

through B.(17) and adding a new item B.(13) to read as follows:

**§ 195.3 Material incorporated by reference.**

(c) \* \* \*

Source and name of referenced material

49 CFR reference

B. * * *									
(13 API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," First Edition (December 2003). ....									§ 195.440

■ 6. Section 195.440 is revised to read as follows:

**§ 195.440 Public awareness.**

(a) Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 195.3).

(b) The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities.

(c) The operator must follow the general program recommendations, including baseline and supplemental requirements of API RP 1162, unless the operator provides justification in its program or procedural manual as to why compliance with all or certain provisions of the recommended practice is not practicable and not necessary for safety.

(d) The operator's program must specifically include provisions to educate the public, appropriate government organizations, and persons engaged in excavation related activities on:

(1) Use of a one-call notification system prior to excavation and other damage prevention activities;

(2) Possible hazards associated with unintended releases from a hazardous liquid or carbon dioxide pipeline facility;

(3) Physical indications that such a release may have occurred;

(4) Steps that should be taken for public safety in the event of a hazardous liquid or carbon dioxide pipeline release; and

(5) Procedures to report such an event.

(e) The program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations.

(f) The program and the media used must be as comprehensive as necessary to reach all areas in which the operator

transports hazardous liquid or carbon dioxide.

(g) The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

(h) Operators in existence on June 20, 2005, must have completed their written programs no later than June 20, 2006. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(i) The operator's program documentation and evaluation results must be available for periodic review by appropriate regulatory agencies.

Issued in Washington, DC, on May 5, 2005.

**Stacey L. Gerard,**

*Acting Assistant Administrator/Chief Safety Officer, Pipeline and Hazardous Materials Safety Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 541, 543, and 545**

**[Docket No. NHTSA-2005-21233]**

**RIN 2127-AJ51**

**Federal Motor Vehicle Theft Prevention Standard**

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

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This final rule responds to petitions for reconsideration of the agency's newly expanded parts marking requirements. The Anti Car Theft Act of 1992 required NHTSA to conduct a rulemaking to extend the parts marking requirements to below median theft rate passenger cars and multipurpose

passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less, unless the Attorney General found that such a requirement would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General did not make such a finding. Accordingly, in a final rule published in April 2004, NHTSA extended parts marking requirements to these vehicles. This document responds to petitions for reconsideration of the April 2004 final rule. Specifically, we are amending our procedures in order to begin processing parts marking exemption petitions prior to the effective date, and we are phasing-in the new requirements over a two-year period.

**DATES:** The amendments to Sections 541.3, 543.3, and 543.5, which were published at 69 FR 17960, April 6, 2004, as amended by 69 FR 31412, June 22, 2004, are hereby withdrawn. Except for the amendment to Section 543.3, this final rule is effective September 1, 2006. The amendment to Section 543.3 is effective July 18, 2005. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by July 5, 2005.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy issues, you may contact Mary Versailles, Office of International Policy, Fuel Economy and Consumer Programs, (Telephone: 202-366-2057) (Fax: 202-493-2290). [Mary.Versailles@nhtsa.dot.gov](mailto:Mary.Versailles@nhtsa.dot.gov).

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**SUPPLEMENTARY INFORMATION:**

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## I. Summary of Decision

After analyzing the petitions for reconsideration, this final rule makes the following changes and clarifications to NHTSA's expanded parts marking requirements:

- Manufacturers are not required to submit part 542 "likely theft rate determinations" for vehicle lines introduced prior to the September 1, 2006 effective date, if the manufacturers choose to voluntarily mark the new vehicle lines immediately after their introduction.
- Manufacturers are permitted to petition the agency to exempt low theft vehicle lines equipped with anti-theft devices from the parts marking requirements 60 days after the publication of this document. Each manufacturer is eligible for one such exemption per model year, beginning with model year 2006.
- Vehicle lines with annual production of not more than 3,500 vehicles are excluded from parts marking requirements because the benefits of marking these vehicle lines would be of trivial or of no value. This exclusion applies to all vehicle manufacturers regardless of overall production volume.

- The agency is adopting a phase-in of the new parts marking requirements over a two-year period. Specifically, car lines representing not less than 50% of a manufacturer's production of vehicle lines that were not subject to parts marking requirements before September 1, 2006, must be marked effective September 1, 2006. The remaining vehicle lines must be marked effective September 1, 2007. Vehicle lines already subject to parts marking requirements are unaffected by this phase-in.

The agency is denying petitions to indefinitely exclude all low theft vehicle lines equipped with anti-theft devices from the requirements of the standard. We are also denying petitions to require glazing marking, and to allow parts marking using the microdot technology.

## II. Background

49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard*, requires that major parts <sup>1</sup> of certain motor vehicle lines be indelibly marked with labels containing the Vehicle Identification Numbers (VINs).<sup>2</sup> This parts marking requirement reduces the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles, and prosecuting thieves, chop shop operators, and stolen part dealers.

The standard currently applies to high theft <sup>3</sup> passenger car lines; high theft multipurpose passenger vehicle (MPV) lines (*i.e.*, passenger vans and sport utility vehicles) with a gross vehicle weight rating (GVWR) of 6,000 pounds or less; and high theft light duty truck (LDT) lines (*i.e.*, pickup trucks and cargo vans) with a GVWR of 6,000 pounds or less. The standard also applies to passenger cars and MPVs that

are not high theft, but have major parts that are interchangeable with major parts of high theft rate vehicle lines.<sup>4</sup> Finally, the standard applies to a small group of below median theft rate (low theft) passenger car and MPV lines that are not otherwise subject to parts marking requirements.<sup>5</sup>

Manufacturers are permitted to petition NHTSA for an exemption from the parts marking requirements for one vehicle line per model year. A vehicle line is eligible for an exemption if it is fitted with an anti-theft device as standard equipment. The agency grants the exemption if it determines that the devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.<sup>6</sup>

The Anti Car Theft Act of 1992 (the 1992 Theft Act)<sup>7</sup> required the Attorney General to conduct an initial review of effectiveness and make a finding requiring that the Secretary of Transportation expand the parts marking requirement to vehicle lines not subject to the current parts marking requirements (except LTDs), unless the Attorney General found instead that extending the requirement would not substantially inhibit chop shop operations and motor vehicle theft.<sup>8</sup> In effect, Congress created a rebuttable presumption, *i.e.*, parts marking should be expanded unless the Attorney General was able to make a finding against the effectiveness of parts marking. The Attorney General did not make such a finding, and instead concluded that the parts marking requirement should be expanded.<sup>9</sup> In accordance with the statutory mandate of the 1992 Theft Act, we published a final rule in April 2004 that extended parts marking requirements to the remaining vehicle lines. That document is described below.

## III. Final Rule

On April 6, 2004, the agency published in the **Federal Register** (69 FR 17960) a final rule<sup>10</sup> extending the parts marking requirements to certain vehicle lines that were not previously subject to these requirements: (1) All low theft passenger car lines; (2) all low theft MPV lines with a gross vehicle weight rating (GVWR) of 6,000 pounds

<sup>1</sup> The list of major parts includes: engine, transmission, hood, fenders, side and rear doors (including sliding and cargo doors and decklids, tailgates, or hatchbacks, whichever is present), bumpers, quarter panels, and pickup boxes and/or cargo boxes. See 49 CFR 541.5.

<sup>2</sup> The labels cannot be removed without becoming torn or rendering the number on the label illegible. If removed, the label must leave a residue on the part so that investigators will have evidence that a label was originally present. Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material. A replacement major part must also be marked with the registered trademark of the manufacturer of the replacement part, or some other unique identifier, and the letter "R".

<sup>3</sup> "High theft" means a vehicle line that has or is likely to have a theft rate greater than the median theft rate for all new vehicles in the 2-year period covering calendar years 1990 and 1991. See 49 U.S.C. 33104(a)(1). "Low theft" means a vehicle line that has or is likely to have a sub-median theft rate.

<sup>4</sup> See 49 U.S.C. 33104(a)(1)(C).

<sup>5</sup> See appendix B to 49 CFR part 541.

<sup>6</sup> See 49 CFR part 543.

<sup>7</sup> See Public Law 102-519, October 25, 1992, codified in 49 U.S.C. chapter 331. *Theft Prevention*.

<sup>8</sup> See 49 U.S.C. 33103(c).

<sup>9</sup> Attorney General's Initial Review of Effectiveness is entitled "The Initial Report." See Docket No. NHTSA-2002-12231-5.

<sup>10</sup> See Docket No. NHTSA-2002-12231-34.

or less; and (3) low theft LDT lines with a GVWR of 6,000 pounds or less that have major parts that are interchangeable with a majority of the covered major parts of passenger cars or MPVs described above.<sup>11</sup> The high theft vehicle lines that were previously exempted under 49 CFR part 543 on the grounds that they are equipped with a qualifying anti-theft device as standard equipment were unaffected by the April 2004 final rule. The agency also stated that it would continue to grant exemptions for one vehicle line per model year. The final rule is effective September 1, 2006.

#### IV. Petitions for Reconsideration

The agency received five petitions for reconsideration of the April 2004 final rule from the Alliance of Automobile Manufacturers (Alliance), DaimlerChrysler Corporation (DCX), DataDot Technology USA, Inc. (DataDot), Retainagroup, and Association of International Automobile Manufacturers (AIAM).<sup>12</sup> Further, the agency received several additional comments and requests for legal interpretation pertaining to the new parts marking requirements. We addressed some of these requests by issuing letters of interpretation, and promised to address other questions when we issued this document.

*The following issues were raised in the petitions:*

- Alliance petitioned the agency to immediately begin accepting and processing part 543 parts marking exemption petitions for vehicles that would become subject to parts marking requirements on September 1, 2006.
- Alliance petitioned the agency to clarify the procedures for selecting vehicles subject to the parts marking requirements before and after September 1, 2006.
- DCX and Alliance petitioned the agency to exclude low-volume vehicle lines from the requirements of the standard, regardless of the size of the vehicle manufacturer.
- Alliance petitioned the agency to extend the lead-time for one year, or in alternative, to implement a phase-in.
- DCX petitioned the agency to temporarily exclude low theft vehicle lines with standard equipment antitheft devices from the requirements of the standard.

- DataDot petitioned the agency to allow a more permanent method of marking vehicles using microdot technology.

- Retainagroup petitioned the agency to require parts marking of glazing.
- AIAM requested that NHTSA correct two typographical errors in the regulatory text of the April 2004 final rule where the agency incorrectly stated the effective date of the new requirements.<sup>13</sup>

*The following issues were raised in letters and e-mails requesting legal interpretations and comments to the docket:*

- Mr. Michael Finkelstein (on behalf of Mazda Motor Company) asked whether the agency would process petitions to exempt low theft vehicle lines from parts marking requirements prior to the September 1, 2006 effective date; and whether multiple exemption petitions before September 1, 2006 were permissible. This is, in part, the same issue raised by Alliance.
- Mr. James C. Chen of Hogan & Hartson asked for a clarification of two issues related to low theft rate LDT lines that will become subject to parts marking requirements because they have a majority of major parts that are interchangeable with major parts of passenger cars or MPVs subject to parts marking requirements.
- Mr. Steven Jonas of Volkswagen (VW) asked if the expanded parts marking requirements applied to passenger cars with a gross vehicle weight rating (GVWR) greater than 6,000 pounds. Mr. Jonas also asked about "carryover" of part 543 exemptions to subsequent model year vehicle lines.

#### V. Response to Petitions

##### *A. Clarification of Procedures for Selecting New Vehicle Lines Subject to Parts Marking Requirements Before and After September 1, 2006*

49 CFR 542.1 sets forth the procedures for determining whether a new vehicle line is likely to have a high theft rate and is therefore subject to current parts marking requirements.

First, manufacturers employ criteria in part 541 appendix C to evaluate new lines and determine whether the new line is likely to be high theft. Next, the manufacturers submit their conclusions (likely theft rate determination), along with underlying factual information, to NHTSA not less than 15 months prior to introduction of the new vehicle line in question. The agency then independently evaluates the new vehicle line (using the same criteria in

part 541 appendix C) and informs the manufacturer by letter if the agency agrees with manufacturer's conclusions as to the likely theft rate of the new vehicle line.

Alliance petitioned the agency to clarify the procedures in § 542.1 as they apply to vehicle lines introduced before and after September 1, 2006. Specifically, Alliance asked whether a manufacturer must make the likely theft rate determination for vehicle lines being introduced several months prior to the September 1, 2006 effective date of the extended parts marking requirements. For example, Alliance asked if the manufacturers are required to evaluate the likely theft rate of a new line being introduced in June of 2006, knowing that this vehicle line would become subject to parts marking requirements regardless of the theft rate several months later. Alliance asked that the agency amend the standard so that likely theft rate determination submissions are not required for vehicle lines which will become subject to parts marking requirements shortly after their introduction.

We agree that in situations where a manufacturer introducing a new vehicle line before September 1, 2006 chooses to mark that vehicle line immediately, there is no reason to require the manufacturer to make the likely theft rate determination submission to NHTSA. We believe that the majority of manufacturers planning to introduce new vehicle lines shortly before the September 1, 2006 date would choose to mark their new vehicle lines immediately, rather than using their resources to submit the likely theft rate determination that, at best, would result in only temporary relief from the parts marking requirements. However, a manufacturer cannot sell unmarked vehicles before September 1, 2006, without having submitted the likely theft rate determination in accordance with 49 CFR 542.1. If the manufacturer introducing a new vehicle line before September 1, 2006 does not wish to voluntarily mark the subject vehicle line immediately, the manufacturer must submit the likely theft rate determination to NHTSA in accordance with 49 CFR 542.1.

Because after September 1, 2006, all passenger cars and MPVs will be subject to parts marking requirements, the likely theft rate determination submissions will be required for only LDTs with a GVWR of 6,000 pounds or less. This is because, with certain limitations, low theft LDT are not subject to parts marking requirements.

<sup>11</sup> Low theft rate LDTs which do not have major parts that are interchangeable with MPVs or passenger cars are not subject to parts marking requirements.

<sup>12</sup> These petitions are available online at <http://dms.dot.gov/search/searchFormSimple.cfm> (Docket No. NHTSA-2002-12231).

<sup>13</sup> A correction notice addressing this petition was published June 2, 2004 (see 69 FR 34612).

*B. Procedures for Filing and Processing Part 543 Exemption Petitions for Existing Vehicle Lines Not Subject to Parts Marking Requirements Until September 1, 2006*

Currently, 49 CFR 543.1 sets forth the procedures for filing and processing petitions to exempt high theft vehicle lines from the parts marking requirements. Manufacturers are allowed to petition NHTSA for one high theft vehicle line per model year. A vehicle line is eligible for an exemption if it is fitted with an antitheft device as standard equipment. The agency grants the exemption if it determines that the devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.

Alliance and Michael Finkelstein petitioned the agency to amend the part 543 procedures in order to allow filing and processing exemptions for existing vehicle lines, equipped with qualifying antitheft devices, that will become subject to parts marking requirements on September 1, 2006, but are not subject to current parts marking requirements because they have been previously determined to be low theft. Specifically, petitioners asked the agency to amend the standard such that the vehicle manufacturer would be able to obtain part 543 exemptions for these vehicle lines prior to September 1, 2006.

Alliance argued that there is no statutory impediment to allowing manufacturers to file exemptions for vehicle lines that would not become subject to parts marking requirements until September 1, 2006. Further, Alliance argued that amending part 543 procedures is consistent with the purpose of the regulation because it encourages installation of antitheft devices on more vehicles.

NHTSA agrees with the petitioner's arguments and also notes that requiring the manufacturers to mark vehicles which the agency may soon thereafter decide are eligible for a part 543 exemption would result in an unnecessary financial burden upon the manufacturers. The costs associated with marking a vehicle line that was not previously subject to parts marking requirements are not insignificant. These costs would be especially high if marking was required for only a short period of time, because the agency would later agree to exempt that vehicle line. For example, there is potential for situations where a manufacturer would only have to mark a vehicle line for several weeks or months after September 1, 2006, while the agency reviewed its part 543 petition for

exemption. A better solution is to review part 543 exemption petitions before the vehicle lines not classified as high theft, become subject to parts marking requirements.

Therefore, the agency is amending part 543 to allow vehicle manufacturers to file petitions to exempt vehicle lines (equipped with qualifying antitheft devices) that will become subject to parts marking requirements on September 1, 2006. Affected manufacturers may begin filing part 543 petitions 60 days after the publication of this final rule. The agency will begin processing these petitions immediately thereafter.

We note that, as discussed above, each manufacturer is eligible for one part 543 exemption per model year.<sup>14</sup> For vehicle lines not subject to current requirements, exemptions will be granted beginning with 2006 model year. That is, while part 543 petitions will be accepted and considered by the agency 60 days after the publication of this document, the manufacturers of existing low theft vehicle lines would be able to obtain only one exemption per model year, beginning with model year 2006 vehicles.

In his e-mail, Michael Finkelstein asked whether a manufacturer of multiple low theft vehicle lines could apply for more than one part 543 exemption before the September 1, 2006 effective date.<sup>15</sup> Specifically, Michael Finkelstein asked if a manufacturer could obtain an exemption for a 2005 model year low theft vehicle line. Our answer is no.

We would not consider it appropriate to grant exemptions for low theft 2005 model year vehicle lines because these vehicle lines are not subject to parts marking requirements; *i.e.*, model year 2005 vehicles will not be in production on September 1, 2006. Thus, a 2005 model year low theft vehicle line is not eligible for a part 543 exemption.

Because the new parts marking requirements become effective September 1, 2006, we anticipate that at least some 2006 model year vehicle lines will still be in production at that time. Accordingly, we believe it is appropriate to consider part 543 exemptions for low theft vehicle lines beginning with 2006 model year.

In sum, the agency will begin accepting and processing part 543 petitions for exemption of vehicle lines not subject to current parts marking requirements 60 days after the publication of this document. Each manufacturer of such vehicle lines is

eligible for one exemption per model year, beginning with model year 2006.

We note that vehicle manufacturers can continue to petition the agency to exempt high theft vehicle lines subject to current parts marking requirements. That is, high theft 2005 model year vehicle lines are eligible for a part 543 exemption if they are equipped with a qualifying antitheft device.<sup>16</sup> As previously stated, beginning with 2006 model year, each manufacturer is eligible for one exemption per model year, regardless of theft rate.

*C. Petition to Exclude Low-volume Vehicle Lines*

The April 2004 final rule excluded manufacturers that sell fewer than 5,000 vehicles in the U.S. each year from the requirements of the standard. DCX and Alliance petitioned the agency to similarly exclude (in addition to small volume manufacturers described above) low-volume vehicle lines whose annual sales do not exceed 3,500. This exclusion would apply to low-volume vehicle lines produced by larger manufacturers. Examples of these low-volume vehicle lines include Dodge Viper, Maybach, Mercedes SLR, and Ford GT.

Alliance argued that like the smaller manufacturers already exempted by the April 2004 final rule, the larger manufacturers also produce low-volume specialty vehicle lines that have low theft rates and high costs of parts marking because the vehicles are not manufactured on traditional assembly lines. Alliance noted that there is virtually no black market demand or chop shop interest in stolen parts from these vehicles. Further, the costs of marking low-volume vehicle lines are potentially as expensive as they are for small vehicle manufacturers exempted from the requirements.

In support of the Alliance petition, DCX offered Dodge Viper as an example of a low-volume vehicle line produced by a large volume manufacturer. The Viper has a unique engine, chassis, and body panels that are not shared with other vehicles produced by DCX.<sup>17</sup> Much like the manufacturers exempt from parts making, DCX assembles each Viper individually at a dedicated facility. DCX argued that implementing parts marking for a low volume vehicle line such as the Viper is equally as

<sup>16</sup> "Qualifying" means NHTSA determined that the device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements.

<sup>17</sup> The Viper V10 powertrain is actually also used in a Dodge Ram SRT 10 pickup truck, but that vehicle is also produced in very limited quantities (<http://www.dodge.com/srt-10/index.html>).

<sup>14</sup> See § 543.5(a).

<sup>15</sup> See Docket No. NHTSA-2002-12231-41.

burdensome for DCX as it is for the exempted manufacturers.

Alliance argued that NHTSA's theft data indicate that the theft rate of low-volume vehicle lines is lower than it is for other vehicles. DCX stated that between 1997 and 2002, 8,194 Dodge Vipers have been produced, and in that time period, there have been only six reported thefts.

NHTSA agrees with the petitioners that the practical burdens of marking low-volume vehicle lines are significant for both small manufacturers and large manufacturers. This is because the fixed costs associated with implementing parts marking of low-volume vehicle lines are unique to those lines, since they are usually built in dedicated facilities and do not share assembly lines with other vehicles produced by larger manufacturers. As indicated by the Alliance, the fixed costs include finding a suitable supplier, investment in parts marking equipment, and process implementation for manufacturers who may have had no previous parts marking experience.

In addition to these financial burdens, NHTSA notes that parts marking of low-volume vehicle lines is unlikely to reduce the incidence of motor vehicle thefts, facilitate recovery of stolen vehicle parts, or facilitate prosecution of chop shop operators because the vehicles that are manufactured in small quantities are generally not stolen for parts, the primary type of theft this standard is meant to address. In most instances, the vehicles in question are expensive and exotic cars. There is typically no market for stolen parts for such vehicles. Accordingly, it is unlikely that these vehicles would wind up in chop shops, even if they were stolen.

We further note that parts marking of low-volume vehicle lines would have the potential to affect only a very small number of vehicle thefts. We estimate that there are 67 yearly thefts of vehicles produced in quantities of not more than 3,500. We note that some of the vehicles in that category are produced by small volume manufacturers already exempted from parts marking requirements. Thus, parts marking of low-volume vehicle lines would, at most, have the potential of affecting fewer than less than 67 motor vehicle thefts per year.

In sum, NHTSA has decided that the benefits of marking these vehicles would be of trivial or of no value. Accordingly, the agency is exempting vehicle lines with 3,500 vehicles or less annually from the requirements.

We note that case law indicates that in some situations, agencies have an

implied authority to create exclusions based on *de minimis* circumstances.<sup>18</sup> *De minimis* circumstances refer to situations where following the plain meaning of a statute would lead to "a gain of trivial or no value." That is, the agency may go beyond the plain meaning of the statute in order to avoid a pointless expenditure of effort by regulated parties. Based on theft information available to NHTSA, we believe that this is one of these situations. That is, parts marking of low-volume vehicle lines would produce theft reduction gains of trivial or no value.

#### *D. Petition to Temporarily Exclude Low Theft Vehicle Lines Equipped With Anti-Theft Devices From the Requirements of the Standard*

DCX petitioned the agency to exclude low theft vehicle lines equipped with anti-theft devices (as standard equipment) from the parts marking requirements until each such vehicle line is discontinued or undergoes a major redesign. Essentially, DCX argues that low theft vehicle lines that are equipped with anti-theft devices should be afforded the same treatment as high-theft vehicle lines that have been granted exemptions under part 543<sup>19</sup> because NHTSA determined that their antitheft devices are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements. DCX explains that this approach would in effect phase-in the new parts marking requirements, allowing the manufacturers to gradually expand parts marking to all affected vehicle lines.

DCX argues that this approach maintains equity in application of parts marking requirements, and would discourage manufacturers of low theft vehicle lines from removing effective antitheft devices from their vehicles. DCX explains that it voluntarily installed antitheft devices in its vehicle lines, and will now also have to mark the same vehicle lines. By contrast, manufacturers of high theft vehicle lines equipped with antitheft devices have in the past been able to obtain part 543 exemptions from parts marking requirements. DCX argues that without continued exclusion of low theft vehicle lines equipped with antitheft devices, manufacturers of low theft vehicles might determine that the cost of parts

marking and standard anti-theft devices is too prohibitive. DCX states that the statutory language is broad enough to permit the agency to adopt this approach. We disagree for several reasons.

DCX argues that the Theft Prevention statute says nothing that prevents or prohibits phasing-in the extension and does not specify any particular method by which the agency should implement the extension of parts marking requirements. By way of analogy and precedent, DCX also noted that although the Vehicle Safety Act does not expressly allow phase-ins, the agency has previously interpreted that Act to allow them for safety standards.

While we believe that the relevant language in the Theft Prevention statute is broad enough to permit a fleet-wide phase-in to address practicability issues, the agency believes that it is otherwise limited in how it could implement the new requirements.

First, 49 U.S.C. 33103(b) directed the agency to extend the parts marking requirements to vehicle lines that are not subject to the current parts marking requirements. While the statute explicitly excluded low theft LDTs, it made no similar exclusions for low theft vehicle lines equipped with antitheft devices, or any other classes of vehicles. The agency believes that if Congress had intended to exclude low theft vehicle lines equipped with antitheft devices from the parts marking requirements, it would have explicitly directed NHTSA to exempt such vehicles, as it did with LDTs. Accordingly, we conclude that Congress intended to extend parts marking requirements to low theft vehicle lines whether or not they are equipped with antitheft devices. This is contrary to the petitioner's suggestion that the agency could indefinitely exclude low theft vehicle lines equipped with antitheft devices from the requirements of the standard.

Second, we note that 49 U.S.C. 33106(b) allows NHTSA to exempt one vehicle line per year, if the manufacturer installs an antitheft device as standard equipment, and NHTSA determines that the antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the part-marking requirements. We believe that because Congress retained our exemption authority in adopting the 1992 amendments and narrowly limited the number of new exemptions, Congress did not deem antitheft devices to be functionally equivalent *per se* to parts marking, and did not intend the agency to provide an automatic, across-the-board exclusion to low theft vehicle

<sup>18</sup> *Alabama Power Co. v. Costle*, 636 F.2d 323 at 360, 361 (DC Cir. 1980); see also *Public Citizen v. Young*, 831 F.2d 1108 at 1112 (DC Cir. 1987); *Environmental Def. Fund v. Environmental Protection Agency*, 82 F.3d 451, 466 (DC Cir.1996).

<sup>19</sup> Please see Section II, which discusses current exemption procedures.

lines equipped with antitheft devices from the parts marking requirements. We believe that the narrow exemption provision is instructive because Congress could have substantially broadened that provision and directed NHTSA to begin immediately to exempt multiple low theft vehicle lines equipped with antitheft devices.

Further, the agency has not had the opportunity to examine the effectiveness of antitheft devices installed on low theft vehicles. Even if, as suggested by DCX, the agency would be provided with a list of every low theft vehicle line equipped with an antitheft device, exempting all such vehicle lines would breach the statutory limit of one exemption per model year. We note also that there are practical limitations to the agency's ability to compare and examine antitheft devices and theft rates of all vehicle lines that will become subject to parts marking on September 1, 2006.

While we cannot indefinitely exclude low theft vehicle lines equipped with antitheft devices by phasing in the new requirements, we can adopt a fleet-wide phase-in that follows a definite, fixed schedule.

In considering what phase-in to adopt, the agency balanced the benefits of parts marking against the practical burdens associated with implementing parts marking for manufacturers that have not previously been required to mark any of their vehicle lines. In assessing the benefits, we are mindful of the presence of antitheft devices on some of the vehicle lines, although we would assess their effectiveness only in the context of a petition for exemption. As previously discussed, the burdens include the fixed costs of finding a suitable supplier, investment in parts marking equipment, and process implementation for manufacturers that have no previous parts marking experience. Thus, we want to implement the new requirements in a time frame that eliminates any basis for practicability concerns.<sup>20</sup> To address this concern, we have decided to adopt a short (two-year) fleet-wide phase-in for the new parts marking requirements. This approach is described in the next section.

#### *E. Petition To Delay the Effective Date or Adopt a Phase-In*

DCX and Alliance petitioned the agency to delay the effective date or implement a limited phase-in, so that

only 70% of each manufacturer's production would have to be marked by September 1, 2006, with the remaining 30% marked by September 1, 2007. While we decline to delay the effective date, for the reasons discussed in the previous section, the agency believes that a phase-in is warranted.

NHTSA estimates that at least five manufacturers have multiple low theft vehicle lines affected by parts marking expansion. Because the second largest vehicle line for at least one of these manufacturers exceeds 30% of the total low theft vehicle production, the 70/100 phase-in suggested by the Alliance and DCX is inappropriate because at least one manufacturer would still be required to mark both low theft vehicle lines. Instead, we are adopting a 50/50 phase-in.

NHTSA cannot adopt a phase-in based solely on a percentage of the total vehicle production because this could result in manufacturers having to mark some, but not all vehicles in the same vehicle line. This, of course, would frustrate the purpose of parts marking because law enforcement personnel would be unable to ascertain whether the vehicle or vehicle part should have been marked. Accordingly, we are adopting a phase-in under which car lines representing not less than 50% of a manufacturer's vehicle lines that were not subject to parts marking requirements before September 1, 2006, must be marked not later than September 1, 2006. The remaining vehicle lines must be marked not later than September 1, 2007. Vehicle lines already subject to parts marking requirements are unaffected by this phase-in.

We note that, in addition to the phase-in, we assume that each manufacturer affected by this final rule will be able to obtain a part 543 exemption from the parts marking requirement for the largest vehicle line equipped with a qualifying anti-theft device. The agency believes that together, the phase-in and the exemption opportunity will substantially lessen the burdens and allow the manufacturers sufficient flexibility in implementing the new parts marking requirements.

#### *F. Request To Permit Parts Marking With Microdot Technology*

DataDot petitioned the agency to allow microdot marking of vehicles that are subject to parts marking requirements.<sup>21</sup> Microdot technology enables vehicle manufacturers to spray microdots on different vehicle components. Each microdot is encoded

with the VIN specific to that vehicle. Microdots are nearly invisible to the naked eye, but can be easily be found and identified with simple magnification.<sup>22</sup> Each vehicle is sprayed with approximately 10,000 microdots.

Microdot technology does not comply with current parts marking size and style requirements because the current standard mandates that the major vehicle parts listed in § 541.5 are marked with the VIN of that vehicle lettered in block capitals and numerals not less than three thirty-seconds of an inch in height. DataDot petitioned the agency to allow the use of microdot technology as an alternative to traditional parts marking.

The agency is unable to consider DataDot's request because a change to parts marking size and style requirements would be outside the scope of the Notice of Proposed Rulemaking (NPRM).<sup>23</sup> That is, when the agency proposed to expand parts marking requirements in June of 2002, it did not propose to change the parts marking size and style. Therefore, NHTSA cannot change these requirements without first issuing a notice requesting public comment on that specific issue.

In addition, the agency would need to examine certain issues related to microdot marking. These issues include acceptance of microdot technology within the law enforcement community; the costs associated with magnifying devices used to read microdot markings; potential need for additional law enforcement personnel training; and the need for objective criteria to regulate microdot markings.

In sum, the agency is unable to amend part 541 to allow microdot technology as an alternative to conventional parts marking because such change would be outside the scope of notice. We note that voluntary use of microdot technology on vehicles not subject to parts marking requirements, or in addition to the required markings, is not prohibited by our standards.

#### *G. Parts Marking of Glazing*

Retainagroup petitioned the agency to add glazing to the list of major parts in § 541.5 that are required to be marked on vehicles subject to parts marking requirements.<sup>24</sup> Retainagroup argued that marking the vehicle glazing would considerably enhance the deterrence effect of our regulations. Retainagroup stated that the chief benefit of glazing

<sup>20</sup> We note that this analysis is limited to issues arising out of the Theft Prevention statute, and the agency would take a different approach to the issues related to practicability in the context of the Safety Act.

<sup>21</sup> See Docket No. NHTSA-2002-42, 44, 46, 47.

<sup>22</sup> For more information on DataDot technology see <http://www.mdatatech.com/about.htm>.

<sup>23</sup> See 67 FR 43075 (June 26, 2002).

<sup>24</sup> See Docket No. NHTSA-2002-12231-40.

marks would be deterrence of vehicle theft, rather than prevention of glazing theft.

As discussed in our April 2004 final rule, the agency does not have the statutory authority to require marking of glazing. Under 49 U.S.C. 33101(6), major parts of motor vehicle subject to parts making requirements only include: (A) The engine; (B) the transmission; (C) each passenger compartment door; (D) the hood; (E) the grille; (F) each bumper; (G) each front fender; (H) the deck lid, tailgate, hatchback; (I) each rear quarter panel; (J) trunk floor pan; (K) the frame or platform; and (L) any other part comparable in design or function to the parts listed in A through K.

Glazing is not listed in A through K, and the agency believes that it is not comparable in design and function to parts listed above. As discussed in our April 14, 2004 letter to Retainagroup,<sup>25</sup> glazing is designed and manufactured from a combination of glass and plastic, materials that are significantly different from metal and fiberglass normally used in manufacturing the "major parts" listed in § 541.5. Glazing also serves a unique function of providing visibility necessary for the safe operation of motor vehicles and helps prevent ejections in automobile collisions. This function is unique to glazing and is different from that of vehicle parts listed in A through K. Accordingly, before the agency could require parts marking of glazing, Congress would have to amend 49 CFR Chapter 331, the statute governing theft prevention.

Finally, Retainagroup made several general arguments in favor of laser-etching the major parts that are subject to marking requirements, instead of affixing labels. We note that laser etching is not prohibited by our standards so long as the VIN number is lettered in block capitals and numerals not less than three thirty-seconds of an inch high. We further note that glazing marking is not prohibited by our regulations and vehicle manufacturers are free to do so.

#### H. Miscellaneous Issues

1. In a letter dated April 13, 2004, VW asked whether expanded parts marking requirements applied to passenger cars with a gross vehicle weight rating (GVWR) greater than 6,000 pounds. In a letter dated May 10, 2004, we explained that the GVWR limitation applied only to multipurpose passenger vehicles and light duty trucks, and that the new parts marking requirements apply to all

passenger cars regardless of GVWR.<sup>26</sup> Subsequently, we published a correction notice, which, among other things, clarified the application of parts marking requirements.<sup>27</sup>

2. In an e-mail dated February 7, 2005, Mr. Steven Jonas of VW asked about "carryover" of part 543 exemptions to subsequent model year vehicle lines. Specifically, Mr. Jonas asked if a part 543 parts marking exemption of a 2006 model year line would carry over to a 2007 model year line, if the 2007 model year line is introduced before September 1, 2006. Our answer is yes.

If the agency grants a part 543 exemption for a 2006 model year line, that exemption carries over to subsequent model years regardless of the model introduction date. We note that, as discussed in Section V(B) above, each manufacturer is eligible for one part 543 parts marking exemption per model year. Thus, VW would not be able to obtain another exemption for a different 2006 model year line.

3. In an e-mail dated October 27, 2004, James Chen of Hogan & Hartson asked if a low theft LDT line that shares majority of interchangeable parts with a vehicle line that is exempted from parts marking under part 543, would itself be subject to parts marking requirements. Our answer is no.

By way of background, The Anti Car Theft Act of 1992 required NHTSA to extend the parts marking requirements to below median theft rate passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less. However, the statute did not direct NHTSA to extend the parts marking requirements to low theft LDTs. Nevertheless, as explained, in the April 2004 final rule, the agency decided to extend parts marking requirements to low theft LDTs that share major interchangeable parts with vehicles that would become subject to parts marking effective September 1, 2006. Failure to apply the parts marking requirements to these low theft LDTs could hinder law enforcement actions because it would have been difficult or even impossible to draw, with any confidence, inferences from the absence of marks on shared major vehicle parts.

The situation described by Mr. Chen does not raise the same concerns. If the vehicle line subject to parts marking is exempted under part 543, there is no risk of confusion associated with only some but not all of identical vehicle

parts being marked. Thus, we believe it is unnecessary to require that low theft LDTs that share major interchangeable parts with exempted vehicle lines, be marked. In fact, we believe that requiring LDTs to be marked when their "counterparts" are exempted, could also hinder effective law enforcement.

We are amending the regulatory text accordingly.

4. In an e-mail dated October 28, 2004, James Chen of Hogan & Hartson asked when the manufacturers of LDTs are required to submit their likely theft rate determinations based on criteria specified in appendix C of part 541.

**New LDT lines:** The manufacturers of all LDTs, are required to submit their likely theft rate determinations 15 months prior to introduction of each new line. This requirement is unaffected by the April 2004 final rule, since the manufacturers were previously required to submit this information 15 months prior to introduction of new vehicle lines.<sup>28</sup> Accordingly, the manufacturers of new LDT lines should continue submitting their likely theft rate determinations as they did before the April 2004 final rule.

**Existing LDT lines:** Under the April 2004 final rule, the manufacturers of existing low theft LDTs lines are required to submit their evaluations and conclusions regarding low theft LDTs that share major parts with vehicles subject to parts marking requirements.<sup>29</sup> The manufacturers are required to submit this information 15 months prior to the date when the vehicles sharing major parts would become subject to parts marking requirements. Thus, the agency expects to receive these evaluations 15 months prior to September 1, 2006.<sup>30</sup>

## VI. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's

<sup>28</sup> As explained in Section V, likely theft rate determination submissions are not required for passenger car and MPV lines because they will become subject to parts marking regardless of theft rate. Further, likely theft rate determinations are not required if these vehicle lines are voluntarily marked prior to the September 1, 2006 effective date.

<sup>29</sup> See 49 CFR 542(c)(3).

<sup>30</sup> We note that, traditionally, the agency evaluates late submissions. Because of timing concerns, we will again evaluate § 542(c)(3) submissions made after June 1, 2005, so long as the required submission is made without unreasonable delay.

<sup>25</sup> <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001563a.html>.

<sup>26</sup> <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF003175.html>.

<sup>27</sup> See 69 FR 34612 (June 22, 2004).



regulatory policies and procedures, and has determined that it is not "significant."

In the Final Regulatory Evaluation (FRA), we estimated that expanding parts marking requirements would cost \$19.6 million annually.<sup>31</sup> Because we are implementing a phase-in, and because we decided to exclude low-volume vehicle lines from parts marking requirements, this document reduces our estimated yearly costs.

The agency estimates that expanded parts marking requirements would reduce the costs associated with vehicle thefts by \$38.8 million each year. Because low-volume vehicle lines are seldom stolen, this document will not substantially affect our benefits estimates.

#### 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 rules on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities because NHTSA has previously excluded small manufacturers (less than 5,000 vehicles annually) from parts marking requirements.

#### C. National Environmental Policy Act

NHTSA has analyzed this document for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

#### D. Executive Order 13132 (Federalism)

NHTSA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999) and have determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The final rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

#### E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a

written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (\$120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be included in conjunction with other assessments, as it is here.

This final rule will not result in expenditures by State, local, or tribal governments or automobile or automobile parts manufacturers of more than \$120.7 million annually.

#### F. Civil Justice Reform

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This final rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

#### G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The report required to verify compliance with the phase-in adopted in this final rule is considered a new "collection of information" as that term is defined by OMB in 5 CFR part 1320.

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB. Comments must be received on or before July 18, 2005.

*Title:* 49 CFR 545—Federal Motor Vehicle Theft Prevention Standard Phase-In Reporting Requirements.

*OMB Control Number:* None.

*Form Number:* None.

*Affected Public:* Vehicle manufacturers.

*Requested Expiration Date of Approval:* Three years from approval date.

*Abstract:* In response to petitions for reconsideration of an April 6, 2004 final rule (69 FR 17960), NHTSA is amending the final rule to phase-in the effective date of new parts marking requirements over a two-year period. To ensure compliance with this phase-in, NHTSA will be requesting approval from OMB to require the submission of a single report within 60 days of August 31, 2007 indicating what vehicle lines were marked effective September 1, 2006.

NHTSA estimates that not more than 21 vehicle manufacturers will be affected by these reporting requirements. None of the affected manufacturers are small businesses because manufacturers producing fewer than 5,000 vehicles per year are excluded from parts marking requirements. NHTSA estimates that the vehicle manufacturers will incur a total annual reporting and cost burden of 42 hours (2 hours × 21 manufacturers) and \$630 to \$840.

*For Further Information Contact:* Mary Versailles, Office of International Policy, Fuel Economy and Consumer Programs, (Telephone: 202-366-2057) (Fax: 202-493-2290). 400 7th Street, SW., Room 5320, Washington, DC 20590.

<sup>31</sup> See Docket No. 2002-12231-35.



*H. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

*I. National Technology Transfer and Advancement Act*

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113, 15 U.S.C. 272), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.”

We are unaware of any applicable technical standards related to parts marking.

*K. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*L. Executive Order 13045 (Protection of Children)*

Executive Order 13045, “Protection of Children from Environmental Health and Safety Risks” (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. This rule is not subject to E.O. 13045 because it is not “economically significant” as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

**List of Subjects in 49 CFR Parts 541, 543, and 545**

Administrative practice and procedure, Crime, Labeling, Motor

vehicles, Reporting and recordkeeping requirements.

The amendments to Sections 541.3, 543.3, and 543.5, which were published at 69 FR 17960, April 6, 2004, as amended by 69 FR 31412, June 22, 2004, are hereby withdrawn.

■ In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

**VII. Regulatory Text****PART 541—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD**

■ 1. The authority citation for part 541 continues to read as follows:

**Authority:** 49 U.S.C. 322, 33101, 33102, 33103, 33104, 33105; delegation of authority at 49 CFR 1.50.

■ 2. Section 541.3 is revised to read as follows:

**§ 541.3 Application.**

(a) Except as provided in paragraph (b) and (c) of this section, this standard applies to the following:

(1) Passenger motor vehicle parts identified in § 541.5(a) that are present in:

- (i) Passenger cars; and
- (ii) Multipurpose passenger vehicles with a gross vehicle weight rating of 6,000 pounds or less; and
- (iii) Light-duty trucks with a gross vehicle weight rating of 6,000 pounds or less, that NHTSA has determined to be high theft in accordance with 49 CFR 542.1; and

(iv) Light duty trucks with a gross vehicle weight rating of 6,000 pounds or less, that NHTSA has determined to be subject to the requirements of this section in accordance with 49 CFR 542.2.

(2) Replacement passenger motor vehicle parts identified in § 541.5(a) for vehicles listed in paragraphs (1)(i) to (iv) of this section.

(b) *Exclusions.* This standard does not apply to the following:

(1) Passenger motor vehicle parts identified in § 541.5(a) that are present in vehicles manufactured by a motor vehicle manufacturer that manufactures fewer than 5,000 vehicles for sale in the United States each year.

(2) Passenger motor vehicle parts identified in § 541.5(a) that are present in a line with an annual production of not more than 3,500 vehicles.

(3) Passenger motor vehicle parts identified in § 541.5(a) that are present in light-duty trucks with a gross vehicle weight rating of 6,000 pounds or less, that NHTSA has determined to be subject to the requirements of this

section in accordance with 49 CFR 542.2, if the vehicle line with which these light-duty trucks share majority of major interchangeable parts is exempt from parts marking requirements pursuant to part 543.

(c) For vehicles listed in subparagraphs (1)(i) to (iv) of this section that are (1) not subject to the requirements of this standard until September 1, 2006, and (2) manufactured between September 1, 2006 and August 31, 2007; a manufacturer needs to meet the requirements of this part only for lines representing at least 50% of a manufacturer's total production of these vehicles.

**PART 543—[AMENDED]**

■ 3. The authority citation for part 543 continues to read as follows:

**Authority:** 49 U.S.C. 322, 33101, 33102, 33103, 33104, 33105; delegation of authority at 49 CFR 1.50.

■ 4. Section 543.3 is amended to read as follows:

**§ 543.3 Application.**

This part applies to manufacturers of vehicles subject to the requirements of part 541 of this chapter, and to any interested person who seeks to have NHTSA terminate an exemption.

■ 5. Section 543.5(a) is amended to read as follows:

**§ 543.5 Petition: General requirements.**

(a) For each model year, a manufacturer may petition NHTSA for an exemption of one car line from the requirements of part 541 of this chapter. However, for car lines not subject to the requirements of part 541 of this chapter until September 1, 2006, a manufacturer may not petition NHTSA for an exemption for model years before model year 2006.

\* \* \* \* \*

■ 6. Part 545 is added to read as follows:

**PART 545—FEDERAL MOTOR VEHICLE THEFT PREVENTION STANDARD PHASE-IN AND SMALL-VOLUME LINE REPORTING REQUIREMENTS**

**Authority:** 49 U.S.C. 322, 33101, 33102, 33103, 33104, 33105; delegation of authority at 49 CFR 1.50.

Sec.

- 545.1 Scope
- 545.2 Purpose
- 545.3 Applicability
- 545.4 Response to inquiries
- 545.5 Definitions
- 545.6 Reporting requirements for vehicles listed in § 541(a)(1)

- 545.7 Reporting requirements for vehicles listed in § 541(b)(2)  
 545.8 Records  
 545.9 Petition to extend period to file report

#### § 545.1 Scope.

This part establishes requirements for manufacturers of motor vehicles to respond to NHTSA inquiries, to submit reports, and to maintain records related to the reports, concerning the number of vehicles that meet the requirements of 49 CFR part 541, and the number of vehicles that are excluded from the requirements of 49 CFR part 541 pursuant to 49 CFR 541(b)(2).

#### § 545.2 Purpose.

The purpose of these requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of 49 CFR 541.5.

#### § 545.3 Applicability.

This subpart applies to manufacturers of motor vehicles.

#### § 545.4 Response to inquiries.

At any time prior to August 31, 2007, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with the requirements of 49 CFR part 541. The manufacturers designation of a vehicle as a certified vehicle is irrevocable.

At any time prior to August 31, 2007, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that are excluded from the requirements of 49 CFR part 541 pursuant to 49 CFR 541(b)(2).

#### § 545.5 Definitions.

*Production year* means the 12-month period between September 1 of 2006 and August 31, 2007, inclusive.

*Small-volume line* means a line with an annual production of not more than 3,500 vehicles.

#### § 545.6 Reporting requirements for vehicles listed in § 541(a)(1).

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2007, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with 49 CFR part 541 for vehicles listed in § 541(a)(1) that were manufactured between September 1, 2006 and August 31, 2007. Each report must—

- (1) Identify the manufacturer;
- (2) State the full name, title, and address of the official responsible for preparing the report;
- (3) Identify the production year being reported on;
- (4) Contain a statement regarding whether or not the manufacturer complied with the requirements of 49 CFR part 541 for the period covered by the report, and the basis for that statement;
- (5) Provide the information specified in paragraph (b) of this section;
- (6) Be written in the English language; and
- (7) Be submitted to: Administrator, National Highway Traffic Safety Administration, Room, 400 7th Street, SW., Washington, DC 20590.

(b) *Report content—(1) Basis for Statement of Compliance.* Each manufacturer shall provide the number of motor vehicles listed in § 541(a)(1) that were manufactured between September 1, 2006 and August 31, 2007 (excluding those motor vehicles that were subject to the requirements of 49 CFR part 541 before September 1, 2006).

(2) *Production.* Each manufacturer shall provide (1) the number of motor vehicles manufactured between September 1, 2006 and August 31, 2007 (excluding those motor vehicles that were subject to the requirements of 49 CFR part 541 before September 1, 2006), that meet the requirements of 49 CFR 541.5; and (2) the number of motor vehicles manufactured between September 1, 2006 and August 31, 2007 (excluding those motor vehicles that were subject to the requirements of 49 CFR part 541 before September 1, 2006), that are exempt from 49 CFR part 541 pursuant to 49 CFR part 543.

(3) *Statement regarding compliance.* Each manufacturer must provide a statement regarding whether or not the manufacturer complied with 49 CFR 541.5 requirements as applicable to the period covered by the report, and the basis for that statement.

#### § 545.7 Reporting requirements for vehicles listed in § 541(b)(2).

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 2007, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning small-volume lines that were manufactured between September 1, 2006 and August 31, 2007. Each report must—

- (1) Identify the manufacturer;
- (2) State the full name, title, and address of the official responsible for preparing the report;
- (3) Identify the production year being reported on;

(4) Provide the information specified in paragraph (b) of this section;

(5) Be written in the English language; and

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, Room, 400 7th Street, SW., Washington, DC 20590.

(b) *Report content.* Within 60 days after the end of the production year ending August 31, 2007, each manufacturer shall provide: (1) The name of each small-volume line the manufacturer produces; (2) the number of motor vehicles in each small-volume line the manufacturer produced.

#### § 545.8 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 545.6(b)(2) and § 545.7(b)(2) until December 31, 2008.

#### § 545.9 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 545.5(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

Issued on May 9, 2005.

Jeffrey W. Runge,  
Administrator.

[FR Doc. 05-9708 Filed 5-18-05; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No.; 040830250-5109-04; I.D. 081304C]

RIN 0648-AS27

### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and