List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 261A and adding Channel 261C3 at Emmetsburg, by removing Channel 262A at Sibley, and by adding Sanborn, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26361 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2309; MM Docket No. 02–62; RM–10397]

Radio Broadcasting Services; De Funiak Springs and Valparaiso, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 67 FR 16706 (April 18, 2002), this document reallots Channel 276C2 from De Funiak Springs, Florida to Valparaiso, Florida and provides Valparaiso with its first local FM transmission service. The coordinates for Channel 276C2 at Valparaiso are 30–30–53 North Latitude and 86–13–12 West Longitude.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–62, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Valparaiso, Channel 276C2, and removing De Funiak Springs, Channel 276C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26359 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11107; Notice 2]

RIN 2127–AI28

Motor Vehicle Safety; Reimbursement Prior to Recall

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

ACTION: Final rule.

SUMMARY: This document adopts a regulation implementing Section 6(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to include in their programs to remedy a safety-related defect or a noncompliance with a Federal motor vehicle safety standard, a plan for reimbursing owners for the cost of a remedy incurred within a reasonable time before the manufacturer's notification of the defect or noncompliance.

DATES: *Effective Date:* The effective date of the final rule is January 15, 2003.

Petitions for Reconsideration: Petitions for reconsideration of the final rule must be received not later than December 2, 2002.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA, (202) 366–2850. For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA, (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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I. Summary of Final Rule

Today's final rule expands manufacturers' programs for remedying safety defects and noncompliances in motor vehicles and equipment to include reimbursement plans that, at a minimum, cover certain expenditures related to the defect or noncompliance incurred before the implementation of the recall. The rule requires manufacturers to submit to the agency reimbursement plans that satisfy specific requirements and to comply with the terms of those plans.

This final rule adopts, in most respects, the proposals in the Notice of Proposed Rulemaking, 66 FR 64078 (December 11, 2001). This rule specifies a minimum period for which a manufacturer must provide reimbursement to a person who

incurred costs to obtain a remedy before the manufacturer provided notification of a safety-related defect or noncompliance with a Federal motor vehicle safety standard (FMVSS) and delineates the conditions that a manufacturer must and may place in its reimbursement plan. The determination of the starting date for the mandatory reimbursement period depends upon what led to the recall. For recalls based upon a noncompliance with an FMVSS, the start of the mandatory reimbursement period is the date of the observation of a test failure by either the manufacturer or NHTSA. For recalls based upon a safety-related defect, the start of the reimbursement period is the date NHTSA opens an engineering analysis (EA) or one year prior to the date the manufacturer submits its notice of a defect to NHTSA pursuant to 49 U.S.C. 30118(b) or (c) and 49 CFR part 573, whichever is earlier.

Unlike the start of the reimbursement period, the end date of the reimbursement period depends on whether the item being recalled is a motor vehicle or replacement equipment. The end date distinguishes between a consumer's eligibility for reimbursement and a consumer's eligibility for the recall remedy. A consumer would not be eligible for reimbursement if he or she paid for the remedy after the end date, and would only be able to obtain a free remedy if the consumer followed the manufacturer's remedy program. For motor vehicles, the end date is ten days after the date the manufacturer mailed the last of its notices to owners pursuant to 49 CFR 577.5. For replacement equipment, the end date is ten days after the date the manufacturer mailed the last of its notices pursuant to 49 CFR 577.5, or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to 49 CFR 577.7, whichever is later.

The rule also establishes certain required provisions of reimbursement plans. For motor vehicles, reimbursable costs may not be less than the lesser of the owner's cost for the remedy or the owner's costs for parts, labor, taxes and other miscellaneous fees. For replacement equipment, reimbursable costs presumably would be the amount paid by the owner to replace the item (including taxes), but the manufacturer may limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant item that was replaced. Manufacturers must also identify the office(s) to which claims for reimbursement are to be submitted. The manufacturer must process the claim within 60 days. If the manufacturer denies the claim, it must provide a clear statement to the owner or purchaser stating the reasons for the denial.

Manufacturers will be required to take certain actions to assure that owners or purchasers are appropriately aware of the possibility of reimbursement. In recalls where there is a reasonable likelihood that some persons may have made expenditures that are eligible for reimbursement, the manufacturer would have to include language in each owner notification that refers to such possible eligibility and that advises how to obtain the details on eligibility for reimbursement and how to obtain reimbursement. This could either be an enclosure with the owner letter or a reference to a toll-free telephone number. In all cases, the manufacturer must make its reimbursement plan available upon request, and it will also be available to the public at NHTSA.

In addition, the final rule identifies the conditions that manufacturers may, but are not required to, impose upon reimbursement. Apart from the specified conditions, no other conditions or limitations are permitted. The reimbursement plan may, with some limitations, exclude reimbursement for costs incurred within the period during which the manufacturer's warranty would have provided for a free repair of the problem addressed by the recall. In regard to this permitted exclusion, a manufacturer may include an extended warranty offered by the manufacturer. However, a manufacturer may not exclude reimbursement based upon the existence of a third party's warranty, such as a service contract.

Today's final rule also permits manufacturers to exclude reimbursement if the pre-notification remedy was not the same type of remedy as the one used in the recall, did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, was not reasonably necessary to correct the defect or noncompliance, or if the owner did not provide adequate documentation to the manufacturer. Under today's final rule, adequate documentation includes the name and address of the person seeking reimbursement; identification of the product; identification of the recall; a receipt for the remedy for which reimbursement is sought; for replaced equipment; proof that the claimant owned the recalled item; and, if the remedy was obtained within the time period of a manufacturer's free warranty, documentation indicating that the warranty was not honored or the warranty repair did not correct the problem addressed by the recall.

Finally, the rule allows manufacturers to submit general reimbursement plans to the agency that may be incorporated into the Part 573 report by reference rather than providing detailed reimbursement plans to the agency for each recall. Under this option, manufacturers would provide basic information concerning the reimbursement plan, such as the entities authorized to administer reimbursement; identify acceptable documentation; and identify the manufacturer's notification procedures. Specific information regarding a particular recall, such as the identity of the remedy and the dates for the reimbursement period, would be submitted in the defect or noncompliance report to the agency pursuant to 49 CFR 573.

II. Background

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act, was enacted on November 1, 2000, Pub. L. 106–414. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate responses to defects and noncompliances in motor vehicles and motor vehicle equipment. The TREAD Act authorizes the Secretary of Transportation (''the Secretary'') to issue various rules relating to a manufacturer's notification and remedy program. The authority to carry out Chapter 301 of Title 49 of the United States Code (''Safety Act''), under which rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment is required to notify the agency if it determines, or in good faith should determine, that its vehicles or equipment contain a defect that is related to motor vehicle safety or do not comply with an applicable Federal motor vehicle safety standard.

49 U.S.C. 30120(a) provides that, except under certain limited circumstances, when notification of a defect or noncompliance is required under section 30118 (b) or (c), the manufacturer is required to remedy the defect or noncompliance without charge

when the vehicle or equipment is presented for remedy. That section further specifies that the remedy, at the option of the manufacturer, can be either to repair the vehicle or equipment or replace it with an identical or reasonably equivalent item or, in the case of a vehicle, refund the purchase price less depreciation. The Safety Act contains separate remedy provisions applicable to tires. 49 U.S.C. 30120(b).

49 U.S.C. 30120(d) requires a manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. Pursuant to 49 U.S.C. 30118 and 30119 and 49 CFR Part 577, manufacturers are required to notify owners of defects and noncompliances. In order to obtain the manufacturer's remedy at no cost, an owner has to act in accordance with the provisions in the notice from the manufacturer. Any other way of remedying the defect or noncompliance would not be free of charge.

Before the TREAD Act, section 30120(d) did not require the manufacturer to reimburse owners for any costs incurred in remedying the defect or noncompliance prior to the notification required under sections 30118 and 30119. Manufacturers often reimbursed owners for these costs, but not in a uniform way. To the extent that the costs were not covered under a warranty program, manufacturers addressed these matters under extended warranty programs, ''good will'' programs, or in resolution of claims, including lawsuits.

Section 6(b) of the TREAD Act amended 49 U.S.C. 30120(d) to require a manufacturer's remedy program to include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. 114 Stat. 1804. Section 6(b) further authorizes the Secretary to prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. *Ibid.*

On December 11, 2001, we issued a notice of proposed rulemaking (NPRM) that would implement this section and solicited comments on the ways in which NHTSA may best implement section 6(b) (66 FR 64078).

In response to the NPRM, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were General Motors Corporation (''GM''), Ford Motor Company (''Ford'') and the Alliance of Automobile Manufacturers (''Alliance''). The tire industry was represented by the Rubber Manufacturers Association (''RMA''). Other motor vehicle equipment manufacturers and associated trade organizations who commented were the Juvenile Products Manufacturers Association, Inc. (''JPMA''), Delphi Automotive Systems (''Delphi''), Motor and Equipment Manufacturers Association (''MEMA'') and Original Equipment Suppliers Association (''OESA''). The National Automobile Dealers Association (''NADA'') also commented. We also received comments from Public Citizen (''PC''), Consumers Union (''CU''), Consumer Federation of America (''CFA''), the Center for Auto Safety (''CFAS'') and Advocates for Highway and Auto Safety (''Advocates''). These comments have provided us with several insights in developing this final rule.

III. Discussion

A. Application

In the NPRM, we proposed that the reimbursement rule apply to manufacturers as delineated in 49 CFR 573.3 and 49 CFR 577.3. We did not receive any comments on the proposed application of this rule. We are adopting it as proposed.

B. Period for Reimbursement

1. Definition of ''Reasonable Time''

Under section 6(b) of the TREAD Act, manufacturers need only provide reimbursement for costs incurred within a ''reasonable time'' in advance of notification. Thus, not all pre-notification remedies are covered under this provision. As we pointed out in the NPRM, Congress authorized the agency to delineate what it constituted ''reasonable time'' for reimbursement purposes. We also noted that the legislative history was not helpful in this determination, only suggesting something more than immediately prior to recall. We noted that Congress intended that the period of reimbursement be limited somewhat by the language of ''reasonable time.'' If Congress had intended reimbursement to cover all pre-notification remedies, it would have either explicitly stated that the period for reimbursement be the same as the statutory free remedy period of ten years (five years for tires) after the product is bought by the first purchaser (49 U.S.C. 30120(g)) or would not have included the limiting term ''reasonable time'' in section 6(b) of the TREAD Act. By using the term ''reasonable time,'' Congress meant something less than a reimbursement period that would cover ''all'' pre-notification remedies.

In the NPRM, we proposed that the period for mandatory reimbursement be specified as an objective, bright-line rule to minimize unnecessary complications. We said that bright-line rules would be easy to administer. They would eliminate, or at least minimize, any disputes about whether an expenditure was made in the covered period. They would also allow the agency to remain outside any disputes between owners and manufacturers over reimbursement. In addition, we proposed to relate the bright-line rules for the period of reimbursement to the agency's investigative activities with respect to alleged noncompliances and defects. Based upon our investigative processes, we proposed objectively determinable time periods for reimbursement that differ depending upon whether the recall involves a noncompliance or a defect.

With respect to a noncompliance with a FMVSS, we proposed that the period under which reimbursement would be mandatory would begin on the date of the initial test failure or the initial observation of a possible noncompliance. For noncompliance recalls that are influenced by the agency (a recall following an agency investigation), the date of the initial test failure will be apparent. With respect to noncompliance recalls that are not influenced (*i.e.*, ''uninfluenced'') by the agency (a recall initiated solely by a manufacturer), former 49 CFR 573.5(c)(7) (2001) (as recodified, 49 CFR 573.6(c)(7) [1]) requires manufacturers to identify ''the test results or other data'' that led to the manufacturer's determination. We proposed an amendment to this language to require the manufacturer to specify the date when it first identified the possibility that a noncompliance existed.

With respect to a recall based upon a safety-related defect, in the NPRM we discussed at length the Office of Defects Investigation (ODI) investigative process and how ODI attempts to complete the final stage of its investigations—engineering analyses (EA)—within one year after they are opened. On the basis of that process, we proposed two different triggering dates as the beginning of the mandatory reimbursement period depending upon the circumstances. The difference between the triggering dates depends upon whether the recall was an

[1] Section 573.5 was redesignated as Section 573.6 when the Early Warning Reporting Rule was published on July 10, 2002. See 67 FR 45822, 45872.

influenced recall or an uninfluenced recall. For uninfluenced recalls, we proposed that the reimbursement period would begin one year before the date of the manufacturer's submission of a notification of the defect to NHTSA pursuant to 49 U.S.C. 30118 and 49 CFR 573.5 (2001). For influenced recalls, we proposed that the beginning of the period for reimbursement would be the date the agency opens an EA.

In general, commenters presented divergent views on the issue of what is a ''reasonable time'' for the purposes of mandatory reimbursement. Manufacturers, while suggesting some slight modifications, generally agreed with NHTSA's proposal, while consumer advocacy groups disagreed.

Manufacturers (the Alliance, GM, Ford and JPMA) generally agreed with NHTSA's proposal that for defect-based recalls that were uninfluenced, the minimum period for reimbursement would begin one year before the manufacturer's Part 573 report. They urged NHTSA to adopt the same one-year rule for all recalls, including defect recalls undertaken after ODI has opened an investigation and all noncompliance recalls.

In our view it would not be reasonable to adopt a reimbursement period beginning date of one year before the Part 573 report across the board. For example, in the case of a noncompliance with a FMVSS, if the failing test were two years before the Part 573 report, the manufacturer should not be allowed to avoid reimbursement for the cost of the remedy made by owners during the first year after the test. Similarly, the fact that some of the agency's complex defect investigations require more than a year to complete should not curtail manufacturer's reimbursement responsibilities. The manufacturers' suggestion could reward recalcitrant manufacturers that delay the submission of their Part 573 reports to the agency. Thus, relating the time period under which reimbursement must be provided to the agency's investigative processes limits or precludes manufacturers from manipulating the period of reimbursement. On the other hand, we see no reason why the period for reimbursement should ever be longer for uninfluenced defect recalls (or for those influenced recalls that did not require an EA) than for those in which ODI's defect investigation reached the EA stage. Therefore, the final rule provides that for those recalls that took place after ODI opened an EA, the start of the reimbursement period may be no later than the date of the EA opening or one year before the defect notification to the agency, whichever is earlier.

In individual and joint comments, consumer advocacy groups (CFAS, PC, CU, CFA and Advocates, collectively ''advocacy groups'') and NADA disagreed with NHTSA's proposed approach for determining reasonable time. The advocacy groups commented that the agency's proposal for reasonable time would be confusing to consumers and would require that consumers have a basic knowledge of the statute and NHTSA's internal procedures. In addition, they asserted that the proposed rule would allow manufacturers to take advantage of the procedure by delaying their submission of a Part 573 report until it is favorable to the manufacturer to report the defect or noncompliance. Moreover, these commenters claimed that the proposed rule would frustrate the intent of Congress by penalizing consumers who act judiciously in remedying their vehicles prior to a recall, and that the rule is complex, difficult and against sound public policy. In general, they asserted that Congress intended to maximize reimbursement rights by extending the time frame for a free remedy. In their view, the ten-year/five-year time frame provided in 49 U.S.C. 30120(g)(1) is the reasonable time period for reimbursement of owners who repair defects or noncompliances prior to recall.

The advocacy groups ascribed to Congress an intent that was not expressed in the law. In the TREAD Act, Congress did not ''maximize'' the reimbursement rights of owners. What Congress did do was create an obligation to provide reimbursement for some pre-recall expenditures that was not previously in the Safety Act. Congress left it to the Secretary to define the minimum period under which such reimbursement would be required. This is evident from the TREAD Act itself. The TREAD Act states:

> A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan.

Pub. L. No. 106–414, sec. 6(b) (2000).

As to the time period, Congress did not specify that the reimbursement period be the entire statutory period remedy period under 49 U.S.C. 30120(g). First, if Congress intended that the reimbursement period be the same as the ten-year/five-year statutory remedy period, it would have explicitly said so. This Congress did not do. Second, as we stated in the NPRM and above, Congress used a limiting term to describe the length of the reimbursement period. It stated that an owner is entitled to reimbursement when he or she remedies the defect within a ''reasonable time'' prior to recall, which was meant to be longer than initial suggestions during congressional consideration of the TREAD Act that it be limited to the period ''immediately'' prior to recall. However, by using the term ''reasonable time,'' Congress must have intended that the period for reimbursement be less than ten years (five years for tires) because that would be ''any time'' prior to recall, since manufacturers are not required to provide a free remedy for vehicles or equipment older than ten years (five years for tires) at the time of a recall.

Moreover, the advocacy groups' statement that to obtain reimbursement under the proposal consumers would need a basic knowledge of the Safety Act and NHTSA's implementing regulations is incorrect. Consumers would not need to know the Safety Act or NHTSA's applicable regulations to obtain reimbursement; manufacturers would. To determine their eligibility for reimbursement, consumers would only need to read or listen to the information provided to them and follow up on it. Under today's rule, manufacturers must provide the specific dates for the period of reimbursement in their reimbursement plans and provide appropriate notice to consumers.

Although we agree with the advocacy groups that there may be some instances of intentional manufacturer delay in filing a Part 573 report, delay would not be determinative in the case of noncompliances with FMVSSs or in the case of most influenced defect-based recalls, because the reimbursement period for these would not be triggered by the date of the Part 573 report. If a manufacturer unreasonably delayed notifying NHTSA of a defect or a noncompliance, NHTSA could seek civil penalties under 49 U.S.C. 30165 for violations of section 30118(c). This should deter such potential manipulation, particularly since, in most cases, the costs of providing reimbursement for expenditures incurred before the opening of an EA or over a year prior to the recall are unlikely to be very great.

Advocates asserted that the agency's ''bright-lines'' are irrational since one consumer could be reimbursed if he/she remedied the defect on the day of the opening of the EA, while another consumer could be denied

reimbursement if he/she remedied the defect on the day before the opening of the EA. However, ''bright-line'' rules commonly have the consequence that Advocates complained about. In fact, the ten-year/five-year statutory remedy period that the advocacy groups suggested the agency adopt is a ''bright-line'' rule. Thus, even under the ten-year/five-year rule, in some cases, there could still theoretically be consumers who would be denied reimbursement while others would receive it.

NADA observed that NHTSA should set minimum periods, allowing manufacturers the flexibility to set longer periods should they choose to do so. We agree. We are setting the requirements listed in this rule as a floor, not a ceiling. Thus, the time periods set forth in this rule are the minimum requirements. In fact, Ford and GM advised that they do not limit, on the basis of time, reimbursement of expenditures by owners for pre-notification remedies. While we encourage this conduct, it is not specifically required by today's final rule.

Therefore, based upon the above, the final rule adopts the ''reasonable time'' periods for mandatory reimbursement that were proposed in the NPRM.

2. Reimbursement End Date

The NPRM proposed two different dates for the end date for the eligibility period for reimbursement. For motor vehicles, the proposed end date was ten days after the manufacturer mailed the last of its initial Part 577 notices to owners. For replacement equipment, the proposed end date was 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance. These proposed end dates were based upon the TREAD Act's language that reimbursement is for costs incurred prior to the manufacturer's notification under 49 U.S.C. 30118 and the practical difficulties of identifying the date when an individual owner actually received notice. We asked for comments whether these end dates were appropriate.

The Alliance and NADA agreed with the proposal to exclude reimbursement obligations for costs incurred more than ten days after the manufacturer mailed the last of its initial Part 577 notices. However, in the case where the notices are mailed to consumers in stages, the Alliance recommended that the reimbursement period applicable to a specific owner terminate ten days after the initial Part 577 notice was sent to that owner.

RMA recommended that the reimbursement end date for tires should not be more than five days after the notification of the recall has been sent to tire dealers. RMA asserted that this would minimize the likelihood of recalled tires being resold.

MEMA and OESA recommended that the ''ending date'' for an equipment owner's entitlement to reimbursement be changed from 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance to:

> Thirty days after the manufacturer has mailed the last of its notifications to purchasers pursuant to part 577 of this chapter, or, if public notice is required by the Administrator or otherwise given by the manufacturer, within 30 days of such publication of the existence of the defect or noncompliance.

They reasoned that public notices have only been required of replacement equipment manufacturers when their products are marketed through identifiable consumer channels, such as chain or volume retail operations. According to MEMA and OESA, in previous recalls, if NHTSA did not require manufacturers to publicize the existence of a safety defect, the replacement part manufacturers made the requisite statutory notice by means of a letter to the most recent purchaser known to the manufacturer. Furthermore, in some situations, such as involving aftermarket distribution of heavy vehicle equipment and sales of equipment to the commercial markets, the agency has not called for public notice.

The advocacy groups criticized our ten-day end date proposal. They suggested that the reimbursement end date should be based upon the ten-year/five-year requirement already in the statute. They reasoned that the mailing date of a manufacturer's notice and the concluding date of a manufacturer's efforts to publicize a defect or noncompliance are irrelevant to an owner's right to be reimbursed for repairs made prior to a safety recall. They also argued that consumers who had the remedy performed prior to the recall should be entitled to reimbursement no matter when they receive notice of the recall.

The approach recommended by the Alliance for staged recalls presents some practical problems. The adoption of a single end date reduces potential confusion, such as could arise if an owner loses the notification letter, or if there is a dispute about whether a letter was actually received. Thus, in the case of motor vehicles, we believe ten days after the date of the last mailing of the manufacturer's letters notifying consumers that the remedy is available pursuant to 49 CFR 577.5 is the appropriate end to the reimbursement period. Manufacturers can predict this date.

RMA correctly recognized the importance of preventing the resale of recalled tires, but we do not believe that setting the end date for the reimbursement five days after tire dealers receive the notification of the recall will further this objective or would be a reasonable reimbursement condition. A tire manufacturer will normally notify its dealers of a defect or noncompliance before the manufacturer notifies owners of the recall. Thus, tire dealers will be on notice not to sell the recalled tires, be they new or used. Therefore, the end date for reimbursement purposes will have no or at most little effect on whether a recalled tire is sold by a dealer. Further, the RMA's proposal could inappropriately lead to a cut-off date before owners are notified.

We believe that the advocacy groups' comment on the end date missed the point that we were making. Under the statute, reimbursement is only required for expenditures made prior to notification of the recall. If an owner has received notification of a defect or a noncompliance under which a free remedy is offered, it is reasonable to require the owner to utilize the remedy offered by the manufacturer rather than expend funds to independently obtain a different remedy.

In the case of motor vehicle equipment, we agree with MEMA and OESA that in some cases there is no public notice of a defect or noncompliance. In that case, the mailing of the notices to owners by the manufacturer should control, as with motor vehicles. However, to be consistent with our approach with respect to vehicles, we are setting ten days after the equipment manufacturer has mailed the last of its notifications to purchasers pursuant to 49 CFR 577.5 as the appropriate end date. Where public notice is required by the Administrator or otherwise given by the manufacturer, we are retaining the 30-day period proposed in the NPRM. For those recalls with both individual and public notice, the latter of the two dates would end the reimbursement period.

C. Reasonable Conditions Allowed in the Reimbursement Plan

In the NPRM, we noted that section 6(b) of the TREAD Act did not specify in detail what is to be included in a manufacturer's reimbursement plan. Rather, the section stated, ''The Secretary may prescribe regulations establishing * * * reasonable

conditions for the reimbursement plan.'' In the NPRM, we proposed to allow manufacturers to include certain conditions or limitations in their reimbursement plans, but no others. We also noted that manufacturers could impose less stringent restrictions on reimbursement if they chose to.

We proposed several permissible conditions in the NPRM that related to: (1) The availability of free warranty coverage, (2) the nature of the pre-notice repair or replacement and its relationship to the defect or noncompliance; (3) the amount of the reimbursement, and (4) the provision of suitable documentation to obtain reimbursement. A discussion of these conditions and how they will be implemented in the final rule follows.

1. Remedies Performed Outside the Period of Free Warranty Coverage

We proposed that one condition a manufacturer may include in its reimbursement plan is that the pre-notification remedy must have been performed or obtained after the conclusion of a manufacturer's warranty that would have covered the repair at no cost to the consumer. We noted in the NPRM that many repairs to address conditions that are subsequently determined to constitute a safety defect are within the coverage provided by the manufacturer's warranty program. As we stated in the NPRM, we wanted to avoid creating a program that would duplicate the manufacturer's warranty program. We said the purpose of the reimbursement plan is to provide a program that includes reasonable conditions, to reimburse an owner who had to incur costs to obtain a repair or replacement of the product before notification that a defect or noncompliance exists. Therefore, we proposed that manufacturers could provide in their reimbursement plan that consumers would not be eligible for reimbursement if they could have obtained a free remedy from a franchised dealer or other authorized entity through the manufacturer's warranty program, but had repairs performed elsewhere.

However, we noted that the warranty availability exclusion would not be absolute. In particular, if a consumer had presented the vehicle or equipment to a person authorized to perform warranty work and that person had concluded that the problem or repair was not covered under the warranty, or the repair did not remedy the problem, the consumer would have to be reimbursed for the reasonable costs of a remedy that was subsequently obtained at a facility that was not an authorized warranty service provider.

In general, the proposal to allow the warranty exclusion condition in the reimbursement plan was well received. The Alliance agreed with this ''common sense approach.'' Some comments, while not against this approach, recommended that NHTSA consider other approaches to address the particular needs of a specific product.

JPMA advised that the child restraint industry does not have a standard warranty coverage that is comparable to the auto industry's basic warranties. It claimed that manufacturers of child restraints merge their warranty claims and consumer complaints into one database so it is difficult to distinguish between the two. Thus, JPMA recommended that NHTSA create a different exclusion for child restraint manufacturers, wherein a consumer would be eligible for reimbursement for remedies obtained from a source other than the manufacturer only if the consumer first sought assistance from the child restraint manufacturer, and was refused. JPMA claimed this is necessary to ensure that child restraint manufacturers are offered the same opportunity to remedy the problem within the company's own consumer affairs policies as vehicle manufacturers.

We disagree with JPMA that we created an ''opportunity'' for motor vehicle manufacturers with this warranty exception. The purpose of the warranty exclusion was to avoid duplication by making customers take advantage of whatever warranty the manufacturer offered. If the manufacturer has no express warranty, then it cannot place this condition in its remedy plan. Moreover, in the motor vehicle context, the general parameters of warranties are often understood and owners commonly bring vehicles to franchised dealers, which are often relatively close by, for repair work. The same does not apply to child restraints. Therefore, we decline to incorporate JPMA's recommendation.

NADA advised that most pre-announcement recall-related repairs are covered under original manufacturers' warranties, in which case customers are effectively reimbursed. In addition, NADA stated that other customers and repairs are covered under extended warranties or service contracts. It suggested that regardless of the source of coverage, all pre-announcement repairs that could have been covered by an original warranty, an extended warranty, or a service contract should be excluded from reimbursement under this rule. Lastly, it suggested any direct cash outlays by the customer, such as a deductible, should be eligible for reimbursement.

We disagree with this approach. We are limiting the warranty exclusion to the manufacturer's original warranty and any extended warranty subsequently offered by the manufacturer, including those purchased by the first owner and those provided by the manufacturer at no charge. Service contracts offered by dealers and other entities are not warranties between the manufacturer and the owner of the vehicle. The manufacturer is not a party to those service contracts. Service contracts can complicate the reimbursement process with questions over what is covered, who can perform repairs, qualifications over coverage, and deductibles. These complications can lead to disputes with manufacturers over something the manufacturer did not offer. Indeed, the manufacturers did not suggest extending the exclusion of warranty coverage to service contracts. The manufacturer should not benefit from a service contract, for reimbursement purposes, when it is not a party to it. For extended warranties, we would require the manufacturer to have provided the owner with written notice of the terms of the extended warranty coverage in order for the manufacturer to exclude any repairs that could have been made under the warranty from reimbursement.

Therefore, in regard to remedies performed within the period of free warranty coverage, today's final rule is essentially the same as proposed in the NPRM. The exclusion of repairs that would have been covered by a warranty only applies to the coverage provided by the manufacturer's warranties that the manufacturer provided in writing, either at the time of sale or by a subsequent notice. We note that this is consistent with the Early Warning Reporting Rule (67 FR 45822, July 10, 2002) under which manufacturers are not required to report claims paid on service contracts by dealers as warranty claims. We are also adopting a definition of warranty that is the same as in the Early Warning Reporting Rule. *See* 49 CFR 579.4(c) and 67 FR 45822, 45877 (July 10, 2002). Finally, we note that the warranty exclusion only applies where the manufacturer would pay in full, as opposed to providing an adjustment or credit and requiring some payment by the consumer. To make this clear, we have added the clause ''without any payment by the consumer'' to section 573.13(d)(1).

2. The Nature of the Pre-Notification Remedy

In the NPRM, we proposed several conditions that a manufacturer may impose in the reimbursement plan regarding the nature of the pre-notification remedies that would be eligible for reimbursement.

First, we proposed that a manufacturer would be permitted to limit reimbursement to remedies that addressed the noncompliance or defect. With all recalls, the defect or noncompliance is described in Part 573 information reports and in notifications to owners. *See* 49 CFR 573.6(c)(5), (c)(8)(i); 49 CFR 577.5(e). We reasoned that manufacturers should not be required to pay for repairs that did not address the problems addressed by the recall.

A second condition we proposed was that a manufacturer could limit the extent of repairs to those that were reasonably necessary to correct the underlying problem. In the NPRM, we provided an example of a failed ignition switch to illustrate that the manufacturer would not have to pay for a replacement of a steering column unit that included the switch, unless that was the only pre-notification repair available to the owner. However, we pointed out that a manufacturer could not provide that a repair would have to be *identical* to the recall remedy. We noted that in many instances the part used in the recall would not have been available before the recall. In those circumstances, the pre-recall repair would necessarily have involved the installation of a part that was different from the remedy part, and the manufacturer could not refuse reimbursement on that basis.

Additionally, the NPRM stated that the reimbursement program could not preclude a vehicle owner from obtaining both the recall remedy free of charge and reimbursement for past expenses, where otherwise allowed. We noted for example an owner who replaced an item of original equipment that had failed with the same part. We said that if the recall remedy is to install a new part made of a material with better properties than the original part, the owner would be entitled to the free recall remedy and to be reimbursed for the cost of the pre-recall repair.

Lastly, we proposed in the NPRM that a manufacturer of a motor vehicle could limit reimbursement to costs incurred for the same type of remedy as selected by the manufacturer. This was due to the Act's scheme that permits the manufacturer to choose the remedy, in the first instance. The general categories of remedies are set forth in 49 U.S.C. 30120(a)(1). Thus, for example, a manufacturer would not have to pay for the replacement of a vehicle when the remedy offered by the manufacturer as part of the recall was to repair the vehicle.

We proposed that replacement equipment be treated differently in this regard than motor vehicles. Due to differences in the costs of vehicles and replacement equipment, and the limited ability to repair most equipment items, replacement equipment is usually replaced in its entirety by the consumer when the item of equipment is broken, while a motor vehicle is almost always repaired. In light of those circumstances, we proposed that replacement equipment manufacturers would have to reimburse an owner for the cost of a replacement following a relevant failure of an equipment item subject to the recall, regardless of the recall remedy subsequently selected by the manufacturer. However, the owner would not also be entitled to the recall remedy with respect to the original item, since the owner would have been made whole by reimbursement for the cost of the new item (unless, of course, the owner had purchased the same defective item as the replacement).

The Alliance commented that manufacturers should not pay for work beyond that which was needed to address the defect or noncompliance. GM commented that when an original equipment part is replaced, and then a subsequent recall remedy uses a different part, the original equipment part must have failed in order for a customer to obtain a remedy that includes reimbursement for the original part and the recall remedy. GM claimed that the proposed rule would not require the original equipment part to be defective in order to obtain both the recall remedy and reimbursement for replacing the original part.

With regard to these points, in general, we agree that manufacturers should pay only for work that was performed to remedy what was later determined to be a noncompliance or defect. However, the original part need not have ''failed'' in order for the owner to be reimbursed. If it was appropriate to inspect, adjust, repair or replace the original part or system in order to correct a performance problem, the manufacturer must reimburse the owner for that work. In addition, if the consumer replaced an item of equipment while an investigation was open, reimbursement would be warranted. Indeed, this very situation was a basis for the TREAD Act. In that situation, consumers replaced certain Firestone Wilderness AT tires with other tires before Bridgestone/Firestone's August, 2000 recall. The reimbursement provision was intended to assure that manufacturers provided reimbursement in situations such as this. To obtain reimbursement, one need not wait until a tire or other part begins to separate or otherwise fails. The regulatory language in section 573.13(d)(2) requires reimbursement in these circumstances. However, if the original assembly is replaced in light of characteristics that would not be within the scope of the defect, such as normal wear, then the manufacturer does not have to reimburse the owner for the cost of that work. These concerns were adequately addressed in the NPRM; therefore, we are adopting the rule as proposed.

Consistent with the proposal, the final rule permits manufacturers to set conditions in their reimbursement plans that may exclude reimbursement if the pre-notification remedy was not the same type of remedy (repair, replacement or refund of purchase price) as the recall remedy, did not address the defect or noncompliance that led to the recall, or was not reasonably necessary to correct the problem addressed by the recall. However, the final rule precludes a manufacturer's reimbursement plan from requiring that the pre-notification remedy be identical to the remedy elected by the manufacturer.

We discussed the possibility of allowing additional conditions applicable to child restraints due to the unique situations that may arise when children outgrow their child restraints. We suggested that it could be inappropriate for an owner of a recalled child restraint to receive reimbursement for the cost of replacing a restraint when the original restraint did not manifest the problem that was the subject of the recall, but was replaced due to the growth of a child. We suggested that it might be appropriate to allow child restraint manufacturers to identify situations where reimbursement would not be appropriate, as long as we could assure that manufacturers do not deny reimbursement where it is warranted. We identified three possible conditions. The first was to allow reimbursement to be conditioned on whether an owner registered the restraint with the child restraint manufacturer. The second condition was to allow a requirement that the receipt for the purchase of a replacement child restraint indicate that it is a model comparable to the original restraint. The last possible condition was to allow the manufacturer to require the owner of the recalled child restraint

to return it to the manufacturer or otherwise prove it had been destroyed in order to obtain reimbursement. We asked for comments on the practical applications of those approaches.

JPMA asserted that all the conditions on reimbursement identified in the NPRM should be adopted regarding child restraints. According to JPMA, prior registration is vital to reimbursement. JPMA commented that prior registration of the defective or noncompliant restraint would help assure that the claimant was the actual owner, because he or she would have registered the restraint before there was any reason to think that reimbursement would be available in the future. JPMA contended that a receipt is necessary, but insufficient on its own, to show that the replacement child restraint is the same type as the one replaced. According to JPMA, a receipt plus the registration card would be sufficient. Finally, JPMA noted that the return of the defective child restraint is a good alternative for consumers who cannot meet the combination of the first two conditions, and should be available as a fall back provision.

PC, CU, CFAU, and CFA jointly commented that when determining the proper way to handle the replacement of defective child restraints, the principal goal of a recall or of a reimbursement—to give a refund for, or repair or replace a defective product—must be considered. To facilitate the removal of recalled child seats from the marketplace and to encourage the repair or replacement of defective seats, the advocacy groups argued that reimbursement should only be predicated on proof of ownership and replacement of the defective restraint. They argued that the intent of the owner replacing the restraint should not be a determining factor. According to the advocacy groups, the goal should be the replacement or repair of the defective restraint. In their view, the agency's concern with preventing fraud should not supercede that goal.

Notwithstanding JPMA's comments, we have concluded that the first and third conditions on which we requested comments in the NPRM would unduly limit reimbursement. With regard to registration, under 49 CFR Part 588, child restraint manufacturers are required to keep registration forms submitted by owners so they can notify owners of any defect or noncompliance. NHTSA is undertaking an evaluation of child safety seat registration, which has not been completed. As part of that evaluation, we have conducted a survey, which estimates that the registration rate for child restraints is currently about 27 percent. Although we would like the rate to be higher, since registration facilitates notification of child restraint owners, this low rate makes it unreasonable to require an owner to have returned a registration card to the manufacturer of the recalled restraint as a predicate to reimbursement. With respect to the third possible condition, as a practical matter, an owner of a broken child restraint who still needs to use the restraint to transport a child will normally replace it rather than get it repaired. The broken child restraint will most likely be discarded. The chances of the owner keeping a broken child seat in anticipation of a future recall are low. Thus, we will not make this an allowable condition.

We have concluded, however, that reimbursement can be limited to the cost of purchasing a child restraint of the same type (*e.g.*, rear-facing, booster) as the restraint covered by the recall. For example, if a rear-facing infant seat was replaced by a toddler seat, it is reasonable to assume that the purchase was made because the child outgrew the restraint, rather than because the infant seat had broken due to a defect. In this rule, we will utilize the same three ''types'' of child restraints established in the Early Warning Reporting Rule. Under that rule, in the context of a child restraint system, we defined ''type'' to mean the category of child restraint system selected from one of the following: rear-facing infant seat, booster seat, or other. *See* 49 CFR 579.4. In today's rule, we are also including definitions of rear-facing infant seat, booster seat, or other child restraint, that are consistent with those in the Early Warning Reporting Rule.

Following issuance of the Early Warning Reporting Rule, we noticed that there was an inconsistency between the definition of ''rear-facing infant seat'' in the preamble and the definition that appeared in the regulatory text. *See* 67 FR at 45834. The definition in the preamble included the phrase ''and is designed to hold children up to 20 pounds,'' while the regulatory text did not. Based upon our experience in conducting defect investigations and monitoring defect recalls, our objective in the Early Warning Reporting Rule was to differentiate those child restraints that are commonly used as infant carriers outside a vehicle. Several models of this type of child restraint have been recalled based on defective handles. The definition in Section 579.4(c) could have been read to extend beyond those restraints to include convertible child restraints (*i.e.*, those that can be used both in a rear-facing position with relatively small children and in a forward-facing position with children up to about 40 pounds), which are not also used as infant carriers. We added the 20-pound limit to exclude the larger, convertible restraints. However, upon further consideration, we have concluded that the 20-pound weight limit in the preamble version is too restrictive, since some manufacturers of rear-facing, non-convertible child restraints now recommend their use with children up to 22 pounds or more.

To address these two matters, we have decided to take a different approach. The definition of ''rear-facing infant seat'' that we are adopting in this rule (and that we intend to adopt as part of our pending reconsideration of the Early Warning Reporting Rule) is ''a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.'' Therefore, it will not include convertible child restraints. ''Booster seat'' means, as defined in S4 of FMVSS No. 213, ''either a backless child restraint system or a belt-positioning seat;'' and ''other'' encompasses ''all other child restraint systems not included in the first two categories.''

We also believe it reasonable to allow equipment manufacturers to require that an individual seeking reimbursement for a replaced item provide proof that he or she, or a relative, owned the recalled item. For example, if the spouse or the original owner purchased the replacement, reimbursement would be required, if other conditions were met. We note that the advocacy groups supported such a condition in their comments. The filing of a registration card with the manufacturer, a copy of a registration card, or an invoice or receipt showing purchase of the recalled equipment item would be sufficient proof that the claimant had owned the item. This is addressed in section 573.13(d)(4)(vi).

D. Amount of Reimbursement

In the NPRM, we proposed requirements related to the amount of reimbursement to be provided. For vehicles, we stated that since most recalls involve repair (which could include the replacement of one or more parts), the most likely scenario would be that reimbursement will be for the costs incurred by the owner to repair or replace the component or system covered by the defect or noncompliance determination. We noted that the Act authorizes two other types of remedy for defects and noncompliances in motor vehicles—replacement and refund.

Historically, these types of remedies have been extremely rare.

In the case of repair, we proposed that the amount of reimbursement could not be less than the lesser of (a) the amount actually paid by the owner for an eligible remedy, or (b) the cost of parts for an eligible remedy, labor at local labor rates, miscellaneous fees such as disposal of wastes, and taxes. The proposed rule also limited costs of parts to the manufacturer's list retail price for authorized parts. However, the proposed rule did not allow any limitation on associated costs, such as taxes or disposal of wastes. The proposed rule also stated that not all costs of repairs of vehicles would have to be reimbursed. Custom-designed replacement parts or repairs other than that related to the recall in one service visit would not be covered by the proposed rule.

In instances where a manufacturer offered a vehicle repurchase or replacement remedy, we proposed that the owner would only be eligible for reimbursement of the costs associated with the pre-notification repairs. If the owner continued to own the vehicle, he or she would also be entitled to have the vehicle repurchased or replaced under the recall. We noted that even if an individual had sold the vehicle prior to being notified of the recall, he or she would be eligible to be reimbursed for any repair costs related to the defect or noncompliance that were incurred while he or she owned the vehicle.

With regard to replacement equipment, as noted in the NPRM and above, replacement is the most common recall remedy. The amount of reimbursement ordinarily would be based upon the amount paid by the owner for the replacement item, as indicated on a receipt, up to the total of the retail price of the item, labor, if any, and taxes. The NPRM proposed that in cases in which the owner purchased a brand or model different from the equipment that was the subject of the recall, the manufacturer would be permitted to limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant model that was replaced, plus taxes.

Finally, the NPRM stated that manufacturers would not be responsible to customers for reimbursement for consequential injuries and damages such as personal injuries, property damage, rental vehicles, or missed employment. The NPRM stated that the proposed rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that resulted from the problem that was remedied by the owner.

We received only a few comments on the amount of reimbursement. The Alliance agreed with NHTSA's view on reimbursement for consequential injuries or damages.

NADA suggested that the rule require manufacturers to reimburse actual labor, parts, or ''menu'' repair costs, plus associated costs (taxes, waste disposal fees, *etc.*) incurred directly by customers to address defects or noncompliances and not allow manufacturers to place a limitation upon reimbursement. NADA further asserted that the rule should state that dealerships are entitled to reimbursement for the cost of any covered pre-announcement repairs made at no cost to the customer as a matter of dealership policy. NADA also observed that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs, such as special tool purchases. We agree with some of NADA's comments regarding the costs of reimbursement. We agree that a manufacturer should be required to reimburse actual labor, parts, and other repair costs, plus associated costs incurred directly by customers. We believe the final rule addresses NADA's concerns in this regard.

We disagree with NADA regarding its suggestions that under this rule dealerships should be eligible for reimbursement of pre-announcement repairs made at no cost to the customer as a matter of dealership policy and that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs. Section 6(b) of the TREAD Act specifically addressed reimbursing owners and purchasers, not dealers. In any event, the Act already requires that manufacturers provide fair reimbursement to dealers for providing a remedy without charge as part of a recall. 49 U.S.C. 30120(f). Reimbursement for costs made as a result of repairs done as a matter of dealership policy or any extraordinary costs incurred are matters between the dealer and the manufacturer. The final rule does not, and is not intended to, require manufacturers to reimburse dealers for costs that are a result of remedies performed as a matter of dealership policy.

Therefore, this aspect of the final rule remains essentially the same as we proposed in the NPRM. Reimbursement is required only for those costs that were reasonably related to the repairs that addressed the problem that was ultimately determined to constitute a safety-related defect or noncompliance. Manufacturers would not have to provide reimbursement for consequential injuries and damages such as personal injuries, property damages, rental vehicles, or missed employment. Again, similar to the NPRM, the final rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that may arise as a result of the problem that was remedied by the owner.

E. How To Obtain Reimbursement

1. Documentation Necessary To Obtain Reimbursement

In the NPRM, we proposed that manufacturers may require a person seeking reimbursement to present documentation that shows: (1) The name and mailing address of the claimant;[2] (2) product identification information, which means (a) for vehicles, the vehicle make, model year (MY) and model as well as the vehicle identification number (VIN), (b) for replacement equipment other than tires, a description of the equipment, including model and size as appropriate, and (c) for tires, the model, size, and DOT number (TIN) of the replaced tire(s); (3) identification of the recall (either the NHTSA recall number or the manufacturer's recall number); (4) a receipt (an original or a copy) that provides the amount of reimbursement sought (for repairs, this would include a breakdown of the amounts for parts, labor, other costs and taxes; for replacements, this would include the cost of the replacement item and associated taxes; where the receipt covers work other than to address the defect or noncompliance, the manufacturer may require the claimant to separately identify the costs that are eligible for reimbursement); and (5) if the claimant seeks reimbursement for costs incurred within the warranty period, documentation to support either the denial of a repair under warranty or of the failure of a warranty repair followed by a repair at another facility. The manufacturer could provide that, to receive reimbursement, costs must be itemized by parts and labor on a receipt. *See* 66 FR 64082, 64086.

We proposed those documentation provisions in light of the objective of ensuring, reasonably effectively, that the

[2] In the discussion in the preamble of the NPRM we discussed the operation of the reimbursement plan in terms of the ''owner,'' but in the proposed regulatory text of the NPRM we referred to reimbursement of ''owners and purchasers'' (*e.g.*, proposed § 573.5(c)(8)), to ''owners'' (*e.g.*, proposed § 573.13(d)(4)), and ''claimants'' (*e.g.*, proposed § 573.13(g)(2)). In today's rule, we are generally using the term ''claimant,'' which refers to the person submitting a claim for reimbursement. We are defining a claimant as a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

vehicle or equipment is covered by a recall, that the reimbursement sought is related to the defect or noncompliance and not to other expenses, that multiple claims for the same work are not presented, and that the reimbursable costs are identified. We requested comments on appropriate documentation provisions, including any reasonable provisions related to prevention of fraud. Additionally, we requested comments on whether a receipt will provide sufficient information to a manufacturer to determine if the remedy addressed the defect and whether it was reasonable, and, if not, what other information would be appropriate.

GM commented that under its current procedures it requires owners to provide the repair order, proof of payment, and proof of ownership of the vehicle at the time the repair was made. The Alliance recommended that one condition that NHTSA should consider is that the person claiming reimbursement prove that s/he was the owner of the vehicle at the time the repair cost was incurred, rather than just the owner at the time of the recall. According to the Alliance, this would prevent manufacturers from reimbursing two people for one repair. It claimed the proof required should be the receipt.

NADA added that it is reasonable for NHTSA to require that ''proper receipts'' support reimbursement. It also commented that there should be no provision requiring itemization of receipts because some receipts will not be itemized. We are unsure what NADA meant by ''proper receipts'' since it did not define the term, but we believe that it is appropriate to allow manufacturers to require itemization. If not required, the manufacturer might have to reimburse costs that were not directly related to the repair of the defect or noncompliance. If necessary, the claimant could obtain a supplemental statement from the repair or other facility.

We do not agree with comments recommending that we limit reimbursement to owners. Section 6(b) of the TREAD Act refers in part to purchasers who incurred the cost of the remedy. In general, the manufacturer should reimburse the person who paid to have the pre-notification repairs performed or who paid for a replacement. In most situations, the owner of the motor vehicle or replacement equipment will be the person who incurred the pre-notification repair or replacement costs. However, in other situations, other persons will have paid for the repair or replacement (*e.g.*, a lessee or a relative of the owner). In still other cases, the owner of a vehicle at the time of the repair will have sold it prior to the announcement of the recall.

In light of these considerations, we have decided that the approach advocated by GM and the Alliance is too restrictive in the context of vehicle recalls. The rule provides for reimbursement of claimants—those who paid for the pre-notification remedy. The rule further avoids duplicate reimbursements by not providing a separate right to owners who did not incur the cost of the remedy. In addition, we believe that for vehicles duplicate and/or fraudulent claims can be prevented by requiring the claimant to submit an invoice or receipt showing the VIN and an identification of the owner of the recalled vehicle at the time that the pre-notification remedy was obtained. Manufacturers will be able to cross check on this basis. Also, the rule provides that manufacturers are not required to provide reimbursement based on fraudulent claims. For example, if someone presents a duplicate claim or one based on a doctored receipt, the manufacturer would not be required to pay it.

Equipment items present a more difficult issue, since there is no unique VIN, and any purchaser of an equipment item similar to one that had been recalled could allege that he or she had previously owned (and discarded) a recalled item that had failed due to the defect. Therefore, consistent with the approach described in Section II.C of this notice, for equipment items we will allow manufacturers to limit reimbursement to individuals who can demonstrate that they or a relative owned the recalled item. Moreover as we discussed above, child restraints would have to be replaced with the same type of restraint.

In the context of recalled tires, RMA recommended that we require a claimant to produce an invoice or a copy of the tire registration card for the recalled tire. While these are both sufficient methods to demonstrate ownership, we believe that they are not exclusive. For example, a consumer would not have either of these documents if the tire that was replaced had been installed on his or her vehicle at the time the vehicle was purchased. Tire manufacturers could not reject valid documentation demonstrating that a claimant had replaced a recalled tire that was on a vehicle that he or she or a relative owned.

Receipts for repairs of vehicles often summarize the customer's concern or request and provide part-by-part and labor itemization. This level of detail does not appear on all repair receipts. As long as the receipt indicates that the repair addressed the problem that was addressed by the recall and the claimant can satisfy the other conditions in the reimbursement plan, reimbursement must be provided by the manufacturer.

2. Where Documents Are To Be Submitted

In the NPRM, we proposed that the documentation had to be submitted directly to the manufacturer. However, based upon our review of the comments, we have reconsidered our approach.

Manufacturers asserted that they should not be required to handle reimbursement themselves because it would be too costly. The Alliance commented that manufacturers should not be required to provide resources to handle reimbursement functions that are already being handled well at dealerships that are authorized to process the reimbursement. The Alliance recommended that the regulation permit manufacturers to manage the reimbursement program through dealers and not require manufacturers to handle the reimbursement themselves. GM concurred with the Alliance's recommendation and commented that by allowing dealers to handle reimbursement, a customer has face-to-face contact with a manufacturer's representative that can answer questions and provide information. GM stated that this method is preferable to exchanging letters or telephone calls to resolve problems as proposed in the NPRM. GM added that its system of reimbursement through dealers is quick, efficient and satisfactory to its customers. Ford echoed these comments.

On the other hand, NADA contended that the rule should provide that any manufacturer using dealers to assist with reimbursement claims should be required to reimburse those dealers for the fair and reasonable administrative costs they incur. As a general proposition, we agree that dealers should be reimbursed for such costs, but do not believe that this issue needs to be addressed in this rule, since it is already covered by 49 U.S.C. 30120(f).

The statute refers to manufacturers' reimbursement plans. Accordingly, we believe that the obligation to assure adequate reimbursement under this rule rests with manufacturers. Nonetheless, we will permit manufacturers to use franchised dealers or other authorized facilities to reimburse owners under their reimbursement plans in the final rule if the franchised dealers or other authorized facilities have agreed to do so. The costs of processing

reimbursement claims would have to be worked out between manufacturers and dealers and any other authorized entities. If the manufacturer does not have authorized dealers or facilities, it must designate the office(s) that will administer claims for reimbursement. In addition, there must be a mechanism for mailing requests for reimbursement to the manufacturer or its designee. Some people live a substantial distance from a franchised dealer or authorized facility and others cannot conveniently visit such an entity. It would not be reasonable to make them travel to a dealer to obtain reimbursement. Furthermore, manufacturers must make the reimbursement plans available to the public upon request. The final rule will reflect these changes.

3. Cut-Off Date for Reimbursement Claims

In the NPRM, we proposed to allow (but not require) manufacturers to establish a cut-off date for reimbursement claims. We identified two possible approaches. The first was based on the period during which the recall campaign is subject to quarterly reporting pursuant to 49 CFR 573.6 (2001). That section requires each manufacturer that conducts a defect or noncompliance campaign to provide a quarterly report to NHTSA for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated. The second approach was to set a fixed period applicable to all recalls; e.g., 90 days after the end of the reimbursement period. Manufacturers would have to identify the deadline for the submission of claims for reimbursement in their remedy plans. We proposed that the outside end date for the submission of claims for reimbursement be 90 days from the date of the last notification letter sent to owners under Part 577, but asked for comments on whether a different period would be more appropriate.

We did not receive many comments on this particular condition. JPMA asserted that the cut-off date after which a consumer cannot obtain reimbursement should be shortened from 90 days until 45 or 60 days. JPMA claimed that a manufacturer needed to ''close the books'' on the reimbursement process. NADA suggested that the time for submitting claims should be limited only by the ten-year/five-year limitation set out in 49 U.S.C. 30120(g). The advocacy groups agreed with NADA. However, section 30120(g) has no relevance to this issue; it applies retrospectively from the date of the defect or noncompliance determination, and has no applicability to future events.

Ford and GM did not suggest a specific cut-off date, but implied that they did not restrict reimbursement on the basis of when a claim was submitted.

Based upon these comments, we have reconsidered our position. We believe a claim for reimbursement should be treated the same as a claim for a free remedy under a recall. Under the Safety Act, once a recall is announced, an owner is entitled to a free remedy. He or she is not required to submit his vehicle or replacement equipment to the manufacturer's franchised dealer or authorized facility within 90 days in order to receive the free remedy. Moreover, at least two major vehicle manufacturers do not currently impose any such limits. Therefore, under today's final rule, manufacturers will not be allowed to establish a cut-off date for the submission of reimbursement claims.

4. When and How a Claimant Receives Reimbursement

In the NPRM, we proposed to require manufacturers to act upon reimbursement claims within a reasonable time from the date a complete claim is submitted. We proposed a period of 60 days and said the manufacturer must either grant or deny the claim for reimbursement within that period.

We also suggested reasonable times for notification by manufacturers that claims were incomplete. We proposed that in the event that a manufacturer receives a claim for reimbursement for a pre-notification remedy that contains deficient documentation, the manufacturer would be required to advise the claimant within 30 days that his or her claim is deficient, provide an explanation of the documents that are needed to make the claim complete, and state that such supplemental documents must be submitted within an additional 30 days. We proposed that if the claimant did not provide the required information within that 30-day period, the manufacturer could deny the claim.

We also proposed that if the manufacturer determines that a claim for reimbursement will not be paid in full, it must clearly advise the claimant, in plain language, of the reasons for the denial.

The comments focused on increasing the time period manufacturers have in responding to a deficient reimbursement claim. MEMA and OESA, the Alliance, GM and Delphi suggested that the 30-day deficiency notice and claimant resubmission periods in the proposed rule should both be increased to 60 days to provide both consumers and manufacturers reasonable time to act on such deficient claims for reimbursement. Based upon the comments, we are extending the 30-day periods proposed in the NPRM to 60 days.

RMA suggested that the manufacturer's time to act upon a request for reimbursement should begin after the manufacturer received the claim, rather than from the date the claimant mailed the claim. The NPRM used the term ''submitted.'' We had meant for that term to refer to the date the claim was received by the manufacturer, and we will clarify that in the final rule.

Although the NPRM did not explicitly discuss the form that reimbursement must take, we are adding a clarifying provision to require manufacturers to provide reimbursement in the form of a check or cash from the manufacturer's office, authorized dealer, or facility that is designated by the manufacturer to administer the reimbursement plan.

F. Owner Notification

We stated in the NPRM, and continue to believe, that the inclusion of a reimbursement plan in a manufacturer's remedy program would have little effect unless consumers were aware of their right to obtain such reimbursement. We proposed to require manufacturers to include information about the availability of reimbursement for the costs of pre-notification remedies in the notification to owners required under 49 CFR part 577 and identified several possible approaches. One approach was to require manufacturers to include a copy of the complete plan in each notification sent to owners. A second approach was to require manufacturers to describe their reimbursement plans using their own language, and a third approach would require particular language that manufacturers would have to use in their owner notifications.

Letters from manufacturers to owners of defective or noncompliant vehicles and equipment emphasize the importance of remedying their vehicle or equipment. It is important that owners are not distracted from this central objective. We were concerned that a great deal of detail regarding reimbursement in the main body of the owner notification could obscure the safety-critical information about the defect or noncompliance itself. Moreover, as a practical matter, the reimbursement provision would be irrelevant to most recipients because only a small fraction of consumers would have expended funds for repair

or replacement of the recalled product. Thus, we proposed that the owner notification letter contain a limited amount of information regarding the manufacturer's reimbursement plan. The notification would have to explain that reimbursement was available, specify the reimbursement period, and identify ways that consumers could timely obtain information about the reimbursement program.

To assure that manufacturers' reimbursement plans were available to owners, we proposed that the notification would have to identify an Internet Web site address maintained by the manufacturer where the plan applicable to the recall in question was to be found, and would have to state that the plan could be obtained by calling the manufacturer at a specified (toll-free) telephone number or by writing to the manufacturer at a specified address. (We also proposed to require each manufacturer to specify the date by which the owner would have to request the plan in order to receive it in time to complete the claim for reimbursement in a timely manner, but this issue is now moot, since we have decided to prohibit manufacturers from limiting the period in which reimbursement claims may be filed.)

We requested comments on whether this proposal provided owners with adequate information about the possibility of reimbursement for the cost of pre-recall remedies, and whether the proposal could be improved. We also sought comment on whether this or the other identified approaches were reasonable ways to advise owners of the possible availability of and requirements for reimbursement; *i.e.*, would the reader understand how to obtain reimbursement? We also sought comments concerning alternatives that might be preferable to those approaches identified in the NPRM with the reasons for, and information relating to, any alternatives. Finally, we sought comments on whether a Web site and a toll-free telephone number would provide consumers with sufficient, clear information.

The majority of commenters (the Alliance, GM, Ford, MEMA & OESA, and JPMA) disagreed with the ''boilerplate'' language we proposed for the Part 577 notifications. They argued that the language we proposed is difficult to read and stylistically inconsistent with many manufacturers' Part 577 notifications. GM also argued that notification regarding possible reimbursement is unnecessary for many recalls, such as label errors, noncompliances that can only be detected with measuring devices or disassembly of the vehicle, and safety defects or noncompliances that have no effect other than on occupant protection in a crash. GM alleged that in these types of recalls, an owner would be confused by a letter that has information regarding reimbursement when, in fact, reimbursement was not available.

In addition, the Alliance and GM observed that, pursuant to 49 CFR 573.5(c)(10) (2001), NHTSA has the opportunity to review every Part 577 owner notification before it is mailed to owners and to require appropriate modifications to the language. They argued that NHTSA can decide if a manufacturer's notification needs to include language regarding reimbursement and whether the language proposed by the manufacturer is adequate. The Alliance commented that ''one-size fits all'' language would not work because the owner notification should be tailored to the facts of each recall. Thus, they suggested that, as with other aspects of owner notification, language regarding reimbursement should be developed by the manufacturer, subject to NHTSA review.

Ford was the only commenter that provided a specific alternative to the NPRM's proposed Part 577 language. Ford contended that the proposed language would confuse many customers because it had a ''readability'' index at a 12th grade level. As an alternative, Ford recommended the following:

> If you paid to have this service done *before* the date of this letter, Ford is offering a full refund. For the refund, please give your paid original receipt to your dealer. To avoid delays, do not send receipts to Ford Motor Company.

Ford claimed that its recommendation has a readability index of the 6th or 7th grade and would be easier to understand than NHTSA's proposed language. Ford also asserted that an owner could obtain the manufacturer's complete reimbursement plan from an authorized dealer. Ford also suggested that rather than specifying language that must be included in owner letters, the final rule list the types of information that must be included. It noted that in cases where it is appropriate to include language about reimbursement, ODI can review the manufacturer's draft owner letter pursuant to section 573.5(c)(10).

Based upon our consideration of the comments, and our experience in reviewing manufacturers' owner notifications under section 573.5(c)(10) (recently renumbered as section 573.6(c)(10)), we are making some adjustments to our proposal. *See* 49 CFR 577.11. First, we have decided that manufacturers will not be required to include any reference to reimbursement in owner notifications for recalls where there is no reasonable possibility that anyone would be eligible for reimbursement. As suggested by GM, these include recalls to correct labeling errors. However, we do not agree with GM's suggestion to exclude recalls involving occupant protection in crashes, since owners may well replace defective components that perform that function, such as seat belt retractors and buckles and air bags. In addition, we are not adopting GM's suggestion to exclude all recalls that address noncompliances that can only be detected with a measuring device or disassembly of the vehicle. GM's comment is conclusory and does not explain the range of noncompliances that would be covered by its recommendation. Moreover, while it may not be possible to prove the existence of a noncompliance with a FMVSS without testing using a measuring device, it may be possible to sense an irregular condition that the owner may decide to remedy. The owner should be reimbursed if it turns out that a part or system that was replaced or repaired did not comply with a standard.

Second, we will not require vehicle manufacturers to refer to reimbursement in an owner notification if we conclude that all of the vehicles covered by the recall are clearly covered by a manufacturer's original warranty. For example, if a manufacturer offers a three year/36,000 mile warranty on a particular vehicle model, and that model is the subject of a recall that commences one month after the first covered vehicle was manufactured, one would expect that all of the recalled vehicles would still be covered by the manufacturer's warranty, so the manufacturer would not have to provide any reimbursement under this rule (except under extraordinary circumstances in which a repair under warranty was refused or inadequate). However, if some of the vehicles were two years old at the time a defect is determined to exist, the owner notification would have to include reimbursement language, since it is likely that at least some two-year-old vehicles would have been driven over 36,000 miles. (We have decided that if it is likely that any of the vehicles covered by the recall would be outside the manufacturer's warranty coverage, all owners would have to be advised of the potential for reimbursement, since it would be too difficult to administer a system in which different owners received different letters, and such a

scenario could lead to consumer confusion.)

For those recalls where there is a reasonable possibility that some consumers will be entitled to reimbursement, the main body of the owner notification must include a concise reference to the right to reimbursement for the cost of repair or replacement, along with a description of where consumers who believe they may be entitled to such reimbursement can obtain further information about reimbursement. However, if a manufacturer has information leads it to believe that no individual would be eligible to receive reimbursement in connection with a particular recall (for example, if the recall involved a noncompliance or a defect that could not have been remedied prior to the manufacturer's recall campaign because there was no repair or replacement available), it may request us, in writing, to exempt it from notifying the public of the possibility of reimbursement. Such a request would have to be submitted at or before the time the manufacturer provides us with a draft of its owner notification letter pursuant to section 573.6(c)(10), together with supporting information, views, and arguments. If we find that no one would be eligible for reimbursement under this rule, the notification provisions of section 577.11 would not apply. This is addressed in section 577.11(e).

Rather than require all manufacturers to utilize identical language, we will allow each manufacturer to use its own words, subject to our review. This process has worked with respect to other aspects of owner notifications, which we review under section 573.6(c)(10), and we believe it that it will work in the reimbursement context as well. We are amending section 573.6(c)(10) to explicitly require that the manufacturer submit reimbursement provisions, including attachments, for NHTSA's review under that section. However, if a manufacturer submits a notice that does not meet the requirements of today's rule and NHTSA's staff does not note the deficiency in their review, a manufacturer may not subsequently attempt to justify the failure on the basis that it relied on the agency review.

With respect to our proposal regarding how supplemental information would be made available, several manufacturers (the Alliance, GM, Ford, MEMA and OESA) opposed our proposal to require information about reimbursement on a special website and through a toll-free telephone number. They argued that such requirements would increase costs due to the set up, monitoring, and staffing of these services. The Alliance argued that NHTSA should not mandate that a manufacturer host a special website since NHTSA's regulations now allow individual manufacturers to decide how to conduct a recall (except for a limited amount of required language in the Part 577 letter). Furthermore, the Alliance claimed that NHTSA did not provide justification for such a requirement, nor did it provide any estimated costs involved in setting up and maintaining a website and toll-free telephone line. In addition, MEMA and OESA noted that some small manufacturers do not have toll-free numbers or even an Internet presence and suggested that this be optional.

Based on these comments, we are not at this time requiring manufacturers to maintain information about reimbursement on an Internet Web site. Rather, we are allowing two options. First, a manufacturer may utilize a toll-free telephone number (with or without a corresponding Internet Web site) through which consumers could obtain the needed information. There would have to be TTY capability for the use of hearing-impaired consumers. Alternatively, the manufacturer could include a separate enclosure with its owner notification letter that would set forth all of the required information.

For notifications of equipment recalls that are in a form other than a letter to a specific owner or purchaser (*e.g.*, a placard in a retail outlet or an advertisement in a magazine), the manufacturer would not be able to utilize the second option. However, to avoid imposing a significant financial burden on those small manufacturers of motor vehicle equipment that do not otherwise maintain a toll-free telephone number for the use of consumers, we have decided that public (non-letter) notifications by such manufacturers may refer consumers to a regular (non-toll-free) telephone number with TTY capability, as long as they also specify a mailing address at which owners can obtain the relevant supplemental information.

The supplemental information must describe all of the relevant components of the manufacturer's reimbursement plan, as specified in today's final rule. Thus, it must identify the vehicles and equipment covered by the recall, identify the type of remedy eligible for reimbursement, identify any limits on the period in which the repair or replacement must have occurred, identify any restrictions on eligibility that the manufacturer is imposing, specify all necessary documentation that must be submitted, and explain how to and where to submit or mail a claim. This is consistent with some manufacturers' practices. For example, we have placed in the docket for this rulemaking a document that Mazda Motor Corporation utilized in a recent campaign that describes its reimbursement plan.

G. General Plans for Reimbursement

In the NPRM, we proposed to allow manufacturers to submit to the agency one or more general reimbursement plans that could be incorporated by reference into any recalls associated with their products, rather than submitting a separate reimbursement plan for each recall. The reimbursement plan would remain on file with the agency and be available to consumers for their review. We also proposed that the manufacturer would have to update such plans at least every two years to provide the agency consumers with current information.

GM suggested that NHTSA permit manufacturers to submit reimbursement plans in advance and then to include information about approved plans in owner's manuals or warranty documents GM provides to its customers. In GM's view, owner notification would be simpler under this approach because the letter would simply refer the owner to his or her owner's manual or warranty documents.

Based on those comments, we have concluded that manufacturers will have the option of filing a general reimbursement plan with the agency every two years rather than submitting a plan with each Part 573 report. The general reimbursement plan must set forth the general procedures for reimbursement. Information specific to a particular recall (*e.g.*, any cut-off dates established by the manufacturer) would be submitted with the Part 573 report.

We are not requiring manufacturers to incorporate the general reimbursement plan in each vehicle's owner's manual or in warranty papers, but they have the option of doing so.

H. Nonapplication

In the NPRM, we proposed that to be consistent with the statutory limitation found in 49 U.S.C. 30120(g), the requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment, it was bought by the first purchaser more than 10 calendar years, or in the case of a tire, including an original equipment tire, it was bought by the first purchaser more than 5 calendar years, before notice is given under 49 U.S.C. 30118(c) or an order is

issued under section 49 U.S.C. 30118(b). We did not receive any comments on this proposal and accordingly adopt it in the final rule.

I. Effective Date

Although the NPRM did not propose a date after the final rule was published, GM contended that, unless ''major changes'' are made to the rule, it estimates it would require six months to make the necessary preparations. However, GM did not provide an explanation on what constituted ''major changes.'' From GM's other comments, we infer ''major changes'' to mean that NHTSA permit manufacturers to utilize their franchised dealers for the reimbursement process. We do not believe that six months is necessary. GM already has a reimbursement program. Moreover, GM has recognized in its comments that reimbursement plans would not be required for most recalls because they are within the warranty period.

This rule does not impose significant new administrative burdens. It allows manufacturers flexibility to utilize their dealers to process reimbursement claims. In addition, manufacturers have options in notifying consumers and will not have to set up any Internet Web sites. Nevertheless, we have decided to provide a somewhat longer period than we proposed in the NPRM. The rule will become effective 90 days after its publication in the **Federal Register** and will apply to all recalls for which Part 573 reports are submitted to the agency after that date.

IV. Regulatory Analyses

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this final rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reimbursement of eligible expenses to owners who paid to remedy a defect or noncompliance prior to the recall notification.

We estimate that the additional economic impact of this rule upon manufacturers will be small. First, although we cannot precisely estimate the number of owners who have made recall-related repairs prior to a manufacturer's defect or noncompliance determination, we believe the number is relatively small. One indicator would be the number of complaints received by the manufacturer. Our review of a sample of Part 573 reports for uninfluenced recalls from the past year indicates that manufacturers generally have not received many complaints from owners about the problem prior to making a defect determination, and rarely, if ever, do they receive complaints prior to a noncompliance determination. Second, most manufacturers already provide voluntary reimbursement for pre-recall repairs, at least under some circumstances.

Generally, vehicle manufacturers offer a warranty program that covers at least 36 months or 36,000 miles. History indicates that most recalls occur within the period of coverage under warranty programs. In 2000, vehicle manufacturers conducted 476 recalls. Of these, only 102 (approximately 20%) occurred more than 36 months after the date the oldest covered vehicle was sold. And in almost all of those recalls, only a small number of the covered vehicles were outside the warranty period (based on the number of months following sale at the time of the determination). For 2001, the relevant numbers were 411 and 104, or approximately 25 percent.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance.

We have considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be felt by the major vehicle manufacturers. Even this impact will be minor since it only involves owners of vehicles and motor vehicle equipment who have paid to remedy a defect or noncompliance prior to recall in a manner that warrants reimbursement under the rule. This number is expected to be small for the reasons stated in the prior section of this notice.

C. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

NHTSA has determined that this proposed rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). We are preparing a notice for publication in the **Federal Register** requesting public comment on our estimate of those burdens.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input'' by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule, which would require that manufacturers include a reimbursement plan in their remedy program for owners who have remedied a defect or noncompliance prior to a recall notification under either section 30118(b) or 30118(c) of the Safety Act, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rulemaking does not have those implications because it applies only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), and not to the States or local governments.

F. Civil Justice Reform

This final rule would not have a retroactive or preemptive effect. Judicial review of the rule 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.

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 tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

We believe that this final rule meets the requirements of E.O. 12866 regarding plain language.

List of Subjects in 49 CFR Parts 573 and 577

Motor vehicle safety, defect, noncompliance, tire, reimbursement, reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR parts 573 and 577 as set forth below.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2–3. Section 573.6 is amended by revising paragraphs (c)(7), (c)(8)(i), and (c)(10) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(7) In the case of a noncompliance, the test results and other information that the manufacturer considered in determining the existence of the noncompliance. The manufacturer shall identify the date of each test and observation that indicated that a noncompliance might or did exist.

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. This program shall include a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the problem addressed by the recall within a reasonable time in advance of the manufacturer's notification of owners, purchasers and dealers, in accordance with § 573.13 of this part. A manufacturer's plan may incorporate by reference a general reimbursement plan it previously submitted to NHTSA, together with information specific to the individual recall. Information required by § 573.13 that is not in a general reimbursement plan shall be submitted in the manufacturer's report to NHTSA under this section. If a manufacturer submits one or more general reimbursement plans, the manufacturer shall update each plan every two years, in accordance with § 573.13. The manufacturer's remedy program and reimbursement plans will be available for inspection by the public at NHTSA headquarters.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions and attachments related to reimbursement, to the Office of Defects Investigation (''ODI'') no fewer than five Federal Government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

* * * * *

4. Section 573.13 is added to read as follows:

§ 573.13 Reimbursement for pre-notification remedies.

(a) Pursuant to 49 U.S.C. 30120(d) and § 573.6(c)(8)(i) of this part, this section specifies requirements for a manufacturer's plan (including general reimbursement plans submitted pursuant to § 573.6(c)(8)(i)) to reimburse owners and purchasers for costs incurred for remedies in advance of the manufacturer's notification of safety-related defects and noncompliance with Federal motor vehicle safety standards under subsection (b) or (c) of 49 U.S.C. 30118.

(b) Definitions. The following definitions apply to this section:

(1) *Booster seat* means either a backless child restraint system or a belt-positioning seat.

(2) *Claimant means* a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

(3) *Pre-notification remedy* means a remedy that is performed on a motor vehicle or item of replacement equipment for a problem subsequently addressed by a notification under subsection (b) or (c) of 49 U.S.C. 30118 and that is obtained during the period for reimbursement specified in paragraph (c) of this section.

(4) *Other child restraint system* means all child restraint systems as defined in 49 CFR 571.213 S4 not included within the categories of rear-facing infant seat or booster seat.

(5) *Rear-facing infant seat* means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

(6) *Warranty* means a warranty as defined in § 579.4(c) of this chapter.

(c) The manufacturer's plan shall specify a period for reimbursement, as follows:

(1) The beginning date shall be no later than a date based on the underlying basis for the recall determined as follows:

(i) For a noncompliance with a Federal motor vehicle safety standard, the date shall be the date of the first test or observation by either NHTSA or the manufacturer indicating that a noncompliance may exist.

(ii) For a safety-related defect that is determined to exist following the opening of an Engineering Analysis (EA) by NHTSA's Office of Defects Investigation (ODI), the date shall be the date the EA was opened, or one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part, whichever is earlier.

(iii) For a safety-related defect that is determined to exist in the absence of the opening of an EA, the date shall be one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part.

(2) The ending date shall be no earlier than:

(i) For motor vehicles, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter.

(ii) For replacement equipment, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter (where applicable) or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to § 577.7, whichever is later.

(d) The manufacturer's plan shall provide for reimbursement of costs for pre-notification remedies, subject to the conditions established in the plan. The following conditions and no others may be established in the plan.

(1) The plan may exclude reimbursement for costs incurred within the period during which the manufacturer's original or extended warranty would have provided for a free repair of the problem addressed by the recall, without any payment by the consumer unless a franchised dealer or authorized representative of the manufacturer denied warranty coverage or the repair made under warranty did not remedy the problem addressed by the recall. The exclusion based on an extended warranty may be applied only when the manufacturer provided written notice of the terms of the extended warranty to owners.

(2) (i) For a motor vehicle, the plan may exclude reimbursement:

(A) If the pre-notification remedy was not of the same type (repair, replacement, or refund of purchase price) as the recall remedy;

(B) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance; or

(C) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(A).

(3)(i) For replacement equipment, the plan may exclude reimbursement:

(A) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance;

(B) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect and noncompliance; or

(C) In the case of a child restraint system that was replaced, if the replacement child restraint is not the same type (*i.e.*, rear-facing infant seat, booster seat, or other child restraint system) as the restraint that was the subject of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(B).

(4) The plan may exclude reimbursement if the claimant did not submit adequate documentation to the manufacturer at an address or location designated pursuant to § 573.13(f). The plan may require, at most, that the following documentation be submitted:

(i) Name and mailing address of the claimant;

(ii) Identification of the product that was recalled:

(A) For motor vehicles, the vehicle make, model, model year, and vehicle identification number of the vehicle;

(B) For replacement equipment other than child restraint systems and tires, a description of the equipment, including model and size as appropriate;

(C) For child restraint systems, a description of the restraint, including the type (rear-facing infant seat, booster seat, or other child restraint system) and the model; or

(D) For tires, the model and size;

(iii) Identification of the recall (either the NHTSA recall number or the manufacturer's recall number);

(iv) Identification of the owner or purchaser of the recalled motor vehicle or replacement equipment at the time that the pre-notification remedy was obtained;

(v) A receipt for the pre-notification remedy, which may be an original or copy:

(A) If the reimbursement sought is for a repair, the manufacturer may require that the receipt indicate that the repair addressed the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, and state the total amount paid for the repair of that problem. Itemization of a receipt of the amount for parts, labor, other costs and taxes, may not be required unless it is unclear on the face of the receipt that the repair for which reimbursement is sought addressed only the pre-notification remedy relating to the pertinent defect or noncompliance or manifestation thereof.

(B) If the reimbursement sought is for the replacement of a vehicle part or an item of replacement equipment, the manufacturer may require that the receipt identify the item and state the total amount paid for the item that replaced the defective or noncompliant item;

(vi) In the case of items of replacement equipment that were replaced, documentation that the claimant or a relative thereof (with relationship stated) owned the recalled item. Such documentation could consist of:

(A) An invoice or receipt showing purchase of the recalled item of replacement equipment;

(B) If the claimant sent a registration card for a recalled child restraint system or tire to the manufacturer, a statement to that effect;

(C) A copy of the registration card for the recalled child restraint system or tire; or

(D) Documentation demonstrating that the claimant had replaced a recalled tire that was on a vehicle that he, she, or a relative owned; and

(vii) If the pre-notification remedy was obtained at a time when the vehicle or equipment could have been repaired or replaced at no charge under a manufacturer's original or extended warranty program, documentation indicating that the manufacturer's dealer or authorized facility either refused to remedy the problem addressed by the recall under the warranty or that the warranty repair did not correct the problem addressed by the recall.

(e) The manufacturer's plan shall specify the amount of costs to be

reimbursed for a pre-notification remedy.

(1) For motor vehicles:

(i) The amount of reimbursement shall not be less than the lesser of:

(A) The amount paid by the owner for the remedy, or

(B) The cost of parts for the remedy, plus associated labor at local labor rates, miscellaneous fees such as disposal of waste, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts.

(ii) Any associated costs, including, but not limited to, taxes or disposal of wastes, may not be limited.

(2) For replacement equipment:

(i) The amount of reimbursement ordinarily would be the amount paid by the owner for the replacement item.

(ii) In cases in which the owner purchased a brand or model different from the item of motor vehicle equipment that was the subject of the recall, the manufacturer may limit the amount of reimbursement to the retail list price of the defective or noncompliant item that was replaced, plus taxes.

(iii) If the item of motor vehicle equipment was repaired, the provisions of paragraph (e)(1) of this section apply.

(f) The manufacturer's plan shall identify an address to which claimants may mail reimbursement clams and may identify franchised dealer(s) and authorized facilities to which claims for reimbursement may be submitted directly.

(g) The manufacturer (either directly or through its designated dealer or facility) shall act upon requests for reimbursement as follows:

(1) The manufacturer shall act upon a claim for reimbursement within 60 days of its receipt. If the manufacturer denies the claim, the manufacturer must send a notice to the claimant within 60 days of receipt of the claim that includes a clear, concise statement of the reasons for the denial.

(2) If a claim for reimbursement is incomplete when originally submitted, the manufacturer shall advise the claimant within 60 days of receipt of the claim of the documentation that is needed and offer an opportunity to resubmit the claim with complete documentation.

(h) Reimbursement shall be in the form of a check or cash from the manufacturer or a designated dealer or facility.

(i) The manufacturer shall make its reimbursement plan available to the public upon request.

(j) Any disputes over the denial in whole or in part of a claim for reimbursement shall be resolved between the claimant and the manufacturer. NHTSA will not mediate or resolve any disputes regarding eligibility for, or the amount of, reimbursement.

(k) Each manufacturer shall implement each plan for reimbursement in accordance with this section and the terms of the plan.

(l) Nothing in this section requires that a manufacturer provide reimbursement in connection with a fraudulent claim for reimbursement.

(m) A manufacturer's plan may provide that it will not apply to recalls based solely on noncompliant or defective labels.

(n) The requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment other than a tire, it was bought by the first purchaser more than 10 calendar years before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b). In the case of a tire, this period shall be 5 calendar years.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

1. The authority citation for Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Part 577 is amended by adding § 577.11 to read as follows:

§ 577.11 Reimbursement notification.

(a) Except as otherwise provided in paragraph (e) of this section, when a manufacturer of motor vehicles or replacement equipment is required to provide notice in accordance with §§ 577.5 or 577.6, in addition to complying with other sections of this part, the manufacturer shall notify owners that they may be eligible to receive reimbursement for the cost of obtaining a pre-notification remedy of a problem associated with a defect or noncompliance consistent with the manufacturer's reimbursement plan submitted to NHTSA pursuant to §§ 573.6(c)(8)(i) and 573.13 of this chapter.

(b) The manufacturer's notification shall include a statement, following the items required by § 577.5 or § 577.6, that

(1) Refers to the possible eligibility for reimbursement for the cost of repair or replacement; and

(2) Describes how a consumer may obtain information about reimbursement from the manufacturer;

(c) The information referred to in § 577.11(b)(2) of this part shall be provided in one of the following ways:

(1) In an enclosure to the notification under § 577.5 or § 577.6 that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan; or

(2) Through a toll-free telephone number (with TTY capability) identified in the notification that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan.

(3) For notifications of defects or noncompliances in item of motor vehicle equipment that are in a form other than a letter to a specific owner or purchaser, if the manufacturer does not otherwise maintain a toll-free telephone number for the use of consumers, the manufacturer may refer claimants to a non-toll-free telephone number (with TTY capability) if it also specifies a mailing address at which owners can obtain the relevant information regarding the manufacturer's reimbursement plan.

(d) The information to be provided under paragraph (c) of this section must:

(1) Identify the vehicle and/or equipment that is the subject of the recall and the underlying problem;

(2) State that the manufacturer has a program for reimbursing pre-notification remedies and identify the type of remedy eligible for reimbursement;

(3) Identify any limits on the time period in which the repair or replacement of the recalled vehicle or equipment must have occurred;

(4) Identify any restrictions on eligibility for reimbursement that the manufacturer is imposing (as limited by § 573.13 (d) of this chapter);

(5) Specify all necessary documentation that must be submitted to obtain reimbursement;

(6) Explain how to submit a claim for reimbursement of a pre-notification remedy; and

(7) Identify the office and address of the manufacturer where a claim can be submitted by mail and any authorized dealers or facilities where a claimant may submit a claim for reimbursement.

(e) The manufacturer is not required to provide notification regarding reimbursement under this section if NHTSA finds, based upon a written request by a manufacturer accompanied by supporting information, views, and arguments, that all covered vehicles are under warranty or that no person would be eligible for reimbursement under § 573.13 of this chapter.

Issued on: October 8, 2002.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 101102A]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2002 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 13, 2002, until 1200 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut PSC limit for vessels using trawl gear was established as 2,000 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002). The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2002 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2002 halibut bycatch allowance specified for trawl gear in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 11, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26423 Filed 10–11–02; 4:26 pm]

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