conformance Work

The original ''gray market'' provisions of the Safety Act, in effect from 1968 to 1990, emphasized the responsibility of the importer to bring imported nonconforming vehicles into compliance with U.S. requirements but was silent regarding the qualifications of

the importer/modifier. In the 1988 Act, Congress rejected the 20-year practice of leaving conformers of motor vehicles unregulated, and enacted a statutory scheme under which only RIs may conform noncompliant vehicles. The statute directed NHTSA to establish procedures and requirements that, among other things, ensure that the RI ''will be able technically'' to carry out conformance and recall repair work. 49 U.S.C. 30141(c)(1)(C). The underlying intent was that a Federal agency would review the qualifications of each RI to bring vehicles into compliance with the FMVSS and to repair those that are included in safety recall campaigns if they have not been remedied by the fabricating manufacturer.

As reflected in existing 49 CFR 592.5(a)(9), we currently require an applicant to demonstrate that it will be ''technically able [to remedy a noncompliance or safety-related defect] through repair.'' However, the current regulation does not specifically address the technical ability of the applicant to conform vehicles or the sufficiency of its facilities to do so. Therefore, we proposed to amend Section 592.5(a)(9) to require an applicant to submit information sufficient to demonstrate to us that it has the technical ability to bring vehicles into compliance with safety, bumper, and theft prevention standards, and to perform recall repairs on vehicles. This information could include a discussion of the applicant's facilities, its experience repairing vehicles, and the qualifications of its personnel.

To demonstrate ownership or lease of facilities adequate for the conformance, repair, and storage of vehicles, under proposed Section 592.5(a)(9)(ii) an applicant would have to provide a copy of the lease agreement or ownership document relating to each such facility. We also proposed that the applicant provide a copy of a license or other similar document issued by an appropriate local authority permitting the applicant to do business as an importer, or modifier, or seller of motor vehicles, or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license. As noted above, this provision overlapped a requirement included in Section 592.5(a)(5)(iii), and we are addressing it in that section.

We are authorized to inspect the conformance, storage, and record-keeping facilities of an applicant to assist us in deciding whether to approve a RI application. 49 U.S.C. 30141(c)(1)(B) and 30166. In some instances, we have conducted an on-site inspection to judge the technical competence of an applicant; in others, we have relied on the description provided in the application. To reduce the need to conduct on-site inspections and to expedite the process, we proposed to require an applicant to submit still or video photographs of each of its facilities where vehicles would be conformed, remedied in safety recall campaigns, and stored prior to their release.

Five commenters addressed proposed Section 592.5(a)(9). Two of these commenters wanted us to allow RIs to have contractors perform conformity work, one asserting that it was unrealistic for the agency to expect RIs to possess the facilities, technical expertise, and equipment to perform all required repairs and modifications on the vehicles that they import. This comment recommended that an applicant demonstrate that it has access to licensed dealer service departments and licensed professionals that have the facilities to modify or repair the vehicles it has imported.

A third commenter supported the proposal that RIs submit proof that they own or lease facilities that are adequate to fulfill a RI's duties. This commenter and another also recommended that we require that a RI be specifically licensed to operate as a motor vehicle repair facility and to have at least one employee who is a licensed mechanic in the state where the RI is located. Finally, one commenter was of the view that a RI's employees should be required to provide proof of their immigration status if they were not U.S. citizens.

In 1989 we proposed allowing RIs to contract out conformance work, but we did not adopt this proposal, and we are even less inclined to do so now. We have concluded that the statute is best implemented by placing the RI's responsibilities squarely on the RI itself. Congress replaced the previous regulatory scheme under which an importer of a gray market vehicle was free to have conformance work performed by any entity, regardless of its qualifications, with a scheme under which conformance work done would be done by an entity which had demonstrated to NHTSA its ''technical ability'' to perform that work. Permitting a delegation of conformance work would be inconsistent with this statutory goal and would dilute the direct accountability of a RI for vehicle modifications. We are aware of past instances in which RIs have contracted with other repair shops to replace odometers and speedometers calibrated in metric units with those calibrated in miles and miles per hour. The agency has directed those RIs to desist from this practice to ensure that the RI is responsible for any safety problems that may arise from the installation and for the accuracy of the odometer reading on the replaced unit.

As for the suggestions that at least one principal or employee should be licensed as a mechanic in the state where the RI facility is located, we are not adopting this as a requirement. As indicated above, we have not been provided, and, at this time, we are not conversant, with the laws of the various states that relate to this issue, and there may be some that do not require licensing of auto repair mechanics. Further, the proposal did not ask for comment on this specific question. However, the fact that a principal or employee has been issued such a license or certificate is the type of information that an applicant could submit in support of its argument that it has the technical ability to conform vehicles. Should the licensee's employment or affiliation with a RI terminate, that fact would have to be reported to us as a change in relevant circumstances, as required by new Section 592.5(f).

As for the comment that non U.S.-citizen employees of RIs should have to provide proof of their immigration status, we note that we did not propose such a requirement nor did the Immigration and Naturalization Service (or, as it is now named, U.S. Citizenship and Immigration Services) inform us of the desirability of such a requirement. In any event, we are reluctant to add requirements that appear to have little relevance to the ''technical ability'' of a RI to conform or repair motor vehicles.

4. Section 592.5(a)(11): An Applicant Must Understand the Duties of a RI

At present, Section 592.5(a)(11) requires an applicant to state that it will fully comply with the duties of a RI as set forth in Section 592.6. We have proposed additions to, and clarifications of, the duties of a RI, and, in this light, proposed an amendment of Section 592.5(a)(11) to require an applicant to state that it has read and understood the duties of a registered importer as set forth in 49 CFR 592.6 and that it will fully comply with each such duty.

No commenter addressed this issue. We are adopting Section 592.5(a)(11) as proposed.

5. Section 592.5(b): How NHTSA Will Treat an Incomplete Application

Under the present regulation, if the information submitted by an applicant is incomplete, the Administrator notifies the applicant of the areas of

insufficiency and that the application is being held in abeyance.

We proposed a clarification under which the Administrator would notify the applicant of the ''information that is needed'' in order to complete the application, and that the Administrator would not give further consideration to the application until the information is received.

We received one comment in support of this proposal. No other comments were received on the issue, and we are adopting Section 592.5(b) as proposed.

This section applies to new applications only. If an existing RI fails to file additional required information by November 1, 2004, as required by new Section 592.6(r), discussed below, the Administrator may automatically suspend the registration, pursuant to Section 592.7(a)(4). Further, if an existing RI fails to file an annual statement as required by Section 592.6(l), the Administrator may suspend the registration, pursuant to Section 592.7(b)(1).

6. Section 592.5(e): Denial of Applications

We received no comments on our proposed amendments to this section and are adopting them as proposed.

Under these amendments, we are removing from present Section 592.5(d) and placing in a new subsection (e) provisions related to denial of RI applications and refunds of certain components of the initial annual fee.

At present, the regulation states only that ''If the information [in the application] is not acceptable, the Administrator informs the applicant in writing that its application is not approved.'' We are expanding this in several ways.

We currently require an applicant to state that it has never had a registration revoked pursuant to Section 592.7 (Section 592.5(a)(6)). We are continuing this requirement and are restating Section 30141(c)(3) as well by specifying that we shall deny registration to an applicant whose registration has previously been revoked (new Section 592.5(e)(1)).

We also currently require an applicant to state that it is not and was not ''directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked'' (Section 592.5(a)(6)). We are continuing this requirement and refer to the portion of Section 30141(c)(3) that specifies that we may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, a RI whose registration has been revoked. For example, if we revoke the registration of a corporate RI that had four officers, we shall deny registration to an applicant in which any one of the four individuals, or specified family members, is involved.

Under the current regulation, each RI's application must include the ''names of all owners, including shareholders, partners, or sole proprietors'' (Section 592.5(a)(4)), and, if an owner is a corporation, ''the names of all shareholders of such corporation whose ownership interest is 10 percent or greater'' (Section 592.5(a)(5)). The RI is required to inform us of any change in the ownership information it has provided (Section 592.5(f)). Thus, under the present regulation, there is some information that can be used to compare the ownership interests of a RI whose registration has been revoked with those of an applicant. However, the present regulation, in our view, may not be sufficient to cover situations where an application is filed by person(s) who may be influenced by a revoked RI, or its shareholders, principals, partners, or employees, and whose name may not have appeared on that RI's application. For example, this would include a spouse, in-law, child, partner, substantial shareholder, or employee. Thus, the amended regulation will also require an applicant to state whether any of its shareholders, officers, directors, employees, or family members of such individuals had been previously affiliated with a RI in any capacity (e.g., major shareholder, partner, participant in the business), and, if so, to state the name of the RI and the capacity.

Under the amended rule, NHTSA's denials of RI applications will be in writing and include the reasons for the denial. Applicants will be specifically permitted to submit a petition for reconsideration of the denial within 30 days (Section 592.5(e)(3)), and the denial will be in effect until the petition is acted upon.

7. Section 592.5(f): The Due Date for the RI's Annual Statement and Fee Will Be September 30

No comments were received on the amendments proposed for Section 592.5(f) and they are adopted as proposed.

Under these amendments, present subsection (e) is redesignated subsection (f). Under 49 U.S.C. 30141(a)(3), a RI must pay an annual fee ''to pay for the costs of carrying out the registration program for importers * * *.'' The annual fee covers a fiscal year, October 1 through September 30 of the year following. At present, the fee, along with the RI's statement that affirms that information provided to the agency remains correct and that it continues to comply with applicable requirements, must be filed and paid not later than October 31 of each year. This is a month after the beginning of the fiscal year. Moreover, Section 592.7(a) now provides that we may not revoke or suspend a registration until the 31st calendar day after an unpaid fee is due and payable. The 31st calendar day after October 31 is December 1. This means that a RI that does not pay its annual fee has a ''free ride'' to continue to operate for two months into the fiscal year.

To address this anomaly, we are amending the present provisions to require payment of the annual fee, and submission of the annual affirmation statement, not later than September 30 of each year, to cover the next fiscal year. In addition, as discussed in more detail below, we are amending Section 592.7(a) to specify that we may automatically suspend a RI's registration if the annual fee has not been paid by the close of business on October 10 or, if October 10 falls on a weekend or a holiday, the next business day.

8. Transfer of Current Section 592.5(f) to new Section 592.6(m): RIs Must Notify NHTSA of Changes of Information Provided in Their Applications

Under current Section 592.5(f), a RI must notify us within 30 days of any change in the information provided in its application. This is a duty and, as such, is more appropriately located in Section 592.6, Duties of a registered importer. Therefore, we are designating it as new Section 592.6(m).

9. Section 592.5(h): How NHTSA Will Treat Applications Pending on the Effective Date of the Final Rule

We received no comments on our proposed Section 592.5(h) and are adopting it as proposed.

This section addresses how we will treat RI applications that are pending when this final rule becomes effective. Under subsection (h), if the application does not contain all the information that is required by Section 592.5(a) as amended by the final rule, we shall defer further consideration of the application until the information is received. Potential and pending applicants are advised to begin preparation of all newly-required information promptly following publication of this rule.

B. Bonding, Conformity, Certification, and Other Duties of a Registered Importer (Section 592.6)

The obligations of a RI are set forth in Section 592.6. The NPRM represented our tentative decision that several provisions in that section should be amended or clarified, and that several more needed to be modified to reflect the establishment of different Types of motor vehicles (Type 1 and Type 2). Therefore, we proposed revising Section 592.6 in its entirety.

The present duties of a RI under Section 592.6 may be summarized as follows, by their subsection:

(a) bond requirements;
(b) recordkeeping;
(c) conformance records after initial certification for same make, model, and model year has been submitted;
(d) certification of conformed vehicles;
(e) certification to NHTSA;
(f) substantiation of certification;
(g) obligation to notify and remedy;
(h) requirement to admit NHTSA representatives for inspection;
(i) maintenance of prepaid mandatory service insurance policy; and
(j) obligation upon failure to conform vehicles.

We are adopting the following structure of subsections for Section 592.6:

(a) conformance and bond requirements;
(b) recordkeeping;
(c) certification of conformed vehicles;
(d) certification documentation to be submitted to NHTSA for motor vehicles;
(e) acts prohibited before bond release;
(f) furnishing the service insurance policy with the vehicle;
(g) odometer disclosure requirements;
(h) obligation to export or abandon a vehicle upon failure to conform it;
(i) obligation to provide notification of and remedy for safety-related defects and noncompliances, and to submit related reports to NHTSA;
(j) requirement to admit NHTSA representatives for inspection;
(k) requirement to provide an annual statement with fee;
(l) notification to NHTSA upon change of information provided in application; prior notice of change of facility;
(m) assurance that at least one full-time employee is present at each facility;
(n) prohibition against co-utilization of employees, or conformance, repair, or storage facilities with any other RI;
(o) timely response to NHTSA information requests;
(p) timely payment of fees; and
(q) provision not later than 30 days after effective date of final rule of information required of new RI applicants.

We discuss below the requirements we have adopted.

1. Section 592.6(a): A RI Must Ensure Conformance of All Imported Vehicles With Safety, Bumper, and Theft Prevention Standards and Furnish a Conformance Bond

Under current Section 592.6(a), a RI must ''furnish to the Secretary of the Treasury (acting on behalf of the Administrator)'' a bond to assure that it will bring a nonconforming vehicle into conformity with the FMVSS within 120 days of entry. We proposed to amend subsection (a) to make explicit that a RI must bring each vehicle under bond into conformity and that a RI must assure that any vehicle that it imports for resale has been deemed eligible for importation by the Administrator pursuant to Part 593 (this would include any pre-determination vehicle that a RI originally imported under 49 CFR 591.5(j)(1) for the specific purpose of developing conformance modifications to support an eligibility petition). The obligation to conform the vehicle would explicitly cover conformance with any Federal bumper and theft prevention standards applicable to the vehicle.

We asked for comments on whether 120 days was needed to bring Canadian Type 2 vehicles into conformity. Given our decision to dispense with different requirements for different vehicle types, we will retain the 120-day period for all vehicles.

Until now, Part 592 has been silent on the RI's responsibility to ensure conformance with the Theft Prevention Standard, though the matter is addressed in Part 567, the certification regulation. It is a violation of Federal law to import motor vehicles that do not comply with safety and bumper standards, but in each case the statutory prohibition does not apply if the vehicles have been determined to be capable of complying and are brought into conformity after importation (See 49 U.S.C. 30112, 30146, and 32506). It is also a violation of Federal law to import a vehicle subject to the Theft Prevention Standard that does not comply with that standard (see 49 U.S.C. 33114), but Section 33114 provides no exceptions that would allow post-importation conformance. Thus, we have applied Section 33114 to require a vehicle to meet the Theft Prevention Standard at the time of entry, and have not allowed conformance after a vehicle has been imported.

We have implemented this through our certification regulation (49 CFR Part 567): If a RI imports a passenger car or multipurpose passenger vehicle from a line listed in Appendix A of 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard, and the original manufacturer has not affixed a label meeting the requirements of Section 567.4(k), the RI is required to inscribe the Vehicle Identification Number on certain parts (Section 541.5(b)(3)), and to affix a label meeting these requirements before the vehicle is imported (Section 567.4(k)). We proposed to allow post-entry conformance on the basis that it might be difficult outside the United States to mark parts or to take other actions needed to certify compliance with the theft prevention standard.

The purpose of the Theft Prevention Standard ''is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles'' (Section 541.2). We viewed it as unlikely that an imported vehicle subject to the Theft Prevention Standard would be stolen while in the custody of a RI. The NPRM represented our tentative conclusion that the purpose of the standard would not be compromised by allowing a RI to bring a vehicle into compliance after its entry and before its sale for on road use, during the period when the RI is conforming and certifying vehicles to the safety and bumper standards.

NICB objected to this tentative conclusion. It remarked that ''after * * * acknowledging that [the] statute 'provides no exceptions,' NHTSA proposes nonetheless to create an exception to allow importation of vehicles from lines that are subject to the parts-marking requirement, but that were not marked. This proposal flatly contradicts Congress' mandate, and NHTSA identifies no statutory authority * * *.'' NICB further asserted that even if NHTSA had authority ''to allow non-parts-marking-compliant 'gray market' vehicles into the United States, it is not possible to implement the proposed rule'' without undercutting enforcement efforts to arrest those who profit from vehicle theft. NICB claimed that NHTSA's statement that it is unlikely that an imported vehicle subject to the parts-marking standard will be stolen while in the possession of a RI ''misses the point * * *. If a marked vehicle was stolen in the United States and re-imported, the major parts—including one in a 'secret' location—will be marked with a VIN different from the number on the VIN plate.'' NICB

concluded that, by allowing non-conforming vehicles to enter the country, ''NHTSA would unwittingly establish a new industry to create non-factory markings for major parts.''

We have carefully considered this comment. We observed in the NPRM that the Theft Prevention Act did not provide any authority for post-importation conformance.

The Theft Prevention Act stands in strong contrast to the statutes authorizing the FMVSS and the Bumper Standard. 49 U.S.C. 30112(a) prohibits the importation of motor vehicles that do not conform, and are not certified as conforming with all applicable FMVSS, except as provided in Sections 30141 *et seq.* These sections allow importation of vehicles that do not conform to the FMVSS provided they will be brought into conformance by RIs.

49 U.S.C. 32506(a) prohibits the importation of a passenger motor vehicle that does not conform to the Bumper Standard, except as that section may provide. Section 32506(c) authorizes the issuance of regulations providing for post-importation conformance of passenger motor vehicles with the Bumper Standard.

Section 33114(a)(1), on the other hand, prohibits importation of a motor vehicle subject to the Theft Prevention Standard ''unless it conforms to the standard.'' Unlike Sections 30112(a) and 32506(a), Section 33114(a)(1) establishes no exceptions of any nature. Given the explicit exceptions in two other statutes that we administer relating to the manufacture of motor vehicles to comply with Federal standards and the importation of these vehicles into the United States, we have decided that we cannot find an implicit exception in the third such statute. It is manifestly clear that Congress intended that a vehicle to which the Theft Prevention Standard applies must comply with that standard before being admitted into the United States. Accordingly, we are not adopting that aspect of the NPRM.

2. Section 592.6(b): Recordkeeping Requirements

For the most part, existing recordkeeping requirements will be retained, and the relatively minor changes proposed in the NPRM will be adopted. However, we will not need to include references to different ''Types'' of motor vehicles, as we had proposed.

We are clarifying that all records must be kept as hard copies (not electronically) at the facility in the United States identified by the RI in its application. Such records include copies of certifications of conformity submitted to NHTSA. The use of the term ''the facility'' means that all required records must be stored at a single location.

One commenter disagreed with our proposal that all documents be stored in the United States. In its view, documents stored in Canada can still be provided by a RI upon NHTSA inquiry, and that if a RI fails to produce them, NHTSA has the same remedy as it has for a RI who fails to produce records stored in the United States.

The question of NHTSA access to records is not limited to whether a RI will produce them upon request, but extends to whether NHTSA may readily inspect the records if it wishes to do so. By requiring that RI records be kept in the United States, we avoid any issue of whether NHTSA has the right to inspect records in a country outside the United States, and any cumbersome procedures and delays such inspections could entail. We are therefore adopting the final rule on this point as proposed.

In addition to documenting eligibility, conformity, and proof that the needed work has been done, one of the primary purposes of recordkeeping is to provide a ready means of identifying vehicles that a RI must remedy without charge in the event of a future defect or noncompliance determination. Under 49 U.S.C. 30120(g), as amended by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414), effective November 1, 2000, the period of free remedy for vehicles has been increased from 8 to 10 years. See amendments to 49 CFR 592.6(g)(1), 65 FR 68109–10, November 14, 2000. Thus, new Section 592.6(b) will require relevant records to be maintained for 10 years from the date of entry.

3. Section 592.6(c): Only a RI May Affix a Certification Label to a Vehicle After it Is Conformed; The RI Must Affix the Certification Label at Its Facility Inside the United States

Under 49 U.S.C. 30146(a)(3), ''each registered importer shall include on each motor vehicle * * * a label prescribed by the [Administrator] identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle.'' We implemented this section by present Section 592.6(d), which requires the RI, upon completion of compliance modifications, to permanently affix a certification of compliance label to the vehicle that meets the requirements of 49 CFR part 567, and to provide to us a photograph of the label affixed to the vehicle. These requirements will be continued in amended Section 592.6(c), and modified as discussed below.

Two issues have arisen with respect to gray market vehicle certification: Who may affix the certification label, and whether the certification label may be affixed outside the United States if compliance work is completed before importation.

In some instances, we have discovered that a RI had not taken possession of the vehicles it had imported and was shipping its certification labels to a customer without having actually seen the cars it was purporting to modify and certify. We had made it clear, in the preamble to the final rule adopting Part 592, that a RI may not contract to have another person conform a vehicle for which it is the importer of record (54 FR 40063 at 40066). For similar reasons, it is improper for a RI to delegate the responsibility to affix the certification label.

In every instance, the proper course of action for a RI is to take physical possession of the vehicle, perform all necessary conformance modifications at a facility that it has identified to NHTSA in its application to become a RI, and only then and there affix the certification label.

Of course, if modifications had been made while the vehicle was still in a foreign country, those modifications would not have to be repeated by the RI in the United States. Under all circumstances, however, the RI must affix its certification label to the vehicle at its conformance facility in the United States after the vehicle has been brought into compliance, and all necessary recall remedies have been performed. We therefore proposed Section 592.6(c), which would require that all necessary conformance work be performed at a facility that the RI has identified to NHTSA for that purpose and that the certification label be permanently affixed at that facility after all appropriate modifications and recall work are performed on the vehicle.

No commenter objected to our proposal to require that the certification label be affixed only by the RI, and we will adopt that requirement as proposed. With respect to the location at which conformance work could be performed, two commenters agreed with our proposal, one remarking that a RI should not be allowed to do conformance work and affix the certification label while the imported vehicle is on a car carrier, and that the vehicle should be required to be on the ground and physically within the RI's facility.

However, a third commenter (with a fourth concurring) argued that there is no reason to prohibit RIs from affixing a certification label outside the United States. In its view, safeguards are in place because of the requirement that a conformance bond be posted for each vehicle.

We cannot allow a RI to both conform and certify vehicles outside the United States. To do so would risk losing a considerable amount of control over the RI program. The person responsible for certifying a gray market vehicle must be subject to our direct jurisdiction for purposes of enforcing the statutory prohibitions against false and misleading certification, and to respond to our inquiries regarding certification submissions. Were we to allow certification outside the United States, there would be little reason to require a RI to maintain a facility in the United States for the rare occasion when it might have to remedy a noncompliance or safety-related defect. Moreover, allowing grey market vehicles to be certified outside the United States by a person other than their original manufacturer could result in some instances in their inadvertent importation into the United States without bond, contrary to 49 U.S.C. 30112(a), which allows unbonded entry only for vehicles that have been certified by their original manufacturers. Should such an entry of a gray market vehicle occur, an unbonded vehicle might not be held for 30 days after submission of the conformance package and we would have no basis upon which to demand export if the vehicle were found to be noncompliant. Accordingly, we specify in Section 592.6(c) that certification labels may be affixed only in the United States.

4. Section 592.6(d): Documentation That RIs Must Submit to NHTSA

Currently, Section 592.6(f) specifies a limited amount of information that must be submitted to NHTSA with the RI's conformance certification, and provides that the RI must also submit ''such information, if any, as the Administrator may request.'' The material that is submitted is known as the ''conformity package.'' Over the years, we have requested that a number of additional items be submitted with the conformity package, such as the reading on the vehicle's odometer at the time of certification, and we have advised the RIs of these items through informal communications, such as a newsletter from our Office of Vehicle Safety Compliance. We have decided that it would be more appropriate to include these items in revised Section 592.6 so that there will be no doubt or confusion about what is required.

We proposed two separate sets of requirements to apply to Type 1 and Type 2 motor vehicles. Since we have decided not to proceed with that approach, we will have only a single set of requirements, *i.e.*, those that were set out in proposed Section 592.6(d) as applying to Type 2 motor vehicles admitted to the United States under bond.

We did not receive any comments with respect to the items to be included in the conformity package. We are therefore adopting new Section 592.6(d)(6) as proposed, with the exception that the RI will not state that it has brought the vehicle into conformity with the Theft Prevention Standard. Thus, the initial conformity package submitted to NHTSA by each RI for a given model/model year vehicle must contain (i) the make, model, model year and date of manufacture, odometer reading, VIN, and Customs Entry Number, (ii) a statement that the RI has brought the vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards, and a description, with respect to each standard for which modifications were needed, of how it has modified the vehicle (this means that the initial conformity package could not simply utilize a form in which boxes are checked to indicate conformance), (iii) a copy of the bond given at the time of entry to ensure conformance, (iv) the vehicle's vehicle eligibility number (indicating that NHTSA has found the vehicle eligible for importation), (v) a copy of the HS–7 Declaration form executed at the time of the vehicle's importation if a Customs broker did not make an electronic entry with Customs, (vi) true and unaltered front, side, and rear photographs of the vehicle, (vii) true and unaltered photographs of the original manufacturer's certification label and the RI's certification label permanently affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the RI certification label before it has been affixed), (viii) documentation including photographs sufficient to demonstrate conformity, and (ix) the policy number of the service insurance policy furnished with the vehicle pursuant to Section 592.6(g). For clarity, we are also requiring the RI to include, as (x), a statement that clearly identifies the submission as the RI's initial certification for the make, model, and model year of the vehicle covered by the submission.

Under current Section 592.6(f), a RI's second and subsequent conformity packages for a given make, model, and model year motor vehicle need not contain all the information in its first submission but only ''such information, if any, as the Administrator may request.'' We proposed new Section 592.6(d)(7) to clarify that the same information would be required for second and subsequent conformity packages for each model unless the RI stated that it had conformed the vehicle in the same manner as it stated in its initial submission for that model. The proposal stated that if the RI makes such a statement, it ''need only provide photographs and other documentation of the modifications that it made to such a vehicle to achieve conformity.'' However, that was not what we intended. Obviously, we need to receive the identifying information in subparagraph (i) of Section 592.6(d)(6), as well as much of the other information required under paragraph (d)(6). Our intent was to ease the burden on RIs involving the submission of subsequent conformity packages by not requiring the RIs to repeat their detailed descriptions of what modifications were made. We have revised Section 592.6(d)(7) to clarify that second and subsequent submissions need not provide the detailed description of conformance modifications needed and performed, if the vehicle was conformed in the same manner as described in the initial submission.

Currently, we require RIs to submit a copy of the actual service insurance policy that applies to each vehicle with the conformity package for the vehicle. We have concluded that this is not necessary, as long as the RI submits the name of the insurer and the insurance policy number or other identifying information so that we have a record in case the owner of the vehicle needs to utilize the policy. We are adopting our proposal on this point.

We received only one comment related to this issue. The commenter supported our proposal to only require RIs to provide policy numbers rather than copies of the actual policies, but asked that NHTSA supply the policy numbers to insurers in the same fashion that it currently provides information on bond releases. We understand that it is the practice of some insurers to provide RIs with quantities of blank policies, and that RIs do not always inform the insurer of the vehicles its policies cover, hence the request that NHTSA provide policy numbers routinely to insurers. This request would add yet another burden to NHTSA's importation enforcement program. We believe that this is a commercial matter, one that

should be resolved between a RI and its policy provider.

Section 592.6 does not currently address a RI's obligations with respect to recalls pending at the time of importation on vehicles for which it is responsible under the statute. In recent years, we have required RIs to include a statement in each conformity package that there are no outstanding recalls applicable to the vehicle (*i.e.*, recalls for which the remedy had not been performed). However, we have found that some RIs were not actually checking to see if such a statement was true and that in some cases vehicles were being released to the public with unremedied noncompliances and safety defects. Because of the clear adverse impact that this practice has on safety, we proposed that each conformity package contain substantiation that the vehicle is not subject to any safety recall campaigns being conducted by its original manufacturer (or its U.S. subsidiary) in the United States that have not been completed. There were no comments on this proposal, and we are adopting it as proposed.

Although the revised regulation (specifically, Section 592.6(d)(5)) does not specify any particular document to substantiate that all defects and noncompliances have been remedied, the most convenient and straightforward substantiation would be a document issued by the original manufacturer or a franchised dealer of that manufacturer stating that there are no outstanding recalls that apply to the vehicle, identified with a reference to a specific VIN. If the manufacturer's or dealer's records indicated that there were one or more recall campaigns for which a remedy had not been performed, the RI will have to submit repair records demonstrating that the remedy work had been performed on or before the submission. In appropriate cases, a RI could submit a printout from NHTSA's website showing that there were no recalls applicable to the specific model and model year of a vehicle.

We are moving in the direction of allowing the electronic submission of certain conformance documentation. However, we need to assure ourselves that all photographic information is authentic. It was our concern that current technology might be sufficiently advanced that it would be easy to alter digital or digitized photographs. We have discovered irregularities by noticing such things as color inconsistencies in the photographs. Because colors can be easily manipulated in a digital image, the agency's ability to detect such anomalies could be compromised. However, we proposed only that photographs documenting conformity be ''true and unaltered,'' a term that would not per se prohibit digital photographs and would encompass all types of photographs submitted. These photographs would be retained for all vehicles conformed by RIs, including but not limited to views of the vehicle speedometer/odometer displays and the RI's and original manufacturer's certification labels.

Two commenters supported allowing electronic submission of digital photographs. According to one, digital cameras exist that have a technology precluding manipulation of the image. The second commenter said that other Federal agencies, including the U.S. Customs Service (now the Bureau of Customs and Border Protection), have successfully used this technology without giving up program control. In view of these comments, and of the growing use of digital cameras since our year 2000 proposal, we have decided that we will accept digital photos as part of a certification of conformance package; however, these packages will not be allowed to be submitted electronically at this time. See discussion below of Section E.2, *Electronic Transmission.* The regulation will be amended as proposed, to require the submission of ''true and unaltered photographs.''

Section 592.6(e) currently requires a RI, after it has completed bringing a vehicle into conformity, to certify to NHTSA that the vehicle complies with all applicable FMVSS, ''and that it is the person legally responsible for bringing the vehicle into conformity.'' In some recent instances, RIs have applied certification labels and submitted conformity packages to NHTSA without any knowledge of what modifications were needed, what in fact was done, or whether standards were met, and without exercising any control over the process. For example, certification to NHTSA has been provided by individuals who have never seen the vehicles and are hundreds of miles away from the RI's conformance facility, purportedly based upon having been granted a power of attorney from the RI responsible for the vehicle's importation. In another instance, we informed a RI that we would not accept certifications to us from appointed individuals resident in Canada.

In our view, certification to NHTSA is a duty that must be performed by someone who has personal knowledge of the relevant information. We therefore proposed, in new Section 592.6(d)(3), that the required certification to NHTSA could only be signed by a principal of the RI, who would attest to having personal knowledge that the RI had performed all work required to bring the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. As noted above, the identity of the principal(s) authorized to make this certification would be stated in the RI application or in subsequent filings with NHTSA pursuant to Section 592.6(m).

These provisions elicited opposition from several commenters. NAATA stated that principals should not be required to sign certifications because this practice is not commercially viable. The commenter asserted that in a majority of cases, employees prepare certifications and the principal does not have specific knowledge of all information behind the certification, ''nor can NHTSA expect the principal to have knowledge.'' NAATA suggested that a stamp of the principal's signature or a signature of the employee in charge should be sufficient. Two commenters asserted that it is legal to delegate signature authority and that a properly authorized agent's signature is always binding on the principal. One further commented that signature stamps have long been accepted in commerce. A fourth commenter suggested that we allow signatures to be submitted electronically once a power of attorney is signed.

We have carefully considered these comments and rejected them. Most telling was NAATA's comment that we cannot ''expect'' the principal to have knowledge of information behind the certification. To the contrary, that is exactly what we do expect. One of the primary purposes of this rulemaking is to ensure that RIs conform the vehicle to the Federal motor vehicle safety standards and assure that recall remedies are performed by requiring one of their principals to be personally responsible for the accuracy of the conformance documentation and for the certification that the vehicle complies with applicable standards and that all outstanding recalls have been completed. We recognize that some RIs may have to change their procedures and personnel to comply with this requirement, but we have concluded that it is necessary to assure that the safety objectives of the statute are achieved.

In addition, we have concluded that the general language proposed in the NPRM could allow the submission of unclear or ambiguous certifications. To address this possibility, we have decided to require that the certification by the RI in the conformity package

must take one of the following two forms: (1) ''I know that the vehicle that I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance,'' or (2) ''I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the persons who performed the necessary modifications to the vehicle are employees of [RI name] and have provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies'' (see new Section 592.6(d)(1)). As proposed, the principal (a corporate officer, general partner, or sole proprietor) must sign the certification, a copy of which would have to be retained under Section 592.6(b)(5). Also, the certification must be personally signed and not bear a stamped signature or one applied by mechanical means. The submission to the Administrator must identify the facility where the conformance work was performed, and the location where the vehicle may be inspected should we need to inspect it before release of the conformance bond. Section 592.6(d)(4).

Finally, we want to add a word of caution. For many years we have not objected to RI certifications through the use of a form that contains a check list on which the RI indicates whether the vehicle was originally manufactured to conform to a specific Federal motor vehicle safety standard (by checking a column headed ''O''), or modified by the RI to conform to the standard (by checking a column headed ''M''), or that the standard is not applicable to the vehicle (by checking a column headed ''N/A''). There have been times that RIs have inaccurately checked the box for a standard that does not apply to the vehicle, or indicated that the RI modified the vehicle when the vehicle, in fact, was originally manufactured to comply, or indicated that a standard did not apply when it did. If a RI indicates that a standard did not apply to a particular vehicle when in fact it did, we will regard the submission as incomplete and return it to the RI. We will also return submissions as incomplete where appropriate boxes are not checked or data not provided. If a submission is returned to a RI, we will charge the RI for the costs associated with the return. Return would not toll the 120-day period for submitting compliance information as provided under Section 592.6(a) (*i.e.*, the conformity package would have to be resubmitted within 120 days of importation). In that circumstance, we would not regard certification as having been provided to NHTSA within the meaning of 49 U.S.C. 30146(a)(1) if the submission is returned to a RI, and the 30-day period that a RI is required to retain custody of a vehicle will run from the day that a complete submission has been received by NHTSA.

Further, if a RI has certified to us that a vehicle has been modified with respect to a specific standard (*e.g.,* if the RI has checked the ''M'' box on the form for a particular standard) when it has not in fact modified the vehicle in that respect, we will consider that to be a knowingly false certification within the meaning of 49 U.S.C. 30115 and 30141(c)(4)(B), which authorizes us to establish procedures for automatic suspension of a RI registration, as related below in our discussion of Section 592.7(a). We believe that the possibility of automatic suspension should bring greater accountability to the certification process by encouraging RIs to complete their certification in a careful and thorough manner. It will also enhance motor vehicle safety by providing a greater incentive to RIs to make all necessary modifications to the vehicles they conform.

5. Section 592.6(e): What RIs Must Not Do Before NHTSA Releases the Conformance Bond

A RI may license or register an imported motor vehicle for use on public roads, or release custody of a motor vehicle to a person for license or registration for use on public roads ''only after 30 days after the registered importer certifies [to NHTSA] that the motor vehicle complies [with applicable FMVSS].'' 49 U.S.C. 30146(a)(1). We have construed this provision to allow a RI to license or register a vehicle, or release custody of a vehicle, for use on the public roads less than 30 days after receipt of the conformance package if we have notified the RI that the conformance bond required by 49 U.S.C. 30141(d) has been released.

We have tried to accommodate RIs by reducing data-submission requirements for vehicles certified to the Canadian standards, and by expediting the process by releasing the conformance bonds. (We intend to propose a new approach in the forthcoming NPRM that would further expedite bond releases. However, that new process is not yet in place). During 2002, we released conformance bonds within an average of five working days after they were received by OVSC. However, despite these short processing times, we have discovered that in some instances vehicles imported from Canada have been shipped directly to auction houses or dealers and sold very soon after entry, before bonds were released, and in some instances, even before we had received a certification of conformity from the RI.

The RI's duty to retain ''custody'' of the vehicles is a statutory requirement that had not been explicitly restated previously in Part 592 even though it is one of the conditions of the conformance bond required by Part 591 and Annex A of that Part. To emphasize this statutory requirement, we are restating it in Section 592.6.

Issues have arisen as to whether the retention of ''custody'' requires a RI to maintain physical possession of a vehicle at one of its own facilities, pending bond release. It has been our view that, at a minimum, we need to know the location of a vehicle to be able to inspect it during the period before we release the bond, and to have the same access to the vehicle as if it were stored at the RI's own facility. In addition, title to the vehicle must not have passed from the RI who imported the vehicle to any other person or entity before bond release so that we can be certain that a RI will be able to fulfill the bond condition to export or abandon the vehicle if NHTSA does not release the bond. See letters of April 17, 2000, from Frank Seales, Jr., to Philip Trupiano, and of April 19, 2000, from Kenneth N. Weinstein to John Dowd, *et al.,* which have been placed in the docket. In the NPRM, we proposed to codify those policies and interpretations.

The custody requirements that we proposed were supported by two commenters. These restrictions parallel those of the EPA with respect to emissions requirements established under the Clean Air Act to ensure that the Independent Commercial Importer (ICI) which has registered with EPA retains physical possession of a vehicle at its own facility pending bond release. Under EPA's regulation, during the period of ''conditional admission'' before EPA issues a certificate of conformity and a vehicle is released, the importer may not operate the vehicle on the public roads, sell or offer it for sale, or store it on the premises of a dealer. 40 CFR 85.1513(b).

One RI specifically opposed this proposal. The commenter claimed that the statute does not authorize NHTSA to prohibit vehicle operation on the public roads before release of the bond. We believe that the prohibition against on-road use of gray market vehicles during the period between importation and bond release is implicit in the statutory scheme. Gray market vehicles are

conditionally admitted into the United States, subject to being brought into compliance by the RI and to being certified as compliant by the RI. The statute provides NHTSA with a period of 30 days after receipt of the RI's certification to review the conformity package to assure that all required actions were taken by the RI. Until this procedure is completed and NHTSA has accepted a certification of compliance by releasing the bond, the vehicle cannot be considered compliant. Moreover, operation of a vehicle on the public roads is an introduction of that vehicle into interstate commerce, and introduction of a noncompliant vehicle into interstate commerce is a specific violation of 49 U.S.C. 30112(a).

The RI commenter noted that some limited operation of gray market vehicles on the public roads is necessary because RIs ''must be able to take vehicles to a dealership for recall service before certification of compliance is made.'' Although a RI could use a tow truck in this circumstance, we are willing to allow limited use of the public roads for recall service, and we have adopted Section 592.6(e)(1) accordingly. Thus, under the final rule, if a RI imports a motor vehicle and sells it or offers it for sale at any time before the end of the 30-day hold period following submission of the conformity package or before the bond has been released, whichever first occurs, or stores it on a dealer's lot, or allows it to be operated on the public roads for a purpose other than transportation to and from a dealership for remedy of a noncompliance or safety-related defect, a violation will have taken place for which sanctions may be imposed.

In addition to the restrictions that parallel EPA's, we are also adopting language that tracks the statutory prohibitions in the Safety Act against premature licensing or registering of a motor vehicle for use on the public roads, or release of custody to any person for such purposes.

With respect to the titling of vehicles, we made the following remarks in the NPRM (p. 69280):

> In line with our past interpretations, we propose to continue to permit a RI to obtain title in its own name to the vehicles that it imports for resale, either before or after importation, but we shall not allow the RI to title it in the name of any other entity (such as a title clearer, dealer or a retail purchaser) until after we have released the bond. This is designed to ensure that the RI retains the ability to export or abandon the vehicle to the United States, upon demand by the United States, for its failure to conform the vehicle.

One comment was received agreeing that vehicles should not be allowed to be titled in the name of a person other than a RI before bond release. However, one commenter disagreed, arguing that NHTSA lacks the statutory authority to impose a titling restriction because the prohibition of Section 30146(a)(1) is against ''licensing'' and ''registration'' only, and does not include the word ''titling.'' We disagree with this contention. In many instances, titling is a prerequisite for registering a vehicle. In any event, prohibiting anyone from holding title other than the RI that imported the vehicle upholds the statutory purpose forbidding the registration of imported vehicles for use on the public roads before we review and accept the RI's conformance certification and release the bond. Moreover, as discussed above, it will assure that improperly certified vehicles can be re-exported or abandoned to the United States.

A further comment cautioned that NHTSA should not encourage States to use their titling authority to administer or enforce Federal regulations. Our restrictions apply solely to RIs, and we are not imposing mandates on the States. However, we recognize that States have interests under their vehicle laws and consumer protection laws in assuring that only compliant vehicles are operated on their roads, and we believe that it is appropriate for States to refuse to title vehicles in the absence of a bond release.

Although our preamble remarks on p. 69280, set forth above, spoke in terms of our existing practice, the NPRM did not propose specific language. After due consideration of the comments from the public on this issue, we have decided to formalize the interpretations by adding titling restrictions to the regulatory text of the final rule, specifically as an addition to Sections 592.6(e)(4) and (5) as actions not to be taken before release of the DOT bond. Thus, prior to bond release, a RI, with respect to a vehicle that it has imported, must not ''(4) Title in a name other than its own, or license or register the motor vehicle for use on public streets, roads, or highways, or (5) Release custody of the motor vehicle to a person for sale, or license or registration for use on public streets, roads, or highways, or title the vehicle in a name other than its own.''

6. Section 592.6(f): RIs Must Provide a Copy of the Service Insurance Policy With Each Vehicle

Under the current rules, an applicant must provide a copy of a contract to acquire, effective upon its registration as a RI, a prepaid mandatory service insurance policy underwritten by an independent insurance company, or a copy of such policy, in an amount that equals $2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator. The purpose of the policy is to ensure that the applicant will be able financially to remedy any noncompliance or safety-related defect occurring in the vehicle.

In the NPRM, we proposed to require each RI to deliver such a policy with each vehicle it conforms. We also proposed that, on a monthly basis, each RI would have to provide to the insurance company issuing the policies the VINs of each vehicle covered by a policy. We did so in an effort to ensure that the purchasers of all gray market vehicles are aware of their ability to use this policy to have safety recall work done at no charge to them, and to ensure that the issuers of the policies are informed of the number and identity of the vehicles that their policies cover.

We had no comments on this proposed requirement, and are adopting it.

7. Section 592.6(g): RIs Must Provide and Retain Copies of Odometer Disclosure Statements

We proposed a new Section 592.6(h) to remind RIs of their obligation, which exists independently under 49 U.S.C. 32705 and 49 CFR Part 580, *Odometer Disclosure Requirements*, to provide an odometer mileage disclosure statement to the transferee of any vehicle that they transfer. Dealers and distributors, such as a RI that imports vehicles for resale, must also retain a copy for five years (49 CFR 580.8(a)). We want to reiterate these obligations in Part 592, so that a RI that focuses principally on 49 CFR Parts 591–594 does not miss this requirement. Also, a failure to comply with these requirements will be a violation of this Part.

We had one comment on this issue, which agreed with our proposal, and we are adopting it as proposed.

8. Section 592.6(h): RIs Must Remedy Noncompliances and Safety-Related Defects, and Provide Reports Regarding Certain Recalls

As discussed above, each RI is statutorily responsible for conducting recalls to address noncompliances and safety defects in the vehicles that it imports or conforms. 49 U.S.C. 30147(a)(1). Section 592.6(g) currently specifies certain RI responsibilities with respect to recalls, but it does not address some relevant issues that should be addressed.

As currently written, Section 592.6(g) is primarily directed toward recalls that are announced after a vehicle has been released by the RI and is already in the possession of an owner, and it does not address recalls that apply to imported vehicles at the time they are imported. To assure that there is no misunderstanding about the duties of a RI under the latter circumstances, we are amending Sections 592.6(b), (c), (d), as described earlier in this notice.

We also proposed amendments addressing a RI's responsibilities for recalls that are announced after the vehicle has been certified by the RI. These duties already exist by virtue of Section 30147(a)(1). However, some RIs have not attended to their obligations in this regard. To further emphasize these obligations, we are restating them in Part 592.

Current Section 592.6(g) requires a RI to provide notification and remedy ''with respect to any motor vehicle for which it has furnished a certificate of conformity.''

We understand that it is the practice of most major manufacturers who sell vehicles in the United States (with the exception of some Asian-based producers of Canadian vehicles) to include in their U.S. safety recall campaigns vehicles that were originally manufactured for sale in Canada that have been registered in the United States. In such cases, the owner of a vehicle modified by a RI normally will be notified of the defect or noncompliance by the original manufacturer. However, this may not always be the case, particularly with regard to recently-imported vehicles, since the State vehicle registration records used by the manufacturer may not be completely up-to-date at all times.

The statute requires a RI to assure that the owner of each vehicle it imports or conforms is provided with notification of all noncompliances and safety-related defects determined to exist in the vehicle and the opportunity to receive a free remedy. To allow us to ascertain whether a RI is satisfying those obligations, when a vehicle manufacturer determines that a noncompliance or safety-related defect exists in its vehicles and commences a notification and remedy campaign, we need to know whether the manufacturer will cover the manufacturer's vehicles that the RI has imported. If it does not, the RI must notify each current owner and provide an appropriate remedy at no charge. We therefore proposed that each RI inform us not later than 30 days after a vehicle manufacturer commences a notification campaign applicable to vehicles imported by the RI whether the manufacturer's recall will cover those vehicles. If not, the RI would be required to furnish us with a copy of the notification that it intends to send to the different vehicle owners in accordance with 49 CFR Part 577, to actually send such notifications, and to provide the appropriate remedy without charge.

Two commenters strongly supported the statutory provisions and our proposed implementation of RI notification and remedy responsibilities. One of these argued that the proposal did not go far enough, and that NHTSA should require RIs to substantiate to NHTSA that they are maintaining a current paid subscription to a manufacturer database such as Alldata or Mitchell. The comment further recommended that RIs be required to identify for NHTSA and vehicle owners an established time period and methodology for providing notification of future recalls, and how it will perform the remedy.

We do not believe that it is necessary to mandate any particular methodology to be used by RIs. In practice, while we are not obligated to do so, we have been notifying RIs (normally at the end of each calendar quarter, by fax) of safety recalls that may apply to the vehicles they imported (based on make, model, and model year). New Section 592.5(a)(9)(iv) requires an applicant for RI status to demonstrate that it is able to acquire and maintain information regarding the vehicles that it imported and/or for which it submitted certification to NHTSA, and the names and addresses of the owners of these vehicles in order to notify such owners of safety-related defects or noncompliances. This will allow RI applicants flexibility while assuring that they will be able to conduct required notifications.

The same commenter also argued that NHTSA should prohibit RIs from subcontracting their recall responsibilities unless the remedy is performed at an authorized dealership for the model of vehicle involved. We believe that this comment has merit, and have adopted this prohibition in the final rule. The 1988 Act directs us to impose ''requirements that ensure that the importer * * * will be able technically * * * to carry out responsibilities under sections * * * 30118–30121 * * * of this title.'' These are the defect and noncompliance notification and remedy responsibilities. Once an applicant has established it is technically capable of remedying noncompliances and is registered as a RI, the RI should not subcontract this duty to anyone other than an authorized dealer or facility for the vehicle in question, since we have no basis to conclude that any other entities would be capable of making the necessary repairs under the recall. We have always prohibited RIs from subcontracting work needed to bring a vehicle into conformance; the work needed to remedy noncompliances and safety defects should be treated in a similar manner.

We proposed in Section 592.6(j)(2) that the RI must inform NHTSA whether the original manufacturer or the RI will provide notification and remedy for defects and noncompliances that have been found to exist in a vehicle as of the time of importation. One RI commenter objected, arguing that such a requirement would be unworkable because a RI is not in a position to know whether all the vehicles it has imported that are subject to a specific recall are to be included in the manufacturer's U.S. campaign. The commenter explained that some vehicles may be excluded from the original manufacturer's VIN database search, such as recently-imported vehicles and vehicles not yet titled and registered.

We have decided on a different, less burdensome approach, in the final rule. If a RI becomes aware (from whatever source) that the manufacturer of a vehicle it has imported will not remedy free of charge a defect or noncompliance that has been decided to exist in that vehicle, within 30 days thereafter, the RI must inform NHTSA and submit a copy of the notification letter that it intends to send to the owner of the vehicle(s) in question. We are adopting Section 592.6(i)(2) to reflect this approach.

Under Section 573.7 (formerly Section 573.6), manufacturers conducting recalls must provide six quarterly reports to us setting forth specified information regarding the recall. This information allows us to monitor the campaigns, and includes the number of vehicles or items of equipment covered by the campaign and the number of vehicles or equipment items remedied by the end of each calendar quarter. Because RIs have a statutory responsibility to notify and remedy, they, too, are subject to this reporting requirement. However, we have concluded that some of the provisions of Section 573.7 should not apply to them, and we proposed less stringent requirements.

For recalls that have been announced by a vehicle manufacturer before the RI submits its conformity package under Section 592.6(d), the RI must ensure the completion of appropriate recall repairs before it releases the vehicle. Therefore, there appears to be no need for the RI

to submit any reports pursuant to Section 573.7 with respect to those recalls. This is reflected in our new Section 592.6(i)(5). Nor do we need to receive reports from RIs with respect to recall campaigns being conducted by the original manufacturer on vehicles imported by the RI.

There may be some instances when a manufacturer conducts a recall of vehicles sold in the United States, but does not include the Canadian counterparts of the recalled vehicles. Recall implementation in this instance falls upon the RI, as it does in those rare cases in which a RI makes its own determination of a defect or noncompliance. In these instances we need to receive progress reports from RIs. While 49 CFR 573.7 requires vehicle manufacturers to submit six quarterly reports containing extensive, detailed information, we believe that fewer reports and significantly less information is needed from RIs. Although one commenter asserted that RIs ''should be required to handle all recalls in the same manner as OEMs, we shall require only two reports for each post-importation recall campaign, which will also serve to ease the paperwork burden on small businesses. (We note that RIs might need to simultaneously conduct campaigns on the products of a number of vehicle manufacturers rather than focusing on a single manufacturer's product at one time.) There were no comments specifically addressing our proposals regarding the timing and content of these reports. Therefore, we are adopting Section 592.6(i)(5) (Section 592.6(j)(5) in the NPRM) as proposed.

Finally, we have reviewed current Section 592.6(g)(2)(i) relating to the period for which a RI must provide a remedy without charge, and have restated it in Section 592.6(i)(6) in a much simpler fashion. By doing so, we are heeding E.O. 12866 and its goal that rules be written in plain language. As noted in our discussion under Section 592.6(b), the TREAD Act has increased the period of free remedy from 8 to 10 years. This increase, effective as of the date of enactment of the TREAD Act, is reflected in conforming amendments to our general recordkeeping regulation, 49 CFR Part 576.

9. Section 592.6(l): RIs Must Notify NHTSA of Any Change of Information Contained in the Registration Application, and Must Notify NHTSA Before Adding or Discontinuing the Use of Any Facility

At present, Section 592.5(f) requires a RI to notify us not later than 30 days after a change in any of the information submitted in its registration application. We proposed to maintain this requirement as a duty with two additions.

We have concluded that, where the change involves the use of a facility (*e.g.,* for modifications, repair, or storage) not designated in the registration application, a RI must notify us of its intent to use such facility not less than 30 days before such change takes place, and provide us with the same information regarding the facility that is required in the original RI application, including still or video photographs of the facility. This will allow us to evaluate the adequacy of the new facility for the services to be performed there. We will also require a RI to notify us at least 10 days before it discontinues the use of any identified facility, and to identify the facility, if any, that will be used in its stead.

We had one comment on this aspect of the NPRM, which supported it, and therefore we are adopting it as proposed.

10. Section 592.6(m): RIs Must Assure That at Least One Full-Time Employee of the RI Is Present at One or More of the Facilities It Identified in Its Application

Where a RI has several separate facilities, we are concerned about the RI's ability to supervise conformance and recall work, to maintain records regarding the vehicles it has imported, and our ability to inspect the vehicles, operation, and records. To address these concerns, we proposed to adopt a new Section 592.6(n) to require each RI to assure that at least one full-time employee of the RI is present at each of its facilities. This is consistent with our statement in the preamble to the final rule establishing Part 592 that a RI may not utilize agents to fulfill its statutory responsibilities, and that ''conformance operations must be carried out by Registered Importers [and] their employees.'' 54 FR 40083, at 40086.

Our proposal on this point was supported by two commenters. NAATA opposed it, on the grounds that the volume of imports by a RI may not support the need for a full-time employee. The commenter contended that if NHTSA requires this, the RI should be able to maintain a facility with no employee on condition that no vehicles are stored at the facility. The facility we are primarily concerned with is the facility where the RI's conformance work is performed. However, we realize that there may be times when the volume of imports is such that the conformance facility is not in use. Nevertheless, we believe that a RI should be accessible to NHTSA during normal business hours, and this can be best assured by requiring a RI to have at least one full-time employee present at one or more of the facilities in the United States it has designated in its application. The term ''employee'' includes any officer of a corporation and partner of a partnership. Accordingly, we are modifying our proposal and adopting this requirement.

11. Section 592.6(n): RIs Must Not Co-Utilize the Same Employee or the Same Conformance or Repair Facility

Questions have been raised whether two or more RIs may use common employees or a shared facility to perform conformance modifications or recall repairs, or to store imported vehicles. As indicated above, we do not allow a RI to make arrangements with other persons, including its customers (*e.g.,* used car dealers) or other RIs, under which the other entity would perform the RI's duties. We had tentatively concluded that to allow two or more RIs to use the same employee, or a common facility for repairs, conformance work, or storage, raised the possibility of ineffective management and controls, particularly when the main office of a RI is some distance away from the facility in question. It could also raise questions of accountability for any problems that might arise. We also noted that if more than one RI shared a storage facility, it would be difficult for us to identify bonded vehicles for which an individual RI may be responsible when we are conducting inspections. We therefore proposed to prohibit a RI from co-utilizing any employee, or any conformance, repair, or storage facility, with another RI.

The proposal was supported by two commenters, and opposed by one on the basis that co-utilization of facilities does not compromise a RI's ability to perform conformance work. However, this comment did not address our concerns regarding accountability, management and controls. We are concerned that, if two RIs utilize common facilities and personnel, one RI may blame the other RI for any of its own failures to comply with statutory or regulatory requirements (*e.g.,* vehicles sold before bond release, vehicles not modified in a timely manner because the mechanic is busy modifying the vehicles imported by the other RI, and affixing labels of one RI on the vehicles of the other). Accordingly, the final rule is adopted substantially as proposed. However, we have decided to allow co-utilization of storage facilities, since such co-utilization of those facilities is less

likely to create the sorts of problems that concern us.

As we noted in the preamble to the NPRM, if a RI stores bonded vehicles on premises other than its own, the storage area should be clearly delineated and the vehicles being stored not mingled with vehicles for which the RI is not responsible. We are now adding this as a regulatory requirement in Section 592.6(n), and it will also be applicable to storage facilities that a RI co-utilizes with one or more RIs.

12. Section 592.6(o): RIs Must Provide Timely Responses to NHTSA Requests for Information

Under 49 U.S.C. 30166(e), we reasonably may require a manufacturer to make reports to enable us to decide whether it is complying with any of our requirements. Our requests for information invariably identify the date by which we expect a response. As noted above, a RI is a statutory manufacturer because it imports motor vehicles for resale. We had tentatively decided that a regulation reiterating the requirement to make timely reports under Section 30166(e) would heighten our ability to obtain information, and would provide a basis for suspension or revocation of a registration if the information were not forthcoming in a timely manner. There was no comment on this aspect of our proposal, and we are adopting it in the final rule.

13. Section 592.6(p): RIs Must Pay Fees When They Are Due

We proposed a new section adding a specific duty for a RI to pay all applicable fees in a timely manner. Although a registration may be suspended under Section 592.7(a) upon a RI's failure to pay fees when they are due and payable, we wished to emphasize that it is an affirmative duty for a RI to pay fees and to pay them when they are due. There was no comment on this aspect of our proposal, and we are adopting it in the final rule.

14. Section 592.6(q): Current RIs Must Provide Information That Will be Required of New RI Applicants

As described above, we are adopting comprehensive revisions to Section 592.5 with respect to the information required in RI applications. By their own terms, these new requirements will apply to applications pending as of the effective date of the final rule. However, we believe that, to assure proper qualifications and operations, entities that are RIs at the time the final rule becomes effective must furnish the equivalent information, even though that information was not required at the time they submitted their original applications. In order to ensure that this information is provided by those whose applications have been granted previously (*i.e.*, those who are already RIs at the time of the final rule), we proposed that RIs, not later than 30 days after the effective date of the amendments to Section 592.5(a), should provide all the information that the revised regulation will require. This additional information would include the RI's designation of an agent for service of process if it is not organized under the law of any State of the United States. A RI could incorporate by reference any item of information previously provided to the Administrator in its application, annual statement, or notification of change by a clear reference to the date, page, and entry in the existing document. Failure to provide this information not later than the effective date of the amendments would be grounds for suspension.

The sole commenter on this aspect of the proposal believed that NHTSA should suspend a registration immediately if a RI failed to provide information in accordance with the new regulation. We address the topic of automatic suspension immediately below and are adopting this provision as proposed.

C. Automatic Suspension, Revocation, and Suspension of Registrations; Reinstatement of RI Registrations (Section 592.7)

1. Section 592.7(a): Automatic Suspension of the Registration of a RI

49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to suspend a registration if a RI fails to comply with specified statutory requirements as well as ''regulations prescribed under this subchapter,'' *i.e.*, 49 U.S.C. Sections 30141–47. Two of the circumstances warranting suspension are of a serious enough nature that Section 30141(c)(4)(B) requires the suspension to be ''automatic:'' when a registered importer does not, in a timely manner, pay a fee required by 49 CFR Part 594 and when a RI knowingly files a false or misleading certification under 49 U.S.C. 30146. Our present regulation covers this in 49 CFR 592.7(a) and (b).

Currently, Section 592.7(a) provides that a registration will automatically be suspended if we have not received a fee by the beginning of the 31st day after it is due and payable. To date, on several occasions we have automatically suspended registrations for failure to timely pay the annual fee that the RI must pay pursuant to Section 594.6. In addition, 49 U.S.C. 30141(a)(3) also authorizes the imposition of fees ''to pay for the costs of—(A) processing bonds provided * * * under subsection (d) of this section; and (B) making the decisions under this subchapter.''

Under this provision, we have established fees for the filing of a petition for a determination whether a vehicle is eligible for importation (Section 594.7); for importing a vehicle covered by an eligibility determination by NHTSA (Section 594.8); for reimbursement of bond processing costs (Section 594.9); and for review and processing of a conformity certificate (Section 594.10).

Under current Section 594.5(e), (f), and (g), the fees for importing a vehicle covered by a NHTSA eligibility determination, for bond processing costs, and for the NHTSA review and processing of a conformity certificate are to be submitted with the certificate of conformity. However, we have allowed RIs to delay payment until 30 days after we issue a monthly invoice indicating the amount due. In practice, about 80 percent of the payments are made less than two weeks after the invoice, and most payments are transmitted electronically or made by credit card. We proposed to formalize the actual payment practice by establishing a due date of 15 days from the date of the invoice by deleting subsections (e), (f), and (g) and adding a new Section 594.5(f). No one commented on the due date aspect of the proposal and we are adopting it in the final rule.

We intend to suspend automatically a RI's registration if any of the required fees are not received by their due dates. As we proposed in Section 592.7(a)(1), if a RI has not paid its annual fee by October 10 or paid its other fees within 15 calendar days of NHTSA's invoice, on the next business day we would inform Customs that the RI's registration had been suspended until further notice, and that the RI may not import any additional motor vehicles. We intend to apply this policy as of September 30, 2004 to fees that are overdue as of that date under the old rule.

Two commenters supported automatic suspension for non-payment of fees. A RI commenter cautioned us to be sure before acting that NHTSA had not made a recording mistake, and recommended that the agency contact the RI to determine whether a mistake has been made before it notifies Customs that a registration has been suspended. This does not place the burden where it belongs. As noted above, a RI receives an invoice each month. If the RI fails to receive an invoice, it should contact NHTSA. We

often call the RI if we do not receive payment but are not assuming a duty to do so. However, when a charge on a credit card is repeatedly rejected, following up becomes time-consuming and wasteful. As a matter of enforcement discretion, we intend to notify a RI by telephone, contemporaneously confirmed in writing, upon the initial rejection of a credit charge. If the charge is not honored a second time, we shall automatically suspend the registration. We will not provide this notification for repeat offenders.

If a fee is paid after a registration is suspended, following receipt and clearance of the payment, we will reinstate the registration and inform Customs of this action. One commenter suggested that we should notify Customs of the reinstatement on the next business day. We will normally attempt to do so, but cannot assure that we will do so, as we cannot predict the press of business on any given day.

To further encourage timely payment and to partially cover our administrative costs of processing such a suspension and reinstatement, we proposed to require the RI to also pay an amount equal to ten percent of the overdue amount as a condition for having the registration reinstated. We are adopting this proposal in the absence of any comments to the contrary.

Congress also directed us to establish procedures for automatically suspending a registration of a RI that has knowingly filed a false or misleading certification. 49 U.S.C. 30141(c)(4)(B). We proposed rules to implement this provision. Two commenters supported our proposal. Auto Enterprises suggested that such a suspension should only occur if we found that the RI ''knowingly and deliberately attempted to deceive NHTSA on a material issue that could be reasonably viewed as having the potential of endangering motor vehicle safety.'' However, this would limit the statutory provision, which refers only to knowingly filing a false or misleading certification. The limiting elements of ''material issue'' and ''potential of endangering motor vehicle safety'' are not specified by the statute. A RI is presumed to know the truth or falsity of what its principal has signed.

Under proposed Section 592.7(a)(2), which we are adopting in the final rule as proposed, if we decide that a RI has knowingly filed a false or misleading certification, we would automatically suspend the RI's registration, effective immediately, notifying the RI by letter of the decision, the length of the suspension, if applicable, and the facts upon which our decision was based. We will afford the RI, within 30 days of the notification, an opportunity to challenge the decision by presenting data, views, and arguments in writing or in person.

We could also suspend a registration non-automatically for these violations under Section 30141(c)(4)(A), and Section 592.7(b) (discussed below). For example, in a factually complex case involving what appears to be a filing of a false and misleading certification under Section 30146, we might provide an opportunity to be heard before issuing a suspension.

The NPRM also identified three further situations that we believe warrant automatic suspension. The first concerned the failure to maintain a current telephone number and a street address where mail is received. It is imperative that we be able to reach each RI to obtain information or to conduct an inspection. As specified in new Section 592.5(a)(5)(i), each RI must include telephone numbers and a street address in the United States with its application. Under current Section 592.5(f), a regulation prescribed under Section 30141(c)(1), a RI is to notify us in writing within 30 days after any change of street address or phone number. As noted above, under new Section 592.6(m), a RI will be required to notify us at least 30 days in advance of its change of street address and/or telephone number.

There have been instances in which mail addressed to a RI has been returned as ''undeliverable.'' When this occurs, and the RI cannot readily be contacted by us, the agency has lost its ability to communicate with the RI even though the RI may still be importing motor vehicles. To address this situation, we proposed in Section 592.7(a)(3) to automatically suspend a registration, and request Customs not to allow vehicles to be imported into the U.S. by a RI, if our letters to the RI are returned to us as undeliverable at the street address it has provided to us or if the telephone number provided to us is disconnected. There were no comments on this aspect of the proposed rule, and we are adopting it.

The second situation involves compliance with the new provision (in Section 592.6(f)) that requires each entity that is a RI at the time that the final rule takes effect to provide us with information equivalent to that which will be required of new RI applicants, not later than 30 days after the effective date. If a RI fails to provide this information, we shall automatically suspend its registration (Section 592.7(a)(4)). We had one comment on this aspect of the proposal, expressing support for ''immediate suspension,'' which we believe means automatic suspension.

Third, we have become aware of several instances in which a RI released vehicles using forged or otherwise falsified documents purporting to be agency bond release letters. In addition to other sanctions such as fines and penalties, we believe that the registration of a RI that is releasing vehicles on the basis of such falsified bond release letters should be suspended automatically. We had no comments on this aspect of the proposal, and we are adopting it. Moreover, it is likely that during such a suspension we would commence a proceeding to revoke the RI's registration, in accordance with the procedures discussed below that we are adopting in Section 592.7(b).

We asked for comments as to whether other violations of Section 30141(c)(4) might warrant automatic suspension, such as failure to admit a NHTSA inspector to the premises, or to make records available for inspection. There were no comments, and we have decided not to include these failures of a RI as grounds for automatic suspension. Of course, we could take other enforcement action with respect to such violations.

There were no comments specifically addressing the procedural steps we proposed that would lead to automatic suspension of an RI registration, and we are adopting them as proposed. One RI commenter stated in very general terms that any automatic suspension before a hearing must take into account due process, and that RIs have a basic right to a fair hearing to ensure the right to be heard before adverse action is taken by the agency. We reviewed the issue of conformance with the Fifth Amendment (due process) and the Administrative Procedure Act before issuing the proposal, and we concluded that the procedures we proposed are consistent with applicable law. We did not receive any specific comments to the contrary. The effect of an automatic suspension is that a RI may not continue to import vehicles after it has been notified of the suspension. Section 592.7(c), discussed more fully below, specifies the conditions under which a suspended registration may be reinstated. Section 592.7(a)(7) provides an opportunity for a RI to seek reconsideration of an automatic suspension.

2. Section 592.7(b): Non-Automatic Suspension and Revocation of RI Registrations

49 U.S.C. 30141(c)(4)(A) requires us to establish procedures for revoking or

suspending a registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of sections 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or regulations prescribed under any of those sections. We intended to implement 49 U.S.C. 30141(c)(4)(A) by regulation, but had not completely done so by the time we issued the NPRM.

The statute authorizes us to consider revocation or suspension of a RI's registration for a broad range of violations, namely for any failure to comply with any aspect of the Imported Vehicle Safety Act of 1988 or its implementing regulations, 49 CFR Parts 591–594, as well as other general requirements of Chapter 301 relating to general prohibitions, certifications of compliance, notification relating to defects and noncompliances with FMVSS, recalls, testing of school buses, automatic crash protection and seat belts, inspections, and recordkeeping. 49 U.S.C. Section 30141(c)(4)(A). We proposed in Section 592.7(b) to reflect the statutory language of 49 U.S.C. 30141(c)(4)(A) and to clarify and broaden the circumstances under which a registration may be suspended or revoked. This would include any failure to perform any duty prescribed by Section 592.6. (As described above, additional duties are now specified in Section 592.6.) One of these duties is to provide information that will be required of new RI applicants (Section 592.6(r)). Thus, for example, if a RI failed to provide a copy of its business license or other similar document issued by an appropriate State or local authority authorizing it to do business as an importer, modifier, or seller of motor vehicles, which new Section 592.5(a)(5)(iii) requires to be submitted by applicants, grounds would exist for suspension of the RI's registration. There were no comments on this aspect of the proposal, and we are adopting it as proposed.

Before issuing the NPRM, we reviewed the suspension and revocation procedures currently specified in Section 592.7(b) and (c). Under these procedures, if the Administrator has reason to believe that a RI has failed to comply with a requirement and that a RI's registration should be suspended or revoked, (s)he notifies the RI in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, as to why the registration should not be revoked or suspended. The Administrator then decides the appropriate action under the circumstances. If a registration is suspended or revoked, the RI may request reconsideration of the decision ''if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked'' (current Section 592.7(d)).

We proposed a revised procedure for non-automatic suspension and revocation of registrations, which, in the absence of comments, we are adopting. Under the revised procedure, the Administrator will notify the RI if there is reason to believe that the RI had violated one or more statutes or regulations, and that suspension for a proposed period or revocation would be an appropriate sanction under the circumstances. The proceedings will then essentially follow those set out in Sections 592.7(a), (b), and (c) of the current regulation, affording the RI, within 30 days of the Administrator's notification, an opportunity to present data, views, and arguments in writing or in person as to whether the violations occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. The Administrator will make a decision on the basis of all information then available and notify the RI in writing of the decision. Because the RI will already have been afforded an opportunity to present data, views, and arguments relating to the proposed suspension, we will not provide an opportunity to seek administrative reconsideration of a decision to suspend or revoke a registration under this subsection.

3. Section 592.7(c): When and How NHTSA Will Reinstate Suspended RI Registrations

Current Section 592.7(f) specifies that the Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the RI. The NPRM expressed our belief that the provisions governing reinstatement of registrations need to be clarified and expanded to reflect the changes we are adopting in our suspension procedures.

Under the amended final rule, there are four specific bases upon which a registration can be automatically suspended (Section 592.7(a)). A registration may also be suspended non-automatically for failure to comply with statutory or regulatory authorities after notification from the Administrator (Section 592.7(b)). Amended Section 592.7(c)(1)–(4) specifies the conditions under which the registrations could be reinstated under each of the four bases for automatic suspension. Amended Section 592.7(c)(5) specifies that a registration that is suspended non-automatically shall be reinstated at the expiration of the period of suspension specified by the Administrator or such earlier date as the Administrator may decide is appropriate.

In the absence of any comments on the proposed conditions of reinstatement, we are adopting them as proposed.

The one comment on this aspect of the proposal suggested that NHTSA should be required to notify the U.S. Customs Service (now the Bureau of Customs and Border Protection) by the next business day when a suspended registration has been reinstated. As explained above, it has been our practice to notify Customs promptly when a RI is reinstated, but we cannot assure that the notification will occur on the next business day. We are adding specific language to this effect in new Section 592.7(c)(6).

4. Section 592.7(d): Effects on a RI of Suspension or Revocation of its Registration

During the period that a registration is suspended or if a registration is revoked, the entity will not be considered an active RI, will not have the rights and authorities appertaining thereto, and will not be allowed to import vehicles. We will promptly notify Customs of our action. If a RI imports vehicles on or after the suspension date, its suspension will be extended by one day for each day that it has imported vehicles while its registration is suspended, and other enforcement action may also be taken depending on the circumstances.

Under current Section 592.7(e), if a registration is revoked, the RI is not refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. This practice will be retained in new Section 592.7(d). In addition, in accordance with 49 U.S.C. 30141(c)(2), the section will specify that a RI whose registration has been revoked may not apply for reregistration. The prohibition will also apply if any of the principals of the applicant had been, or is affiliated with, a principal of a RI whose registration has been revoked.

We received no comments on this aspect of the proposed rule and are adopting our proposal.

Although a suspended or revoked RI will be foreclosed from importing vehicles, there may well be vehicles in its custody that are still under bond. New Section 592.7(d)(2) (proposed as Section 597(e)(2)) and (d)(3) cover these vehicles. With respect to those vehicles that the RI has certified and for which

it has submitted conformity packages to NHTSA at the time of a suspension or revocation, NHTSA will review and act upon the submissions as if the suspension or revocation had not occurred, and the RI may release the vehicles from custody when NHTSA releases the bonds, even if its suspension is in effect or its registration has been revoked. With respect to those vehicles for which certification or information submissions have not been submitted at the time a registration has been suspended, the RI must perform conformance work, and submit certification conformity packages to NHTSA within the 120-day submittal period.

When a registration has been revoked, or suspended for more than the first time, the RI will be required to export all vehicles which it imported for which it has not yet submitted conformity packages to NHTSA at the time of the suspension or revocation.

With respect to those vehicles imported for personal use by other persons under Section 591.5(f)(2)(ii) that a RI has contracted to conform and for which it has not yet submitted certifications, a suspended or revoked RI will be required to notify immediately the owners of the vehicles of NHTSA's action. We are adopting a conforming amendment to Part 591 under which the notified owner will be able to contract with another RI in order to have the vehicle certified and released. The applicable 120-day period for submission of certification information will be tolled during the period from the date of the RI's notice to the importer until the date of the contract with the substitute RI.

5. Section 592.7(e): Continuing Obligations of a RI Whose Registration Has Been Revoked or Suspended

We are removing existing Section 591.7(e), which has expired (Section 591.7(e) provided for applications to the Administrator, on or before February 14, 2000, to change the status of vehicles imported pursuant to Section 591.5(j)).

New Section 592.7(e)(1) clarifies that a RI whose registration is suspended or revoked remains obligated under Section 592.6(j) to notify owners of, and to remedy, noncompliances or safety-related defects for each vehicle for which it has furnished a certificate of conformity to the Administrator.

There were no comments on this aspect of the NPRM, which is being adopted as proposed.

D. Amendments to Part 591 to Preclude the Importation by a RI of a Salvage or Reconstructed Motor Vehicle; Minor Conforming Amendments to Part 591; Section 592.9: Forfeiture of Bond

Within the past several years, some RIs have sought to import heavily damaged motor vehicles both before and after their repair. In addition, some motor vehicles have been imported consisting of the body of one vehicle and the chassis and frame of another. Although we may have determined under Part 593 that the original vehicles, as manufactured, are capable of being modified to meet the FMVSS, we were not considering damaged vehicles. When a vehicle has been heavily damaged or reconstructed, we have no assurance that it can be restored to a condition in which it complies, or can be brought into compliance with, the Federal motor vehicle safety standards. The NPRM represented our tentative decision that the safety of the American public would be served by prohibiting importation of salvage, repaired salvage, or reconstructed vehicles into this country. Accordingly, we proposed amending Part 591 to require a RI to declare that each motor vehicle it is importing is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle. We proposed the following definitions for these terms:

> Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.
>
> Repaired salvage vehicle means a salvage motor vehicle that has been repaired to the extent that any State will issue it a title and register it for use on the public streets, roads, or highways.
>
> Salvage motor vehicle means a motor vehicle less than 25 years old that has been wrecked, damaged, or destroyed to the extent that to repair it to the extent that any State would issue a title and register it for use on the public streets, roads or highways would require replacement of two or more of the following subassemblies: Front clip assembly (fenders, grille, hood, and bumper), rear clip assembly (rear quarter panels and floor panel assembly), side assembly (fenders, door(s) and quarter panel), engine and transmission, top assembly (except for convertible tops), or frame.

We received five comments on this aspect of our proposal. One commenter argued that salvage vehicles should still be eligible for import as parts. The commenter opposed a ban on reconstructed motor vehicles because in its view the definitions of this category of vehicle are not clear and vary among jurisdictions. The commenter asserted that reconstructed motor vehicles can be repaired to be as safe as other vehicles. A second commenter supported a ban on vehicles that have been totaled or severely damaged. It recommended that NHTSA use the definitions that were approved by the Senate Committee on Commerce, Science and Transportation in its consideration, in July 1999, of legislation (not enacted) to establish nationally uniform and workable definitions of those terms.

A third commenter argued that the proposed salvage definition is seldom followed in the U.S. or Canada. It recommended ''accepting the determination of vehicle status * * * made by the jurisdiction where the vehicle was registered at the time of the damage.'' A fourth commenter suggested definitions for salvage vehicle, non-repairable vehicle, and flood vehicle.

We based our proposed definition of ''salvage motor vehicle'' in large part upon that of the State of Georgia. Our definition of ''reconstructed motor vehicle'' would be predicated on the fact that, pursuant to 49 U.S.C. 30112(b)(9), motor vehicles that are at least 25 years old may be imported without the need to meet the Federal motor vehicle safety standards, and therefore are not imported under the RI program.

Under the legislative proposal mentioned by the second commenter, a ''rebuilt salvage vehicle'' would be defined as ''a passenger motor vehicle which was previously issued a salvage title, has passed a State anti-theft inspection, and has been issued a certificate stating so.'' The term ''nonrepairable vehicle'' would be defined as ''any passenger motor vehicle which is incapable of safe operation on the roads and highways and which has no resale value except as a source of parts or scrap, or which the owner irreversibly designates as a source of parts or scrap.'' A ''flood vehicle'' would be ''a motor vehicle that is acquired by an insurance company as part of a damage settlement due to water damage, or a vehicle that has been submerged in water such that water has reached over the door sill, entered the passenger or trunk compartment, has exposed any electrical, computerized, or mechanical component to water.''

Another commenter agreed with the definitions submitted by the previous commenter for ''nonrepairable vehicle'' and for ''flood vehicle.'' It submitted its own definition for ''salvage vehicle':

> A salvage vehicle is a motor vehicle, other than a flood or non-repairable vehicle which has been
>
> (A) wrecked, destroyed, or damaged, to the extent that the total cost of repairs to rebuild or reconstruct it to its prior condition, and for

legal operation on the roads or highways, exceeds 75 percent of its value at the time it was wrecked, destroyed, or damaged;

(B) Wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement; or

(C) Voluntarily designated as such, without regard to its level of damage, age, or value, by an owner who obtains a salvage title.

We have carefully considered this suggested definition in light of the fact that no commenter specifically supported the definition we proposed, and have concluded that, with minor changes, it should be adopted. Thus, under the final rule:

Salvage motor vehicle means a motor vehicle, whether or not repaired, which has been (1) wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the motor vehicle to its pre-accident condition and for legal operation on the streets, roads, or highways, exceeds 75 percent of its retail value at the time it was wrecked, destroyed, or damaged; or (2) wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement; (other than a damage settlement in connection with a recovered theft vehicle unless such motor vehicle sustained sufficient damage to meet the 75 percent threshold specified in the first sentence), or (3) voluntarily designated as such by its owner, without regard to the extent of the motor vehicle's damage and repairs.

With the inclusion of the phrase, ''whether or not repaired,'' we remove the need for a definition of ''repaired salvage vehicle.'' We are adopting our proposed definition of ''reconstructed vehicle'' because of the questions that arise as to the reasons for the reconstruction, the quality of the reconstruction, and the extent to which the original safety features of both vehicles have been retained or compromised. Above all, it seems highly unlikely that a reconstructed vehicle could be modified to comply with the Federal motor vehicle safety standards.

Section 591.8(c) requires that ''the surety on a bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989).'' When published late in 1989, this list was intended to be a reference to current sureties, rather than a list of specific sureties incorporated by reference. The list is a document that changes as sureties are added to and dropped from the list, and we are dropping the reference to it. The requirement will remain that, at the time the bond is given, the surety possesses a certificate of authority to underwrite Federal bonds.

To ensure that the conditions under which the conformance bond may be forfeited are clearly understood, we proposed to adopt a new Section 592.9 that clearly describes the forfeiture conditions. There were no comments on this aspect of the proposal, and we are adopting it as proposed.

We are also making a minor amendment to Section 591.8(d)(3) to conform it to the associated Condition 3 in each of the Conformance Bonds contained in Appendix A and Appendix B to Part 591. Section 591.8(d)(3) is structured as a prohibition (release of a vehicle from custody within 30 days after certification to the Administrator) that no longer applies if a condition is met (bond release) to which there is an exception (two conditions under which the vehicle will not be released). The amendment clarifies that if one or both of the latter conditions occur, the vehicle shall not be released until after the appropriate condition is met even though more than 30 days may have passed after the Registered Importer has provided certification to the Administrator.

E. Other Comments to the NPRM

1. *New Classification of Importers.* NAATA observed that many RIs do not comply with the existing rules because of costs and competitive influences. This commenter predicted that these practices would continue even if the proposed rules were adopted. To address this shortcoming, the commenter recommended that there should be a third class of RI, identified as ''Certification Bureaus.'' These bureaus ''would accept the entire liability and responsibility for complete vehicle certification and compliance and for subsequent recall notification.'' The ''Certification Bureau'' would be the only entity allowed to be a subcontractee of a RI. We interpret this comment as indicating NAATA's view that a Certification Bureau would be free of competitive pressures because it would not be importing vehicles.

An entity not importing, or not intending to import, vehicles would not be eligible to become a RI under the statute. Further, as we have said before, we do not read the statute as countenancing the delegation of duties of an RI. The RI alone must be totally responsible for fulfilling its statutory obligations. Therefore, we are not implementing NAATA's suggestions. Moreover, we would not have statutory authority to regulate the activities of a ''certification bureau'' because such an entity would not qualify as a RI or be engaged in importation activities that are subject to the Safety Act. The Safety Act imposes certification responsibilities, and other duties and responsibilities on manufacturers and importers for resale (who are defined as ''manufacturers'' under 49 U.S.C. 30102(a)(5)(B)), and does not authorize their delegation to other persons.

2. *Electronic Transmissions.* Four commenters encouraged NHTSA to permit the electronic submissions of compliance data to lighten its workload, reduce expenses for all parties involved, and expedite the release of conformance bonds. We agree that this is a worthy goal, and it is a critical part of the revised system that we will propose in the subsequent NPRM. However, to spare the disruption to our work process that would be necessary to accommodate such a change, we are not adopting it at this time.

3. *Availability of FMVSS.* One commenter recommended that NHTSA supply RIs with hard copies of the FMVSS and regulations, or identify the source from which that information may be obtained. Hard copies of the regulations are too costly to permit us to distribute them free of charge. OVSC routinely identifies how the regulations may be ordered in the information it supplies to those who may wish to apply to become a RI, and in its occasional guidance to RIs advising of changes in the regulations. The full text of specific regulations may also be downloaded from the Electronic Code of Federal Regulations (e-CFR)'' Web site at *http://www.gpoaccess.gov/ecfr.*

4. *CAFE.* Three comments were received expressing the opinion that RIs should comply with Corporate Average Fuel Economy (CAFE) Standards. We agree that CAFE requirements apply to RIs. By letter dated June 15, 1999, which we have placed in the docket for this rulemaking, we asked the Environmental Protection Agency (EPA) to work with us in developing an appropriate approach to this issue. We have had several subsequent discussions with EPA concerning this matter. However, we have not yet resolved all the many difficult issues that need to be addressed before CAFE requirements can be applied to RIs.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to modify regulatory procedures that have been in

effect for over ten years. In many cases, the effect of the proposed amendments would be to relax or eliminate burdens on regulated entities. In most other cases, the new provisions clarify existing requirements and responsibilities. This action does not involve a substantial public interest or controversy. The rulemaking action would not have a substantial impact on any transportation safety program or on state and local governments. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

A RI commenter contested our conclusion in the preamble to the NPRM that the proposed rule would not have a significant economic impact upon a substantial number of small entities, choosing to base its conclusion on the multiple of estimated gray market vehicles imported in 2000 (200,000) by the ''conservative average valuation of $12,000 per vehicle,'' or a gross dollar volume of $2.4 billion. However, the gross dollar volume associated with the gray market program has nothing to do with the issue of the impact of the proposed amendments. On the contrary, the overall costs of compliance with the new requirements imposed by this rule (*e.g.*, requiring RIs to maintain their own facility for conformance work and to have one full-time employee at a facility during normal business hours (which can be a corporate officer or partner of a partnership), requiring certification to NHTSA to be made by a principal of the RI, requiring applicants for RI status to provide additional information in their possession) are likely to be minimal. For these reasons, NHTSA does not accept the comment that the rulemaking action is likely to have a significant economic impact, requiring the agency, pursuant to 5 U.S.C. 609 to hold a public hearing on the rulemaking.

For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for our certification (5 U.S.C. 605(b)). The rule primarily affects Registered Importers (RIs) of motor vehicles. As of January 1, 2003, there were 168 entities that are currently RIs under 49 CFR Part 592. Most, if not all, RIs import motor vehicles for resale. That this is a profitable business is demonstrated by the large number of vehicles imported from Canada and the increasing number of applicants to become a RI. Most of the amendments adopted in the final rule are refinements and clarifications of existing RI obligations. We agree that many, if not most, RIs are small businesses as defined by the Small Business Administration's regulations, but we believe that the final rule will not have a significant economic impact upon a substantial number of small entities. Governmental jurisdictions will not be affected.

C. Executive Order 13132 (Federalism)

E. O. 13132 (64 FR 43255, August 10, 1999) revokes and replaces E.O.s 12612 ''Federalism'' and 12875 ''Enhancing the Intergovernmental Partnership.'' E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

One commenter noted that under Section 9(b) of E.O. 13132, ''no agency shall promulgate any regulation that * * * imposes substantial direct compliance costs on state and local governments.'' The comment contended that State and local governments have incurred direct compliance costs based on the premise that the large increase in the number of Canadian vehicles must have increased the paperwork requirements in the States' motor vehicle title offices. The comment is not well taken. Any increase in the number of Canadian vehicles imported into the United States is independent of this rulemaking action. The final rule does not require any action by State or local governments. To the extent that there are indirect compliance costs involved in titling and registering an increased number of vehicles, these costs may be offset by the fees that States and local jurisdictions impose for these services.

Accordingly, we state that the final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because the final rule would not impose any manufacturing requirements. We expect the volume of vehicles imported from Canada to fluctuate, independent of our rulemaking actions, based on differences in the exchange rate of the American and the Canadian dollar, and the presence or absence of incentive programs for new-car purchases.

E. Civil Justice Reform

This final rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal 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.

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by OMB in 5 CFR Part 1320. The original information collection requirements were approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0002 (''Motor Vehicle Information''). Under the final rule, new requirements will be imposed for RIs to retain records pertaining to modified vehicles for an additional two years, and for RIs and applicants for RI status to submit additional information to support an application for registration and the annual renewal of an existing registration. On October 3, 2003, the agency published, at 68 FR 57508, a notice describing these additional recordkeeping requirements and soliciting public comment thereon. Thereafter, on July 26, 2004, OMB approved this additional information collection as a revision to the collection

it previously approved under OMB Control No. 2127–0002. That approval also covers information collected by the agency through the HS–7 Declaration Form and the HS–474 Bond to Ensure Conformance with Motor Vehicle Safety and Bumper Standards.

G. 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. Because the final rule will not result in an expenditure of $100 million, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Parts 591, 592, 594

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

In consideration of the foregoing, 49 CFR parts 591, 592, and 594 are amended as follows:

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

■ 1. The authority citation for part 591 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Section 591.4 is amended by adding the definitions for ''Reconstructed motor vehicle'' and ''Salvage motor vehicle'' in alphabetical order to read as follows:

§ 591.4 Definitions.

* * * * *

Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.

Salvage motor vehicle means a motor vehicle, whether or not repaired, which has been:

(1) Wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the motor vehicle to its pre-accident condition and for legal operation on the streets, roads, or highways, exceeds 75 percent of its retail value at the time it was wrecked, destroyed, or damaged; or

(2) Wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement (other than a damage settlement in connection with a recovered theft vehicle unless such motor vehicle sustained sufficient damage to meet the 75 percent threshold specified in the first sentence); or

(3) Voluntarily designated as such by its owner, without regard to the extent of the motor vehicle's damage and repairs.

■ 3. Section 591.5 is amended as follows:

(a) By adding the word ''and'' following the semicolon at the end of paragraph (f)(2)(ii);

(b) By adding a new paragraph (f)(3); and,

(c) By adding a new paragraph (g).

The revisions and additions read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(f) * * *

(3) The vehicle is not a salvage motor vehicle or a reconstructed motor vehicle.

(g) (For importations for personal use only) The vehicle was certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and its original manufacturer has informed NHTSA that it complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, or that it complies with all such standards except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and/or the specifications of Federal Motor Vehicle Safety Standard No. 108 relating to daytime running lamps. The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

* * * * *

■ 4. Section 591.6 is amended by revising paragraph (c) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph (f) of §591.5, and under a bond for the entry of a single vehicle, shall be accompanied by a bond in the form shown in Appendix A to this part, in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B to this part and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety and bumper standards, or, if conformance is not achieved, for the delivery of such vehicles to the Secretary of Homeland Security for export at no cost to the United Sates, or for its abandonment.

* * * * *

■ 5. Section 591.7 is amended by revising paragraph (e) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(e) If the importer of a vehicle under §591.5(f)(2)(ii) has been notified in writing by the Registered Importer with which it has executed a contract or other agreement that the registration of the Registered Importer has been suspended (for other than the first time) or revoked, pursuant to §592.7 of this chapter, and that it has not affixed a certification label on the vehicle and/or filed a certification of conformance with the Administrator as required by §592.6 of this chapter, and that it therefore may not release the vehicle for the importer, the importer shall execute a contract or other agreement with another Registered Importer for the certification of the vehicle and submission of the certification of conformance to the Administrator. The Administrator shall toll the 120-day period for submission of a certification to the Administrator pursuant to §592.6(d) of this chapter during the period from the date of the Registered Importer's notification to the importer until the date of the contract with the substitute Registered Importer.

■ 6. Section 591.8 is amended by revising the introductory text of paragraph (d), and paragraphs (d)(1), (d)(3), and (d)(6) to read as follows:

§ 591.8 Conformance bond and conditions.

* * * * *

(d) In consideration of the release from the custody of the Bureau of Customs and Border Protection, or the withdrawal from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to applicable standards issued under part 571 and part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 571 and part 581 of this chapter within the number of days after the date of entry that the Administrator has established for such vehicle (to wit, 120 days);

* * * * *

(3) In the case of a Registered Importer, not to release custody of the

vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted the certification, and that the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of the vehicle will be required or that there is reason to believe that such certification is false or contains a misrepresentation;

* * * * *

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), or to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or to any other port of entry, and to secure all documents necessary for exportation of the vehicle from the United States at no cost to the United States, or in default of abandonment or redelivery after prior notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

* * * * *

■ 7. Appendix A to part 591 is amended by revising the introductory text and Condition (6) to read as follows:

APPENDIX A TO PART 591—SECTION 591.5(f) BOND FOR THE ENTRY OF A SINGLE VEHICLE

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH FEDERAL MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation), as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the Bureau of Customs and Border Protection: (make, model, model year, and VIN) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this_____day of_____, 20____.

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301 and 325; and DOT Form HS–7 ''Declaration;''

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform to the Federal motor vehicle safety or bumper standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform to the Federal motor vehicle safety and bumper standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the vehicle described above); and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has decided that the motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No._____, dated_____, 20____;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

* * * * *

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

* * * * *

■ 8. Appendix B to part 591 is amended by revising the introductory text of Appendix B and Condition (6) to read as follows:

APPENDIX B TO PART 591—SECTION 591.5(f) BOND FOR THE ENTRY OF MORE THAN A SINGLE VEHICLE

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH FEDERAL MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicles, to produce documents, to perform conditions of release such as to bring vehicles into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation) as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the Bureau of Customs and Border Protection (make, model, model year, and VIN of each vehicle) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this_____day of_____, 20____.

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301 and 325; and DOT Form HS–7 ''Declaration,''

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform to the Federal motor vehicle safety, or bumper, or theft prevention standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform to the Federal motor vehicle safety, bumper, and theft prevention standards; and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has decided that each motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicles described above have been imported at the port of_____, and entered at said port for

consumption on entry No._____, dated____ __, 20____;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

* * * * *

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the Bureau of Customs and Border Protection.

* * * * *

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 9. The authority citation for part 592 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 10. Section 592.4 is amended by adding the definitions of ''Independent insurance company'', ''Principal'', ''Safety recall'', and ''Service insurance policy'' in alphabetical order to read as follows:

§ 592.4 Definitions

* * * * *

Independent insurance company means an entity that is registered with any State and authorized by that State to conduct an insurance business including the issuance or underwriting of a service insurance policy, none of whose affiliates, shareholders, officers, directors, or employees, or any person in affinity with such, is employed by, or has a financial interest in, or otherwise controls or participates in the business of, a Registered Importer to which it issues or underwrites a service insurance policy.

* * * * *

Principal, with respect to a Registered Importer, means any officer of a corporation, a general partner of a partnership, or the sole proprietor of a sole proprietorship. The term includes a director of an incorporated Registered Importer, and any person whose ownership interest in a Registered Importer is 10% or more.

* * * * *

Safety recall means a notification and remedy campaign conducted pursuant to 49 U.S.C. 30118–30120 to address a noncompliance with a Federal motor vehicle safety standard or a defect that relates to motor vehicle safety.

Service insurance policy means any policy issued or underwritten by an independent insurance company which covers a specific motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in that vehicle will be remedied without charge to the owner of the vehicle.

■ 11. Section 592.5 is amended by revising paragraphs (a)(3), (4), (5), (9), and (11), (b), (d), (e) and (f) and by adding a new paragraph (h) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(3) Sets forth the full name, street address, and title of the person preparing the application, and the full name, street address, e-mail address (if any), and telephone and facsimile machine (if any) numbers in the United States of the person for whom application is made (the ''applicant'').

(4) Specifies the form of the applicant's organization (*i.e.,* sole proprietorship, partnership, or corporation) and the State under which it is organized, and:

(i) If the applicant is an individual, the application must include the full name, street address, date of birth, and Social Security Number of the individual;

(ii) If the applicant is a partnership, the application must include the full name, street address, date of birth, and Social Security Number of each partner; if one or more of the partners is a limited partnership, the application must include the names and street addresses of the general partners and limited partners; if one or more of the partners is a corporation, the application must include the information specified by either paragraph (a)(4)(iii) or (iv) of this section, as applicable;

(iii) If the applicant is a non-public corporation, the application must include the full name, street address, date of birth, and Social Security Number of each officer, director, manager, and person who is authorized to sign documents on behalf of the corporation. The application must also include the name of any person who owns or controls 10 percent or more of the corporation. The applicant must also provide a statement issued by the Office of the Secretary of State, or other responsible official of the State in which the applicant is incorporated, certifying that the applicant is a corporation in good standing;

(iv) If the applicant is a public corporation, the applicant must include a copy of its latest 10–K filing with the Securities and Exchange Commission, and provide the name and address of any person who is authorized to sign documents on behalf of the corporation;

(v) Contains a statement that the applicant has never had a registration revoked pursuant to §592.7, nor is it, nor was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer that has had a registration revoked pursuant to §592.7; and

(vi) Identifies any shareholder, officer, director, employee, or any person in affinity with such, who has been previously affiliated with another Registered Importer in any capacity. If any such persons are identified, the applicant shall state the name of each such Registered Importer and the affiliation of any identified person.

(5) Includes the following:

(i) The street address and telephone number in the United States of each of its facilities for conformance, storage, and repair that the applicant will use to fulfill its duties as a Registered Importer and where the applicant will maintain the records it is required by this part to keep;

(ii) The street address that the applicant designates as its mailing address (in addition, an applicant may list a post office box, provided that it is in the same city as the street address designated as its mailing address);

(iii) A copy of the applicant's business license or other similar document issued by an appropriate State or local authority, authorizing it to do business as an importer, or modifier, or seller of motor vehicles, as applicable to the applicant and with respect to each facility that the applicant has identified pursuant to paragraph (a)(5)(i) of this section, or a statement by the applicant that it has made a bona fide inquiry and is not required by such State or local authority to have such a license or document;

(iv) The name of each principal of the applicant whom the applicant authorizes to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located; and

(v) If an applicant is a corporation not organized under the laws of a State of the United States, or is a sole proprietorship or partnership located outside the United States, the application must be accompanied by the applicant's designation of an agent for service of process in the form specified by Section 551.45 of this chapter.

* * * * *

(9) Sets forth in full complete descriptive information, views, and arguments sufficient to establish that the applicant:

(i) Is technically able to modify any nonconforming motor vehicle to conform to all applicable Federal motor vehicle safety and bumper standards, including but not limited to the professional qualifications of the applicant and its employees at the time of the application (such as whether any such persons have been certified as mechanics), and a description of their experience in conforming and repairing vehicles;

(ii) Owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it provides certification of conformance to NHTSA and which it imports and may hold pending release of conformance bonds, including a copy of a deed or lease evidencing ownership or tenancy for each such facility, still or video photographs of each such facility, the street address and telephone number of each such facility;

(iii) Is financially and technically able to provide notification of and to remedy a noncompliance with a Federal motor vehicle safety standard or a defect related to motor vehicle safety determined to exist in the vehicles that it imports and/or for which it provides certification of conformity to NHTSA through repair, repurchase or replacement of such vehicles; and

(iv) Is able to acquire and maintain information regarding the vehicles that it imported and the names and addresses of owners of the vehicles that it imported and/or for which it provided certifications of conformity to NHTSA in order to notify such owners when a noncompliance or a defect related to motor vehicle safety has been determined to exist in such vehicles.

* * * * *

(11) Contains the statement: ''I certify that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will fully comply with each such duty. I further certify that all the information provided in this application is true and correct. I further certify that I understand that, in the event the registration for which it is applying is suspended or revoked, or lapses, [name of applicant] will remain obligated to notify owners and to remedy noncompliances or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which it has furnished a certificate of conformity to the Administrator.''

(b) If the application is incomplete, the Administrator notifies the applicant in writing of the information that is needed for the application to be complete and advises that no further action will be taken on the application until the applicant has furnished all the information needed.

* * * * *

(d) When the application is complete (and, if applicable, when the applicant has paid a sum representing the inspection component of the initial annual fee), the Administrator reviews the application and decides whether the applicant has complied with the requirements prescribed in paragraph (a) of this section. The Administrator shall base this decision on the application and upon any inspection NHTSA may have conducted of the applicant's conformance, storage, and recordkeeping facilities and any assessment of the applicant's personnel. If the Administrator decides that the applicant complies with the requirements, (s)he informs the applicant in writing and issues it a Registered Importer Number.

(e)(1) The Administrator shall deny registration to any applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section and to an applicant whose previous registration has been revoked. The Administrator also may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relatives of former partners or major shareholders, of a Registered Importer whose registration was revoked.

(2) If the Administrator denies an application, (s)he informs the applicant in writing of the reasons for denial and that the applicant is entitled to a refund of that component of the initial annual fee representing the remaining costs of administration of the registration program, but not those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection of the applicant's facilities.

(3) Within 30 days from the date of the denial, the applicant may submit a petition for reconsideration. The applicant may submit information and/or documentation supporting its request. If the Administrator grants registration as a result of the request, (s)he notifies the applicant in writing and issues it a Registered Importer Number. If the Administrator denies registration, (s)he notifies the applicant in writing and refunds that component of the initial annual fee representing the remaining costs of administration of the registration program, but does not refund those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection.

(f) In order to maintain its registration, a Registered Importer must file an annual statement. The Registered Importer must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(r), or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(m), remains correct, and that it continues to comply with the requirements for being a Registered Importer. The Registered Importer must include with its annual statement a current copy of its service insurance policy. Such statement must be titled ''Yearly Statement of Registered Importer,'' and must be filed not later than September 30 of each year. A Registered Importer must also pay any annual fee, and any other fee that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(h) An applicant whose application is pending on September 30, 2004, and which has not provided the information required by paragraph (a) of this section, as amended, must provide all the information required by that subsection before the Administrator will give further consideration to the application.

■ 12. Section 592.6 is revised to read as follows:

§ 592.6 Duties of a registered importer.

Each Registered Importer must:

(a) With respect to each motor vehicle that it imports into the United States,

assure that the Administrator has decided that the vehicle is eligible for importation pursuant to part 593 of this chapter, prior to such importation. The Registered Importer must also bring such vehicle into conformity with all applicable Federal motor vehicle safety standards prescribed under part 571 of this chapter and the bumper standard prescribed under part 581 of this chapter, if applicable, and furnish certification to the Administrator pursuant to paragraph (e) of this section, within 120 calendar days after such entry. For each motor vehicle, the Registered Importer must furnish to the Secretary of Homeland Security at the time of importation a bond in an amount equal to 150 percent of the dutiable value of the vehicle, as determined by the Secretary of Homeland Security, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety and bumper standards or will be exported (at no cost to the United States) by the importer or the Secretary of Homeland Security or abandoned to the United States. However, if the Registered Importer has procured a continuous entry bond, it must furnish the Administrator with such bond, and must furnish the Secretary of Homeland Security (acting on behalf of the Administrator) with a photocopy of such bond and Customs Form CF 7501 at the time of importation of each motor vehicle.

(b) Establish, maintain, and retain, for 10 years from the date of entry, at the facility in the United States it has identified in its application pursuant to § 592.5 (a)(5)(i), for each motor vehicle for which it furnishes a certificate of conformity, the following records, including correspondence and other documents, in hard copy format:

(1) The declaration required by § 591.5 of this chapter.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements between the Registered Importer and persons who import motor vehicles for personal use, and correspondence between the Registered Importer and the owner or purchaser of the vehicle.

(3) The make, model, model year, odometer reading, and VIN of each vehicle that it imports and the last known name and address of the owner or purchaser of the vehicle.

(4) Records, including photographs and other documents, sufficient to identify the vehicle and to substantiate that it has been brought into conformity with all Federal motor vehicle safety and bumper standards that apply to the vehicle, that the certification label has been affixed, and that either the vehicle is not subject to any safety recalls or that all noncompliances and safety defects covered by such recalls were remedied before the submission to the Administrator under paragraph (d) of this section. All photographs submitted shall be unaltered.

(5) A copy of the certification submitted to the Administrator pursuant to paragraph (d) of this section.

(6) The number that the issuer has assigned to the service insurance policy that will accompany the vehicle and the full corporate or other business name of the issuer of the policy, and substantiation that the Registered Importer has notified the issuer of the policy that the policy has been provided with the vehicle.

(c) Take possession of the vehicle and perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety and bumper standards that apply to the vehicle at a facility that it has identified to the Administrator pursuant to § 592.5(a)(5)(i), and permanently affix to the vehicle at that facility, upon completion of conformance modifications and remedy of all noncompliances and defects that are the subject of any pending safety recalls, a label that identifies the Registered Importer and states that the Registered Importer certifies that the vehicle complies with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and contains all additional information required by § 567.4 of this chapter.

(d) For each motor vehicle, certify to the Administrator:

(1) Within 120 days of the importation that it has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured by the fabricating manufacturer. Such certification shall state verbatim either that ''I know that the vehicle that I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance,'' or that ''I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the person who performed the necessary modifications to the vehicle is an employee of [RI name] and has provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies.'' The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complied as manufactured with those parts marking requirements.

(2) If the Registered Importer certifies that the vehicle was originally manufactured to comply with a standard that does not apply to the vehicle or that it has modified the vehicle to conform to such standard, or if the certification is incomplete, the Administrator may refuse to accept the certification. The Administrator shall refuse to accept a certification for a vehicle that has not been determined to be eligible for importation under part 593 of this chapter. If the Administrator does not accept a submission, (s)he shall return it to the Registered Importer. The costs associated with such a return will be charged to the Registered Importer. If the Administrator returns the submission as described above and the vehicle is eligible for importation, the 120-day period specified in paragraph (d)(1) of this section continues to run, but the 30-day period specified in paragraph (f) of this section does not begin to run until the Administrator has accepted the submission. If the vehicle is not eligible for importation, the importer must export it from, or abandon it to, the United States. If the Registered Importer certifies that it has modified the vehicle to bring it into compliance with a standard and has, in fact, not performed all required modifications, the Administrator will regard such certification as ''knowingly false'' within the meaning of 49 U.S.C. 30115 and 49 U.S.C. 30141(c)(4)(B).

(3) The certification must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(iv), with an original hand-written signature and not with a signature that is stamped or mechanically applied.

(4) The certification to the Administrator must specify the location of the facility where the vehicle was conformed, and the location where the Administrator may inspect the motor vehicle.

(5) The certification to the Administrator must state and contain substantiation either that the vehicle is not subject to any safety recalls as of the time of such certification, or, alternatively, that all noncompliances and defects that are the subject of those safety recalls have been remedied.

(6) When a Registered Importer certifies a make, model, and model year

of a motor vehicle for the first time, its certification must include:

(i) The make, model, model year and date of manufacture, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, and Customs Entry Number,

(ii) A statement that it has brought the vehicle into conformity with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and a description, with respect to each standard for which modifications were needed, of the modifications performed,

(iii) A copy of the bond given at the time of entry to ensure conformance with the safety and bumper standards,

(iv) The vehicle's vehicle eligibility number, as stated in Appendix A to part 593 of this chapter,

(v) A copy of the HS–7 Declaration form executed at the time of its importation if a Customs broker did not make an electronic entry for the vehicle with the Bureau of Customs and Border Protection,

(vi) Unaltered front, side, and rear photographs of the vehicle,

(vii) Unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed),

(viii) Unaltered photographs and documentation sufficient to demonstrate conformity with all applicable Federal motor vehicle safety and bumper standards to which the vehicle was not originally manufactured to conform,

(ix) The policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section, and the full corporate or other business name of the insurer that issued the policy, and

(x) A statement that the submission is the Registered Importer's initial certification submission for the make, model, and model year of the vehicle covered by the certification.

(7) Except as specified in this paragraph, a Registered Importer's second and subsequent certification submissions for a given make, model, and model year vehicle must contain the information required by paragraph (d)(6) of this section. If the Registered Importer conformed such a vehicle in the same manner as it stated in its initial certification submission, it may say so in a subsequent submission and it need not provide the description required by paragraph (d)(6)(ii) of this section.

(e) With respect to each motor vehicle that it imports, not take any of the following actions until the bond referred to in paragraph (a) of this section has been released, unless 30 days have elapsed from the date the Administrator receives the Registered Importer's certification of compliance of the motor vehicle in accordance with paragraph (d) of this section (the 30-day period will be extended if the Administrator has made written demand to inspect the motor vehicle):

(1) Operate the motor vehicle on the public streets, roads, and highways for a purpose other than transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or safety-related defect;

(2) Sell the motor vehicle or offer it for sale;

(3) Store the motor vehicle on the premises of a motor vehicle dealer;

(4) Title the motor vehicle in a name other than its own, or license or register it for use on public streets, roads, or highways; or

(5) Release custody of the motor vehicle to a person for sale, or for license or registration for use on public streets, roads, and highways, or for titling in a name other than that of the Registered Importer who imported the vehicle.

(f) Furnish with each motor vehicle for which it furnishes certification or information to the Administrator in accordance with paragraph (d) of this section, not later than the time it sells the vehicle, or releases custody of a vehicle to an owner who has imported it for personal use, a service insurance policy written or underwritten by an independent insurance company, in the amount of $2,000. The Registered Importer shall provide the insurance company with a monthly list of the VINs of vehicles covered by the policies of the insurance company, and shall retain a copy of each such list in its files.

(g) Comply with the requirements of part 580 of this chapter, *Odometer Disclosure Requirements,* when the Registered Importer is a transferor of a vehicle as defined by § 580.3 of this chapter.

(h) With respect to any motor vehicle it has imported and for which it has furnished a performance bond, deliver such vehicle to the Secretary of Homeland Security for export, or abandon it to the United States, upon demand by the Administrator, if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days from entry.

(i)(1) With respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity or information to the Administrator as provided in paragraph (d) of this section, provide notification in accordance with part 577 of this chapter and a remedy without charge to the vehicle owner, after any notification under part 573 of this chapter that a vehicle to which such motor vehicle is substantially similar contains a defect related to motor vehicle safety or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or the Registered Importer of such vehicle demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle, or that the defect or noncompliance was remedied before the submission of the certificate or the information to the Administrator, or that the original manufacturer of the vehicle will provide such notification and remedy.

(2) If a Registered Importer becomes aware (from whatever source) that the manufacturer of a vehicle it has imported will not provide a remedy without charge for a defect or noncompliance that has been determined to exist in that vehicle, within 30 days thereafter, the Registered Importer must inform NHTSA and submit a copy of the notification letter that it intends to send to owners of the vehicle(s) in question.

(3) Any notification to vehicle owners sent by a Registered Importer must contain the information specified in § 577.5 of this chapter, and must include the statement that if the Registered Importer's repair facility is more than 50 miles from the owner's mailing address, remedial repairs may be performed at no charge at a specific facility designated by the Registered Importer that is within 50 miles of the owner's mailing address, or, if no such facility is designated, that repairs may be performed anywhere, with the cost of parts and labor to be reimbursed by the Registered Importer.

(4) Defect and noncompliance notifications by a Registered Importer must conform to the requirements of §§ 577.7 and 577.8 of this chapter, and are subject to §§ 577.9 and 577.10 of this chapter.

(5) Except as provided in this paragraph, instead of the six quarterly reports required by § 573.7(a) of this chapter, the Registered Importer must submit to the Administrator two reports containing the information specified in § 573.7(b)(1) through (4) of this chapter. The reports shall cover the periods ending nine and 18 months after the commencement of the owner notification campaign, and must be

submitted within 30 days of the end of each period. However, the reporting requirements established by this paragraph shall not apply to any safety recall that a vehicle manufacturer conducts that includes vehicles for which the Registered Importer has submitted the information required by paragraph (d) of this section.

(6) The requirement that the remedy be provided without charge does not apply if the motor vehicle was bought by its first purchaser from the Registered Importer (or, if imported for personal use, conformed pursuant to a contract with the Registered Importer) more than 10 calendar years before the date the Registered Importer or the original manufacturer notifies the Administrator of the noncompliance or safety-related defect pursuant to part 573 of this chapter.

(j) In order that the Administrator may determine whether the Registered Importer is meeting its statutory responsibilities, allow representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility identified by the Registered Importer where any vehicle for which a Registered Importer has the responsibility of providing a certificate of conformity to the Administrator is being modified, repaired, tested, or stored, and any facility where any record or other document relating to the modification, repair, testing, or storage of these vehicles is kept;

(2) Any part or aspect of activities relating to the modification, repair, testing, or storage of vehicles by the Registered Importer; and

(3) Any motor vehicle for which the Registered Importer has provided a certification of conformity to the Administrator before the Administrator releases the conformance bond.

(k) Provide an annual statement and pay an annual fee as required by § 592.5(f).

(l) Except as noted in this paragraph, notify the Administrator in writing of any change that occurs in the information which was submitted in its registration application, not later than the 30th calendar day after such change. If a Registered Importer intends to use a facility that was not identified in its registration application, not later than 30 days before it begins to use such facility, it must notify the Administrator of its intent to use such facility and provide a description of the intended use, a copy of the lease or deed evidencing the Registered Importer's ownership or tenancy of the facility, and a copy of the license or similar document issued by an appropriate state or municipal authority stating that the Registered Importer is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a *bona fide* inquiry and is not required by state or local law to have such a license or permission), and a sufficient number of unaltered photographs of that facility to fully depict the Registered Importer's intended use. If a Registered Importer intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, it shall notify the Administrator not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

(m) Assure that at least one full-time employee of the Registered Importer is present at at least one of the Registered Importer's facilities in the United States during normal business hours.

(n) Not co-utilize the same employee, or any repair or conformance facility, with any other Registered Importer. If a Registered Importer co-utilizes the same storage facility with another Registered Importer or another entity, the storage area of each Registered Importer must be clearly delineated, and the vehicles being stored by each Registered Importer may not be mingled with vehicles for which that Registered Importer is not responsible.

(o) Make timely, complete, and accurate responses to any requests by the Administrator for information, whether by general or special order or otherwise, to enable the Administrator to decide whether the Registered Importer has complied or is complying with 49 U.S.C. Chapters 301 and 325, and the regulations issued thereunder.

(p) Pay all fees either by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System made payable to the Treasurer of the United States, in accordance with the invoice of fees incurred by the Registered Importer in the previous month that is provided by the Administrator. All such fees are due and payable not later than 15 days from the date of the invoice.

(q) Not later than November 1, 2004, file with the Administrator all information required by § 592.5(a), as amended. If a Registered Importer has previously provided any item of information to the Administrator in its registration application, annual statement, or notification of change, it may incorporate that item by reference in the filing required under this subsection, provided that it clearly indicates the date, page, and entry of the previously-provided document.

■ 13. Section 592.7 is revised to read as follows:

§ 592.7 Suspension, revocation, and reinstatement of suspended registrations.

This section specifies the acts and omissions that may result in suspensions and revocations of registrations issued to Registered Importers by NHTSA, the process for such suspensions and revocations, and the provisions applicable to the reinstatement of suspended registrations.

(a) *Automatic suspension of a registration.* 49 U.S.C. 30141(c)(4)(B) explicitly authorizes NHTSA to automatically suspend a registration when a Registered Importer does not, in a timely manner, pay a fee required by part 594 of this chapter or knowingly files a false or misleading certification under 49 U.S.C. 30146. NHTSA also may automatically suspend a registration under other circumstances, as specified in paragraphs (3), (4) and (5) of this section.

(1) If the Administrator has not received the annual fee from a Registered Importer by the close of business on October 10 of a year, or, if October 10 falls on a weekend or holiday, by the next business day thereafter, or has not received any other fee owed by a Registered Importer within 15 calendar days from the date of the Administrator's invoice, the Registered Importer's registration will be automatically suspended at the beginning of the next business day. The Administrator will promptly notify the Registered Importer in writing of the suspension. Such suspension shall remain in effect until reinstated pursuant to paragraph (c)(1) of this section.

(2) If the Administrator decides that a Registered Importer has knowingly filed a false or misleading certification, (s)he shall promptly notify the Registered Importer in writing that its registration is automatically suspended. The notification shall inform the Registered Importer of the facts and conduct upon which the decision is based, and the period of suspension (which begins as of the date indicated in the Administrator's written notification). The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after

considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(3) If mail is undeliverable to the Registered Importer at the official street address it has provided to the Administrator, or if the telephone has been disconnected at the telephone number specified by the Registered Importer, the Administrator may automatically suspend the Registered Importer's registration. Such suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(3) of this section.

(4) If a Registered Importer, not later than November 1, 2004, does not file with the Administrator all information required by § 592.5(a), as required by § 592.6(q), the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. Such a suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(4) of this section.

(5) If a Registered Importer releases one or more motor vehicles on the basis of a forged or falsified bond release letter, and the Administrator has not in fact issued such a letter, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension.

(6) The Administrator, in his or her sole discretion, may provide notice of a proposed automatic suspension or revocation for reasons specified in paragraphs (a)(1) through (a)(5) of this section.

(7) The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days of such notification, before a decision, as provided in paragraph (b)(2) of this section. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any automatic suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(b) *Non-automatic suspension or revocation of a registration.* (1) 49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to revoke or suspend a registration if a Registered Importer does not comply with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. These regulations include, but are not limited to, parts 567, 568, 573, 577, 591, 593, and 594 of this chapter.

(2) When the Administrator has reason to believe that a Registered Importer has violated one or more of the statutes or regulations cited in paragraph (b)(1) of this section and that suspension or revocation would be an appropriate sanction under the circumstances, (s)he shall notify the Registered Importer in writing of the facts giving rise to the allegation of a violation and the proposed length of a suspension, if applicable, or revocation. The notice shall afford the Registered Importer an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. If the Administrator decides, on the basis of the available information, that the Registered Importer has violated a statute or regulation, the Administrator may suspend or revoke the registration. The Administrator shall notify the Registered Importer in writing of the decision, including the reasons for it. A suspension or revocation is effective as of the date of the Administrator's written notification unless another date is specified therein. The Administrator shall state the period of any suspension in the notice to the Registered Importer. There shall be no opportunity to seek reconsideration of a decision issued under this paragraph.

(c) *Reinstatement of suspended registrations.* (1) When a registration has been suspended under paragraph (a)(1) of this section, the Administrator will reinstate the registration when all fees owing are paid by wire transfer or certified check from a bank in the United States, together with a sum representing 10 percent of the amount of the fees that were not timely paid.

(2) When a registration has been suspended under paragraph (a)(2) or (a)(5) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(3) When a registration has been suspended under paragraph (a)(3) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided a street address to which mail to it is deliverable and a telephone number in its name that is in service.

(4) When a registration has been suspended under paragraph (a)(4) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided all relevant documentation and information required by § 592.6(q).

(5) When a registration has been suspended under paragraph (b) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(6) When a suspended registration has been reinstated, NHTSA shall notify the Bureau of Customs and Border Protection promptly.

(7) If a Registered Importer imports a motor vehicle on or after the date that its registration is suspended and before the date that the suspension ends, the Administrator may extend the suspension period by one day for each day that the Registered Importer has imported a motor vehicle during the time that its registration has been suspended.

(d) *Effect of suspension or revocation.* (1) If a Registered Importer's registration is suspended or revoked, as of the date of suspension or revocation the entity will not be considered a Registered Importer, will not have the rights and authorities appertaining thereto, and must cease importing, and will not be allowed to import, vehicles for resale. The Registered Importer will not be refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. The Administrator shall notify the Bureau of Customs and Border Protection of any suspension or revocation of a registration not later than the first business day after such action is taken.

(2) With respect to any vehicle for which it has not affixed a certification label and submitted a certificate of conformity to the Administrator under § 592.6(d) at the time it is notified that its registration has been suspended or revoked, the Registered Importer must affix a certification label and submit a certificate of conformity within 120 days from the date of entry.

(3) When a registration has been revoked or suspended, the Registered Importer must export within 30 days of the effective date of the suspension or revocation all vehicles that it imported to which it has not affixed a certification label and furnished a certificate of

conformity to the Administrator pursuant to § 592.6(d).

(4) With respect to any vehicle imported pursuant to § 591.5(f)(2)(ii) of this chapter that the Registered Importer has agreed to bring into compliance with all applicable standards and for which it has not certified and furnished a certificate of conformity to the Administrator, the Registered Importer must immediately notify the owner of the vehicle in writing that its registration has been suspended or revoked.

(e) *Continuing obligations.* A Registered Importer whose registration is suspended or revoked remains obligated under § 592.6(i) to notify owners and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certificate of conformity to the Administrator.

■ 14. Section 592.8 is amended by revising paragraph (a), the first sentence of paragraphs (c) and (d), and paragraph (e), to read as follows:

§ 592.8 Inspection; release of vehicle and bond.

(a) With respect to any motor vehicle for which it must provide a certificate of conformity to the Administrator as required by § 592.6(d), a Registered Importer shall not obtain title, licensing, or registration of the motor vehicle for use on the public roads, or release custody of it for such titling, licensing, or registration, except in accordance with the provisions of this section.

* * * * *

(c) Before the end of the 30th calendar day after receiving a complete certification under § 592.6(d), the Administrator may notify the Registered Importer in writing that an inspection of the vehicle is required to verify the certification. * * *

(d) The Administrator may by written notice request the Registered Importer to verify its certification of a motor vehicle before the end of the 30th calendar day after the date the Administrator receives a complete certification under § 592.6(d). * * *

(e) If the Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a complete certification under section 592.6(d) of this chapter, the Registered Importer may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed, or registered for use on the public roads.

* * * * *

■ 15. Section 592.9 is added to read:

§ 592.9 Forfeiture of bond.

A Registered Importer is required by § 591.6 of this chapter to furnish a bond with respect to each motor vehicle that it imports. The conditions of the bond are set forth in § 591.8 of this chapter. Failure to fulfill any one of these conditions may result in forfeiture of the bond. A bond may be forfeited if the Registered Importer:

(a) Fails to bring the motor vehicle covered by the bond into compliance with all applicable standards issued under part 571 and part 581 of this chapter within 120 days from the date of entry;

(b) Fails to file with the Administrator a certificate that the motor vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in effect at the time the vehicle was manufactured and which applies to the vehicle;

(c) Fails to cause a motor vehicle to be available for inspection if it has received written notice from the Administrator that an inspection is required;

(d) Releases the motor vehicle before the Administrator accepts the certification and any modification thereof, if it has received written notice from the Administrator that there is reason to believe that the certification is false or contains a misrepresentation;

(e) Before the bond is released, releases custody of the motor vehicle to any person for license or registration for use on public roads, streets, and highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the Registered Importer has filed a complete certification under § 592.6(d), and the Registered Importer has not received written notice pursuant to paragraph (a)(3) or (a)(4) of this section. For purposes of this part, a vehicle is deemed to be released from custody if it is not located at a duly identified facility of the Registered Importer and the Registered Importer has not notified the Administrator in writing of the vehicle's location or, if written notice has been provided, if the Administrator is unable to inspect the vehicle, or if the Registered Importer has transferred title to any other person regardless of the vehicle's location; or

(f) Fails to deliver the vehicle, or cause it to be delivered, to the custody of the Bureau of Customs and Border Protection at any port of entry, for export or abandonment to the United States, and to execute all documents necessary to accomplish such purposes, if the Administrator has furnished it written notice that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards along with a demand that the vehicle be delivered for export or abandoned to the United States.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 16. The authority citation for part 594 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 30141; 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 17. Section 594.5 is amended as follows:

(a) By removing paragraphs (e) and (g); and

(b) By redesignating paragraph (h) as paragraph (e); and

(c) by redesignating paragraph (i) as paragraph (g) and revising it; and

(d) by revising paragraph (f).

The addition and revisions read as follows:

§ 594.5 Establishment and payment of fees.

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(f) The Administrator will furnish each Registered Importer with a monthly invoice of the fees owed by the Registered Importer for reimbursement for bond processing costs and for the review and processing of conformity certificates and information regarding importation of motor vehicles as provided in Section 592.4 of this chapter. A person who for personal use imports a vehicle covered by a determination of the Administrator must pay the fee specified in either § 594.8(b) or (c), as appropriate, to the Registered Importer, and the invoice will also include these fees. The Registered Importer must pay the fees within 15 days of the date of the invoice.

(g) Fee payments must be by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System, made payable to the Treasurer of the United States.

18. Section 594.9 is amended by revising paragraph (a) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

(a) Each Registered Importer must pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of Homeland Security on behalf of the Administrator with respect to each vehicle for which it furnishes a certificate of conformity pursuant to § 592.6(d) of this chapter.

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Issued on: August 9, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–18833 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–59–P