

**ADDRESSES:** You may submit comments by mail to: Maritime Administration, Office of Congressional and Public Affairs, 400 Seventh Street, SW., Washington, DC 20590; or by e-mail to: [pao.marad.dot.gov](mailto:pao.marad.dot.gov).

**FOR FURTHER INFORMATION CONTACT:** Erhard Koehler, Manager, NS *Savannah* Programs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; phone: (202) 366-2631; fax: (202) 366-3954; or e-mail [Erhard.Koehler@dot.gov](mailto:Erhard.Koehler@dot.gov). Information regarding the NS *Savannah* is also available on MARAD's Web site at <http://www.marad.dot.gov>.

**SUPPLEMENTARY INFORMATION:** The NS *Savannah*, the world's first nuclear-powered commercial vessel, was originally launched on July 21, 1959, and served as a demonstration of the peaceful and productive use of atomic power. It was part of the Patriots Point Naval and Maritime Museum in Mount Pleasant, SC from 1981 to 1994, and has spent the last 11 years moored at MARAD's James River Reserve Fleet in Virginia.

MARAD is considering transferring the *Savannah* from its present location to either Charleston, South Carolina; Wilmington, North Carolina; Hampton Roads, Virginia; or Baltimore, Maryland, to complete the decommissioning of its nuclear reactor. No nuclear fuel remains on the *Savannah* (as all of the fuel was removed more than 30 years ago). MARAD has a five-year plan to remove the rest of the irradiated components from the ship—the reactor pressure vessel, steam generators, pumps and piping systems. These components have been tested and found to be Class A or lower, which means they have the lowest radiation levels they can have and still be considered nuclear waste. The waste would be disposed of in a licensed facility. This collective process is defined as “decommissioning.”

The *Savannah* is licensed and regulated by the U.S. Nuclear Regulatory Commission (NRC)—just like any other commercial utility that operates a nuclear power station. Under NRC regulations, MARAD must move the *Savannah* from its present location in the James River Reserve Fleet to an East Coast port / industrial complex where the decommissioning work can be accomplished. NRC will then consider an amendment to MARAD's *Savannah* license to authorize the decommissioning work. This review is expected to take two years (2006–2008), and it will include a series of formal hearings chaired by the NRC in the decommissioning port.

MARAD is requesting public comments on its proposal to relocate the *Savannah* for decommissioning. After reviewing comments, MARAD may hold several informational public meetings (and/or teleconferences) addressing this proposal in Charleston, South Carolina; Wilmington, North Carolina; Hampton Roads, Virginia (to include Norfolk, Portsmouth, Newport News); and Baltimore, Maryland. If such meetings are determined to be necessary, specific dates and times for the meetings will be announced in the **Federal Register**.

(Authority 49 CFR 1.66)

Dated: February 24, 2006.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-22654; Notice 2]

#### Final Decision To Partially Rescind Decision That Nonconforming 1990-1999 Nissan GTS and GTR Passenger Cars Are Eligible for Importation

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

**ACTION:** Final decision to partially rescind decision that nonconforming 1990-1999 Nissan GTS and GTR passenger cars are eligible for importation.

**SUMMARY:** This document announces a final decision by NHTSA to partially rescind a prior decision by the agency that 1990-1999 Nissan GTS and GTR passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States. As a result of this decision, only Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 are eligible for importation. All other model and model year vehicles admissible under the prior decision are no longer eligible for importation. As a consequence, the agency is rescinding vehicle eligibility number VCP-17, which covered vehicles admissible under the prior decision, and issuing vehicle eligibility number VCP-32 to cover only those model and model year Nissan GTS and GTR passenger cars that remain eligible for importation. The rescission will only bar the future importation of the model

and model year Nissan GTS and GTR passenger cars that are no longer eligible for importation, and will not affect the status of vehicles that have already been lawfully imported under vehicle eligibility number VCP-17.

**DATES:** The decision is effective on March 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5291).

#### SUPPLEMENTARY INFORMATION:

##### A. Statutory and Regulatory Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on crash test data or other evidence (such as an engineering analysis) that NHTSA decides is adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. Because NHTSA has little or no direct knowledge of many vehicles for which import eligibility is sought, the agency must rely on the petition and any comments that are submitted in making this decision. The agency then publishes its decision in the **Federal Register**. If NHTSA decides that the vehicle is eligible for importation, it will assign a vehicle eligibility number. The eligibility

number is entered on the importation declaration to inform Customs that the vehicle can be lawfully imported (by a registered importer or by a person who has a contract with a registered importer to modify the vehicle) even though the vehicle was not originally manufactured to comply with all applicable FMVSS or was not so certified by its original manufacturer for importation into, and sale in, the United States.

### **B. Import Eligibility Petition and Decision**

NHTSA was petitioned by a registered importer to decide whether 1990–1999 Nissan GTS and GTR Passenger cars are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of this petition under Docket Number NHTSA–99–5507 on April 16, 1999 (64 FR 18963). As stated in the notice, the petitioner claimed that 1990–1999 Nissan GTS and GTR passenger cars have safety features that comply with many standards that apply to passenger cars of the model years in question, and are capable of being altered to comply with other applicable standards. With respect to FMVSS No. 208 Occupant Crash Protection, the petitioner stated that the driver's air bags on 1990–1993 models, and the driver's and passenger's air bags on 1994–1999 models, would need to be replaced with components manufactured to the petitioner's specifications based on the results of dynamic crash tests conducted by MGA Research Corporation. As indicated by the petitioner, these tests were conducted after it had made certain structural modifications to the vehicles.

No comments were received in response to the notice of petition. Based on its review of the information submitted by the petitioner, NHTSA granted the petition on November 15, 1999, and assigned Vehicle Eligibility Number VCP–17 to vehicles admissible under that decision. The agency published notice of the decision on January 19, 2000 (65 FR 3002).

### **C. Information Undermining Eligibility Decision**

After the notice of decision granting the petition was published, the agency obtained additional information regarding 1990–1999 Nissan GTS and GTR passenger cars from Nissan North America, Inc., the U.S. representative of Nissan Motor Company, LTD (Nissan) of Tokyo, Japan, the vehicles' manufacturer. Nissan informed the agency that it manufactured three distinct GTS and GTR models from 1990 to 1999, designated as the R32, the R33,

and the R34 models, respectively. Nissan stated that the R32, the R33, and the R34 models differ in terms of their "structural design and restraint performance," and that each of the models, which followed a chronological sequence, was "newly designed and different from the type preceding it." Nissan confirmed that the company received official type approval from the Japanese government for each model separately, and stated that it was "highly likely that each model type would perform differently in the crash tests required by the FMVSS."

Nissan also provided a chart showing production "start" and "end" dates for the R32, the R33, and the R34 models. The R32 models were manufactured from May 1989 through November 1994; the R33 models were manufactured from August 1993 through June 1998; and the R34 models were manufactured from November 1997 through August 2002. Included in the chart is information identifying the production "start" dates when air bags were offered as an option and as standard equipment at both the driver's and the front passenger's seating positions on the R32, the R33, and the R34 model vehicles.

The agency did not have this information at the time of its original decision to grant import eligibility to 1990–1999 Nissan GTS and GTR passenger cars. Instead, the agency heavily relied on the results of static and dynamic tests on two modified 1996 R33 model vehicles, which the original petition suggested were representative of the entire model year range covered by the petition. As indicated in the original petition, the petitioner had made structural modifications to these two vehicles and replaced the air bags at the driver's and front passenger's seating positions with components manufactured to its own specifications. With the benefit of the information provided by Nissan, it is now apparent that the petitioner did not demonstrate full compliance with the performance requirements of FMVSS 208 and other crashworthiness standards (e.g., FMVSS Nos. 210 Seat Belt Assembly Anchorages, 212 Windshield Mounting, and 301 Fuel System Integrity) for R32 and R34 models because petitioner did not identify these separate models or provide crash performance test data on them.

The agency's decision to grant import eligibility to 1990–1999 Nissan GTS and GTR passenger cars also relied on the petitioner's assertion that the original equipment driver's air bag on 1990–1993 models, and the driver's and

passenger's air bags on 1994–1999 models would be replaced with components manufactured to the petitioner's specifications.

However, the air bag production chart provided by Nissan shows that no driver's air bags were available in the R32 GTS model until August 1991. For the R32 GTR model, no driver's air bag was offered until February 1994, and it was then offered only as optional equipment. Nissan did not offer passenger's air bags in the R32 model. Nissan began production of the R33 model in August 1993, offering both driver's and passenger's air bags as optional equipment on the GTS model. It was not until January 1995 that a driver's air bag was offered on the GTR model. As of January 1995, the driver's air bag became standard on both GTS and GTR models. One year later, in January 1996, the passenger's air bag became standard on both GTS and GTR models.

Nissan has informed the agency that it does not possess records that would allow it to determine whether any individual vehicle had air bags installed as optional equipment. Based on the information furnished by Nissan, the agency can only be assured that R33 model vehicles, produced by Nissan beginning in January 1996, had both driver's and passenger's air bags installed as original equipment.

### **D. Tentative Decision To Partially Rescind Import Eligibility**

On the basis of the foregoing, NHTSA tentatively concluded that the original grant of eligibility to the 1990–1999 Nissan GTS and GTR passenger cars, comprising R32, R33, and R34 model vehicles, was overly broad. As a consequence, the agency tentatively decided to rescind that decision in part, so that only Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 would be eligible for importation if the tentative decision was made final. The agency published a notice of the tentative decision on November 28, 2005, 70 FR 71375. The notice solicited public comments on the tentative decision.

### **E. Comments on Tentative Decision**

The agency received 35 comments in response to the notice of tentative decision. Nine of these were duplicates. Eliminating the duplicates, a total of 26 comments were received. Those comments are summarized below.

#### *a. General Issues*

Ten commenters opposed any change in the existing decision that 1990–1999

Nissan GTS and GTR "Skyline" passenger cars are eligible for importation. Two commenters expressed the opinion that Skylines are not unsafe vehicles. Three commenters observed that there are so few Skyline vehicles in the United States that their impact on motor vehicle safety is negligible. Three commenters observed that NHTSA should not rescind import eligibility for Nissan Skylines, thereby denying enthusiasts the opportunity to own these vehicles, on account of a single registered importer's fraudulent practices in certifying the compliance of these vehicles to all applicable standards. In contrast to these comments, three commenters were of the opinion that NHTSA should rescind import eligibility for all Nissan Skyline vehicles. Of these, one commenter believed the market for the Nissan Skyline was too limited for businesses to spend the capital necessary to re-engineer components required to fully comply with the FMVSS.

*Agency Response:* Because they were not originally manufactured to comply with all applicable FMVSS, Nissan Skyline vehicles could not be lawfully imported into the United States unless they were determined eligible for importation, based on their capability of being modified to conform to those standards. That is the case regardless of how safe the commenters may believe the vehicles to be, and regardless of how many Skyline vehicles may actually be operated on U.S. roads.

Although the agency's original import eligibility decision was overly broad because it was based on the premise that all vehicles within the 1990-1999 model years were built on the same platform and were all equipped with air bags, the agency does not believe it is necessary to entirely rescind import eligibility for all Skyline vehicles. There is sufficient information of record for the agency to conclude that certain of those models and model years are capable of being modified to conform to all applicable standards within the meaning of 49 U.S.C. 30141(a)(1)(B).

Although the agency has been informed that some Skyline owners have been defrauded by unscrupulous enterprises operating outside the laws and regulations that the agency administers, that is not the reason for the partial rescission action. The partial rescission is instead based on the receipt of new information from the vehicles' original manufacturer that caused the agency to question the breadth of its original eligibility decision.

#### *b. Request To Delay Agency Decision*

One commenter, who described himself as a member of the armed forces, stated that he specifically requested a tour of duty in Japan so that he could return to the United States with a Nissan Skyline. This commenter requested the agency to delay the partial rescission for 12 to 24 months so he and other military personnel may import vehicles before the rescission takes effect.

*Agency Response:* An agency decision to partially rescind import eligibility for the Nissan Skyline would limit the model and model year range of those vehicles that can be lawfully imported, but would not render all Nissan Skyline vehicles ineligible for importation. This should assure that returning service members and others would continue to have a sufficient opportunity to import one of these vehicles. The agency notes that it lacks the authority to create special exemptions from the importation restrictions for any reason, including military service.

#### *c. Challenges To Information Supporting Partial Rescission*

##### 1. The Three Models Would Perform the Same in Crash Tests

Four commenters disagreed with the manufacturer's statement that R32, R33, and R34 model vehicles differ in terms of their structural design and restraint performance. The commenters acknowledge that there are structural differences among the platforms, which they view as minor, but predict that crash tests performed on each of those platforms would yield identical results. Several commenters recommended that the agency obtain the manufacturer's vehicle design documents to confirm the differences claimed by the manufacturer.

*Agency Response:* The original manufacturer, Nissan, represented that the R32, the R33, and the R34 models differ in terms of their "structural design and restraint performance," and that each of the models, which followed a chronological sequence, was "newly designed and different from the type preceding it." Nissan confirmed that the company received official type approval from the Japanese government for each model separately, and observed that it was "highly likely that each model type would perform differently in the crash tests required by the FMVSS." The commenters have not provided any technical basis for disputing Nissan's statements. Based on its review of the petition and the petition's supporting information, including reports of crash tests conducted on two R33 model

Nissan Skyline vehicles, in 1999 the agency was persuaded that the petitioner had demonstrated that the R33 model Nissan Skyline was capable of being altered to comply with all applicable FMVSS. Aside from generally observing that the three Skyline models would yield similar crash test results, none of the commenters provided any sound evidence, such as crash test data, to show that the R32 and R34 models are also capable of being brought into compliance with all applicable FMVSS. There is nothing to refute the original manufacturer's claim that the three models would be highly likely to perform differently in dynamic crash tests. In light of the manufacturer's statement that the three Skyline models would perform differently in dynamic crash tests and the absence of crash test data to support the commenters' claim that the three models would perform the same, we decline to accept that claim.

##### 2. Owner's and Parts Manuals Show Availability of Air Bags as Optional Equipment in Early Models

One commenter stated that he obtained in Japan a 1992 Nissan Skyline GTR owner's manual showing that an air bag was offered for the vehicle. Additionally, this commenter stated that he purchased a parts manual for a 1992 R32 model vehicle showing the part numbers for an air bag. The commenter stated he was enclosing pages from both manuals with his comment to the Docket, but did not do so. Based on the information he reportedly found in the two manuals, the commenter requested clarification of Nissan's statement that no driver's air bag was offered for the R32 GTR model until February 1994, and that it was then offered only as optional equipment.

*Agency's Response:* Based on the information provided by Nissan, that manufacturer offered an air bag as optional equipment at the driver's designated seating position on the R32 sedan and coupe beginning in August 1991. We are aware that vehicle owner's manuals often contain information covering optional equipment offered in a vehicle model. The same holds true for parts manuals. While an air bag was offered as early as August 1991 in the R32 sedan and coupe, Nissan states that it did not offer the air bag in the R32 GTR until February 1994. We do not regard the commenter's information as refuting the information provided by Nissan.

### 3. Optional R32 Air Bags Are Nearly Identical to R33 Air Bags

One commenter, an attorney representing a vehicle owner, claimed that an air bag was available as a factory option on 1990–1993 R32 model Nissan Skyline vehicles. This commenter asserted that this optional restraint system is nearly identical to that found in 1993–1995 R33 model Nissan Skyline vehicles and employs the same sensors and electronic control module. Although he conceded that there are differences between the chassis of the R32 and later R33 models, the commenter contended that the air bag systems installed in those models are substantially similar, in terms of both their components and their manner of operation, and observed that the R33 model was crash tested by the RI that petitioned NHTSA to determine the vehicle eligible for importation. The commenter also noted that 1990 to 1994 model vehicles are not required to have an air bag to comply with the automatic crash protection requirements of FMVSS No. 208, and may do so by means of an automatic restraint such as a motorized seatbelt. As a consequence, the commenter encouraged the agency to allow the original eligibility determination to stand, but to permit an alternate means of achieving compliance with FMVSS No. 208 (e.g., by adding automatic seatbelts).

*Agency Response:* Contrary to the commenter's contention, information supplied to the agency by Nissan shows that no 1990 R32 model Skyline vehicles were manufactured with air bags at the driver's designated seating position. It was not until August 1991 that Nissan began offering, as optional equipment, air bags at the driver's designated seating position in R32 model sedans and coupes. According to Nissan, no R32 model Skyline was equipped with an air bag at the passenger's designated seating position. With regard to the commenter's observation that nearly identical restraint systems were available for R32 and R33 model vehicles, the agency again notes Nissan's claim that the R32, R33, and R34 models differ in terms of their "structural design and restraint performance," that each of the models was "newly designed and different from the type preceding it," and that it was "highly likely that each model type would perform differently in the crash tests required by the FMVSS."

Addressing the commenter's suggestion that motorized seatbelts be allowed as an alternate means of achieving compliance with FMVSS No. 208, the agency notes that the registered

importer that petitioned NHTSA to determine the Nissan Skyline eligible for importation conducted crash tests on the vehicle after replacing its air bags with ones manufactured to the petitioner's specifications. The petitioner did not install motorized seatbelts in the vehicle to achieve compliance with the standard. Moreover, Nissan informed the agency that automatic seatbelts were not installed as original equipment in the 1990–1999 Skyline models, and no dynamic crash test data is available to demonstrate that such a vehicle equipped with automatic seatbelts would comply with FMVSS No. 208. The mere statement that equipment such as automatic seatbelts could be added to a vehicle is not sufficient to prove that the vehicle is capable of being altered to comply with FMVSS No. 208, as would be required to establish that the vehicle is eligible for importation under 49 U.S.C.

30141(a)(1)(B). Such proof could only be obtained by conducting a crash test that replicates how the vehicle structures and restraint systems perform in a crash.

### 4. Agency's Reliance on Manufacturer's Comments Is Inconsistent With Past Import Eligibility Decision Practices

Another commenter, a registered importer, observed that because Nissan had every opportunity to comment on the original import eligibility petition covering 1990–1999 Nissan GTS and GTR passenger cars, but elected not to do so, the manufacturer in effect conceded that no adverse safety impact would result from the granting of this petition. Noting that NHTSA received information from the manufacturer after the petition was granted, the commenter recommended that the agency officially announce, in the **Federal Register** notices that it publishes to solicit comments on future petitions, that it will ask manufacturers to assess the sufficiency of the proposed modifications identified by the petitioner. In particular, the commenter faulted the agency for accepting Nissan's statements that the R32, R33, and R34 model vehicles are sufficiently distinct that they are likely to yield different crash test results. The commenter noted that NHTSA has disregarded manufacturer's comments in ruling on past petitions. The commenter further noted that NHTSA personnel have previously stated that minor differences in overall wheelbase would not have an overall impact on a vehicle's crashworthiness unless weight differences of more than 500 pounds were involved.

*Agency response:* The agency does not believe that any conclusion or inference can be drawn from the fact that Nissan did not comment on the original eligibility petition for Nissan Skyline vehicles. Regarding the manner in which NHTSA obtained information from Nissan in this instance, the agency notes that it asked the manufacturer to provide vehicle production data on Skyline vehicles as part of an investigation unrelated to the original petition. Based on the information furnished by the manufacturer (such as the fact that air bags were not installed as original equipment on 1990 R32 models), the agency re-evaluated the eligibility decision. Contrary to the commenter's observation, the agency was not constrained from re-evaluating this decision on account of past instances in which it has granted import eligibility to a particular vehicle despite objections from the vehicle's original manufacturer.

The information furnished by Nissan, which NHTSA did not have when it granted the original petition, compelled the agency to conclude that the petitioner did not adequately demonstrate that R32 and R34 model Skyline vehicles are capable of being modified to comply with all applicable FMVSS. In these circumstances, it was not appropriate for the agency to let its earlier import eligibility decision stand. Accordingly, NHTSA undertook to modify that decision prospectively by limiting import eligibility to R33 model vehicles in which both required air bags are installed as standard equipment. However, RIs are free to petition the agency to decide whether any other model or model year Skyline vehicle is eligible for importation.

Unlike past instances in which a single eligibility decision has covered vehicles with minor differences in overall wheelbase, in this instance, the Nissan Skyline was produced in three distinct models over the 1990 through 1999 model years. In view of Nissan's statement that the three models differ in terms of their "structural design and restraint performance," and would be "highly likely to perform differently in the crash tests required by the FMVSS," NHTSA cannot justify maintaining import eligibility for the three models based on data submitted for one model alone.

### 5. Import Eligibility Should Be Retained for 1995 R33 Model Skyline Vehicles

Six commenters asked the agency to retain import eligibility for 1995 R33 model Nissan Skyline vehicles. The commenters noted that the body style of the 1995 R33 model is exactly the same

as the R33 models produced from 1996 to 1998. The commenters further observed that some of the 1995 R33 model vehicles were equipped with an optional air bag at the passenger's designated seating position. The commenters noted that even though Nissan is unable to advise the agency whether any particular vehicle was manufactured with an optional air bag, agency personnel might verify the air bag's presence by performing a vehicle inspection.

The commenters further contended that 1995 models that were not originally equipped with an air bag at the passenger's designated seating position are capable of being retrofitted with readily available components. One commenter stated that a dual supplemental restraint system (SRS) could be installed in those vehicles. As described by the commenter, this system would include a complete dash, a passenger's air bag module, a dual SRS wire harness, and a dual SRS electronic control unit.

Another commenter contended that it is possible to retrofit 1995 Skyline vehicles with dual air bags, because these vehicles were originally designed to accept the optional passenger air bag on the assembly line. The commenter claimed that the steering column, the wiring harness, and air bag system mounting brackets are identical on 1995 R33 model vehicles, regardless of whether they were originally equipped with or without the optional passenger air bag. The commenter further contended that the components needed to add the air bag at the passenger's designated seating position (*e.g.*, rear SRS control unit mount and dashboard pad with blow out panel) could be readily purchased from the manufacturer and retrofitted to the vehicle.

*Agency response:* The original petition stated that to achieve compliance with FMVSS No. 208, the driver's air bags on 1990–1993 models, and the driver's and passenger's air bags on 1994–1999 models, would need to be replaced with components manufactured to the petitioner's specifications. The petition did not address the fact that many Skyline vehicles within the covered range of model years never had air bags installed as original equipment and that those components could therefore not be "replaced" in the manner described. Because it has no way to reliably determine whether any particular 1995 model Skyline vehicle was originally equipped with a passenger air bag, the agency is unwilling to retain import eligibility for that model year.

With regard to the suggestion that 1995 vehicles be inspected to determine whether air bags are installed, our regulations at 49 CFR 594.7(e) require the payment of \$827 when agency personnel inspect a vehicle. The agency does not have the resources that would be needed to inspect each 1995 vehicle that may be imported.

Only vehicles originally manufactured with all required air bags are within the scope of the original eligibility decision. Without the benefit of data, views, and arguments equivalent to what is needed to support an eligibility petition, the agency is unable to determine whether a 1995 R33 model Skyline vehicle that was not originally equipped with one or more required air bags may be properly retrofitted with an air bag system. Based on the information furnished by Nissan, our only assurance is that R33 model Skyline vehicles manufactured beginning in January 1996, which had dual air bags installed as standard equipment, can be modified in the manner described in the original eligibility petition.

#### 6. Requested Relief for Vehicles Already Imported

Ten commenters stated that they had purchased Nissan Skyline vehicles in good faith and lawfully imported those vehicles for personal use in reliance on the agency's existing import eligibility determination. These commenters requested the agency to grant a one-time waiver from the requirements of standards the vehicles have not been proven to meet. Given the limited number of vehicles that fall into this category, the commenters contended that the granting of such a waiver would have a negligible impact on motor vehicle safety. In exchange for any such waiver, several commenters offered to accept certain conditions, such as those limiting on-road use, restricting the resale of the vehicle, and releasing the agency from liability for injuries that could result from operating a vehicle that does not comply with all applicable standards.

One commenter asked the agency to consider exempting from the air bag requirements vehicles already imported and in the custody of a registered importer. This commenter observed that the agency has previously granted financial hardship exemptions from the requirements of FMVSS No. 208 to five manufacturers, including Saleen, Bugatti, Shelby America, Laforza, and Spyker. The commenter also observed that the agency also granted permission to a vehicle owner to deactivate an air bag based on a medical condition, even

though the vehicle's registered importer did not properly install a required air bag.

*Agency response:* An agency decision to partially rescind import eligibility for Nissan Skyline vehicles would only be effective prospectively, and would not affect the legality of the importation of those vehicles under the prior eligibility decision. As previously noted, NHTSA granted import eligibility to 1990–1999 Nissan GTS and GTR "Skyline" passenger cars on the basis of a representation in the original petition that the vehicle's airbags would be "replaced" with components manufactured to the petitioner's specifications. Because no comments were submitted in response to the notice of petition, this representation was not refuted. It was only later that the agency learned, through an investigation, that air bags were only installed as standard equipment on a limited range of vehicles produced within the models years covered by the petition. NHTSA has not released the DOT Conformance bonds on a number of Skyline vehicles that were not originally manufactured with required air bags, for want of evidence that those vehicles have been altered to comply with FMVSS No. 208 in the manner described in the petition. Comments relating to disposition of these and other vehicles already imported under the prior decision are outside the scope of this decision. Nevertheless, the agency is willing to consider, on a case-by-case basis, the concerns of those owning Skyline vehicles that were lawfully imported under the original eligibility decision but have yet to be bond released by NHTSA.

We have considered the commenters' suggestions in light of the agency's authority under the laws and regulations that it administers. One commenter suggested that the agency grant owners of the affected vehicles exemptions from one or more applicable FMVSS, such as those granted to manufacturers under 49 U.S.C. 30113 and 49 CFR Part 555. As specified in those provisions, these exemptions can only be granted to a manufacturer, and only in circumstances where compliance with a standard would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The agency lacks the authority to grant such an exemption to any other party. Although a registered importer may file with the agency a petition for a temporary exemption under Part 555, as explained in the agency's interpretations, the agency would regard such a petition as being filed on behalf

of the foreign manufacturer, and would consider the circumstances of the manufacturer, and not the importer, in deciding whether to grant the petition. Moreover, since an exemption under Part 555 would only apply to vehicles originally manufactured after the date the exemption is granted, used vehicles could not benefit from such an exemption.

One commenter also suggested that the agency grant owners of vehicles that cannot be modified to conform to the air bag requirements of FMVSS No. 208 an exemption similar to the one described in 49 CFR 595.5. This provision enables motor vehicle dealers or repair businesses to install retrofit air bag on-off switches without violating the prohibition in 49 U.S.C. 30122 against making inoperative safety equipment installed in a vehicle in compliance with an applicable standard. This regulation applies to a limited and narrowly tailored set of circumstances. The regulation seeks to preserve the benefits of air bags, while providing a means for reducing the risk of serious or fatal injury that air bags pose to identifiable groups of people, such as people who cannot avoid sitting extremely close to air bags by reason of their short stature, people with certain medical conditions, and young children. To obtain permission for the installation of an on-off switch, the vehicle owner must certify that the owner or another user of the vehicle is a member of one of the at-risk groups. This regulation, which pertains to the prohibition on making safety equipment inoperative in 49 U.S.C. 30122, has no bearing on import eligibility decisions under 49 U.S.C. 30141(a)(1)(B).

Several commenters offered to limit their vehicles' on-road use, to restrict the resale of their vehicles, or to release the agency from liability resulting from the vehicles' noncompliance in exchange for a waiver from compliance with one or more applicable standards. Addressing the offer to release the agency from liability, the agency notes that it is not subject to suit for exercising governmental functions of this kind. The remaining conditions are similar to ones imposed on the owners of vehicles imported for purposes of show or display under 49 CFR 591.5(j)(1). A vehicle cannot be imported for purposes of show or display unless it is found by the agency to have such historical or technological significance that it is worthy of being imported for those purposes. As a general rule, a vehicle is ineligible for importation for purposes of show or display if more than 500 of the vehicles were produced, or if the vehicle has

been found eligible for importation under 49 CFR Part 593, based on its capability of being modified to conform to all applicable standards. For these reasons, the agency has previously denied an application for the importation of a 1995 Nissan Skyline GTS-T under the show or display provisions. To be consistent with its past administration of these provisions, the agency remains unwilling to extend show or display status to Nissan Skyline vehicles. Moreover, the agency lacks the authority to impose mileage or resale restrictions on vehicles imported for any other purpose.

#### *Final Decision*

Accordingly, on the basis of the foregoing, NHTSA hereby rescinds its decision, granted on November 15, 1999, that 1990–1999 Nissan GTS and GTR Passenger cars are eligible for importation into the United States. NHTSA hereby decides that Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

#### *Vehicle Eligibility Number*

The importer of a vehicle admissible under any import eligibility decision must enter on the HS-7 Declaration form covering the entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for importation. Vehicle eligibility number VCP-17 was assigned to 1990–1999 Nissan GTS and GTR passenger cars. NHTSA is rescinding that eligibility number and assigning eligibility number VCP-32 to Nissan R33 model GTS and GTR passenger cars manufactured between January 1996 and June 1998 that remain eligible for importation.

**Authority:** 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*  
[FR Doc. 06–1896 Filed 2–28–06; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a government corporation within the Department of the Treasury, is soliciting comments concerning the “New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application” (hereafter, the Application).

**DATES:** Written comments should be received on or before May 1, 2006 to be assured of consideration.

**ADDRESSES:** Direct all comments to Pamela Williams, Program Operations Advisor, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

**FOR FURTHER INFORMATION CONTACT:** The Application may be obtained from the Fund's Web site at <http://www.cdfifund.gov>. Requests for additional information should be directed to Pamela Williams, Program Operations Advisor, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, or by phone to (202) 622–6355.

#### **SUPPLEMENTARY INFORMATION:**

*Title:* New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

*OMB Number:* 1559–0014.

*Abstract:* Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D and created the NMTC Program. The Department of the