

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA-2007-0037; Notice 2]

RIN 2127-AK10

Schedule of Fees Authorized by 49 U.S.C. 30141 Offer of Cash Deposits or Obligations of the United States in Lieu of Sureties on DOT Conformance Bonds

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

SUMMARY: This document amends NHTSA's regulations that prescribe fees authorized by 49 U.S.C. Sec. 30141 for various functions performed by the agency with respect to the importation of motor vehicles that are not originally manufactured to conform to all applicable Federal motor vehicle safety and bumper standards. An importer must file with U.S. Customs and Border Protection (CBP) a Department of Transportation (DOT) conformance bond at the time that a nonconforming motor vehicle is offered for importation into the United States, or in lieu of such a bond, the importer may post cash deposits or obligations of the United States to ensure that the vehicle will be brought into conformance with all applicable standards within 120 days from the date of importation, or will be exported from, or abandoned to, the United States. To avoid the costs of a DOT conformance bond, some importers have attempted to post cash deposits, which would relieve the importers of the bonding costs, but cause the agency to expend considerable resources. The amendments adopted today establish a fee of \$459.00 that will permit the government to recover all the direct and indirect costs incurred by the agency in processing cash deposits or obligations of the United States that are furnished in lieu of a DOT conformance bond.

DATES: *Effective date:* The effective date for this final rule is October 1, 2008.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received by NHTSA not later than August 25, 2008.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice numbers set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

In addition, a copy of the petition for reconsideration must be submitted to the docket number cited in the heading above by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting information.

- *Mail Addressed to:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except for Federal holidays.

- *Fax:* 202-493-2251.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202-366-3151). For legal issues: Michael Goode, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202-366-5238).

SUPPLEMENTARY INFORMATION:**I. Introduction**

As described in the notice of proposed rulemaking (NPRM), subject to certain exceptions, 49 U.S.C. 30112(a) prohibits any person from importing into the United States a motor vehicle manufactured on or after the date that an applicable Federal motor vehicle safety standard (FMVSS) takes effect unless the vehicle complies with the standard and is so certified by its manufacturer. 72 FR 65532 (November 21, 2007). One of the exceptions to this prohibition is found in 49 U.S.C. 30141. That section permits an importer that is registered with NHTSA (a "registered importer") to import a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, provided NHTSA has decided that the vehicle is eligible for importation. Under the criteria that are specified in section 30141 for these decisions, a motor vehicle is not eligible for importation unless, among other things, it is capable of being altered to comply with all applicable FMVSS. See 49 U.S.C. 30141(a)(1)(A)(iv) and (B).

II. Requirements for Bonding

Once NHTSA decides that a motor vehicle is eligible for importation, a vehicle of the same make, model, and model year can be imported by a

registered importer (RI) or by a person who has executed a contract with an RI to bring the vehicle into compliance with all applicable FMVSS. For vehicles that are imported in this fashion, a DOT conformance bond (Form HS-474), in an amount equivalent to 150 percent of the declared value of the vehicle, must be furnished to CBP at the time of importation to ensure that the necessary modifications are completed within 120 days from the date of entry or, if conformance is not achieved, for the vehicle to be delivered to the Secretary of Homeland Security for export at no cost to the United States, or for the vehicle to be abandoned to the United States. See 49 CFR 591.6(c). The DOT conformance bond must be underwritten by a surety that possesses a certificate of authority to underwrite Federal bonds. See 49 CFR 591.8(c), referencing a list of certificated sureties at 54 FR 27800, June 30, 1989.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (hereinafter referred to as "cash deposits") in an amount equal to the amount of the bond. See 49 CFR 591.10(a).

As stated in the NPRM, in recent years some RIs have encountered difficulty in obtaining DOT conformance bonds underwritten by certificated sureties. To achieve the entry of the nonconforming vehicles they have sought to import, these RIs have had to resort to furnishing NHTSA with cash deposits in lieu of sureties on a DOT conformance bond. Other RIs have attempted to post cash deposits to avoid the cost of procuring a DOT conformance bond. The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs have caused the agency to consume a considerable amount of staff time and material resources.

III. Fees Authorized by 49 U.S.C. 30141

As detailed in the NPRM, NHTSA is authorized under 49 U.S.C. 30141(a)(3) to establish an annual fee requiring RIs to pay for the costs of carrying out the RI program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that RIs provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment.

Because NHTSA's acceptance of the cash deposits is a necessary predicate to the release of the vehicle into the

commerce of the United States, NHTSA has concluded that the expense incurred by the agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A).

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. Sec. 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs to receive, process, handle, and disburse cash deposits. By performing these tasks, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. Sec. 9701. Courts have long recognized that Federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. See, e.g., *Seafarers International Union of North America v. U.S. Coast Guard*, 81 F.3d 179, 183 (D.C. Cir. 1996) (finding the Coast Guard authorized to charge reasonable fees for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association v. E.P.A.*, 20 F.3d 1177, 1180 (D.C. Cir. 1994) (finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc. v. F.C.C.*, 554 F.2d 1094, 1101 (D.C. Cir. 1976) (finding the F.C.C. authorized to impose fees for issuing certificates of compliance to cable television operators). In view of the language and judicial construction of 31 U.S.C. 9701, NHTSA is relying on this provision as an independent source of authority for the fee to cover the agency's cost of processing cash deposits.

IV. Fee for Processing Cash Deposits

Although the fees described above have permitted NHTSA to recover the costs it incurs in administering certain aspects of the RI program, other services that NHTSA provides to importers of nonconforming vehicles have gone unreimbursed. One such service is the receipt, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on DOT conformance bonds. The amendments adopted in this final rule will permit the agency to collect a fee to recover its costs in providing these services.

V. Fee Computation

As noted in the NPRM, NHTSA computes the fees that it collects under

the authority of 49 U.S.C. 30141 on the basis of all direct and indirect costs incurred by the agency in performing the function for which the fee is charged. In the **Federal Register** notice proposing the original schedule of fees that was adopted in Part 594, the agency observed that this approach was consistent with the manner in which other agencies have computed user fees under the Independent Offices Appropriation Act, 31 U.S.C. 9701, and the Consolidated Omnibus Budget Reconciliation Act, Public Law 99–272. See 54 FR 17792, 17793 (April 25, 1989). NHTSA specified in the 1989 NPRM proposing rules for the RI program that “the fees imposed by Part 594 would include the agency's best direct and indirect cost estimates of the man-hours involved in each activity, on both the staff and supervisory levels, the costs of computer and word processor usage, costs attributable to travel, salary, and benefits, and maintenance of work space,” as appropriate for each fee. See 54 FR 17795 (April 25, 1989).

Consistent with this approach, the agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond. In the NPRM, the agency proposed a fee of \$598.00 to recover the expenses the government incurs in the performance of these functions. In computing this proposed fee, the agency estimated that it would take 60 minutes of a government employee's time to deliver the funds provided by importers and RIs to a bank for deposit in the agency's account and an additional 60 minutes to withdraw those funds. This estimate was based on the need for the funds to be deposited in a non-interest bearing commercial account for which the agency would not be charged any transactional fees. The bank in which the agency had established such an account was in downtown Washington, DC, some distance from the DOT Headquarters Building, requiring transit time for the deposit and withdrawal to be made.

Following publication of the NPRM, the agency was able to open a non-interest bearing commercial account for which it will not be charged any transactional fees at a bank in close proximity to the new DOT Headquarters building in the Southeast Federal Center. Given the location of this bank, the agency estimates that it will take 15 minutes of an employee's time to bring the importer's cash deposit to the bank, wait there for the transaction to be completed, and return to the office and

an additional 15 minutes to go to the bank, wait for a cashier's check payable to the importer to be drawn, and return to the office once the agency receives satisfactory evidence that all necessary conformance modifications have been performed on the vehicle for which the cash deposit was made. As a result, the total amount of staff time needed to accomplish these tasks has been reduced from 2 hours to 30 minutes. Calculating the charge for this time at the rate of \$92.64 per hour, this will result in a reduction of \$138.96 from the \$598.00 fee originally proposed.

Accounting for this difference, NHTSA is adopting a fee of \$459.00 to recover the costs it incurs for each vehicle imported during FY 2009, for which the importer or RI submits a cash deposit in lieu of a DOT conformance bond. This fee will have to be tendered with each cash deposit submitted to the agency in lieu of sureties on a DOT conformance bond. The factors that the agency has taken into account in establishing the fee, including time expended by agency personnel, hourly rates for their services, and other direct and indirect costs, are detailed in a chart included in Appendix A of this notice.

VI. Response to Comment

The NPRM solicited comments from interested members of the public. One comment was submitted in response to the NPRM. The substance of this comment, which was submitted by an RI, and the agency response to each point that it raised, are set forth below.

A. General Observations

The comment, in general, disputed whether the agency had accurately set forth in the analysis included in the NPRM the direct and indirect costs of processing cash deposits. The commenter expressed the opinion that some of the costs identified by the agency should be reduced or eliminated, especially in circumstances where importers already understand the obligations associated with importing a nonconforming motor vehicle, have previously submitted cash deposits in lieu of sureties on a DOT conformance bond, and have entered into formal agreements with the agency relating to those cash deposits in the past.

In the NPRM, the agency stated that it considered its direct and indirect costs relating to administering cash deposits for the purposes of calculating the proposed fee. As further stated in the NPRM, the agency's direct costs included the estimated cost of contractor and professional staff time and direct costs including computer

equipment and maintenance costs, telephone toll charges, and postage. To present the best available information, the agency included in the NPRM a detailed itemization of each step in the process for administering cash deposits, including the time spent by agency staff on each step and the cost associated with each step.

We are aware that more or less staff time may actually be spent on processing a cash deposit in an individual circumstance, and that this could be influenced by the experience level of the importer. To be reasonable, the agency based its cost estimates on the average time its staff spent time accomplishing each step of the process and the direct and indirect costs associated with each step.

More specific observations raised in the comment, and the agency's responses are set forth below.

B. Importer Obligations

The commenter stated that the agency should not charge for time that it expends in discussing with importers their obligations pertaining to cash deposits. The commenter also asked whether the agency would charge an importer for this time even if the importer should ultimately decide not to provide a cash deposit.

We believe that importers must clearly understand their obligations relating to the submission of cash deposits before those importers enter into formal agreements with the agency. While agency personnel may expend more time explaining those obligations to a first time importer than to one who has previously submitted cash deposits, we believe that the average time shown in the analysis is reasonable. Naturally, an importer could only be expected to pay the fee for the processing of cash deposits if the importer actually submits a cash deposit to the agency. In circumstances where the importer discusses with the agency the prospect of making a cash deposit, but ultimately elects not to submit one, there would be no basis for assessing a fee and the agency would not seek to collect one. Nevertheless, in circumstances where the importer decides to go ahead and make a cash deposit, the time expended by the agency in discussing the preliminaries with the importer is part of the transaction and is fairly compensable.

C. Toll Charges

The commenter observed that the agency could email the formal agreement to the importer at no charge rather than having to incur toll charges by transmitting the agreement by

facsimile. By doing so, the commenter contended that the agency could reduce the fee associated with this step in the process.

In its analysis of the costs incurred by the agency for administering cash deposits, the agency identified three long-distance toll calls totaling \$5.75 to reimburse the government for its expenses in transmitting the agreement by facsimile to the importer for signature and later notifying CBP and the importer by letter that the importation of the vehicle may proceed. While the commenter is correct that the agreement could be emailed to the importer, the agency incurs computer time costs, and any difference in the costs associated with either method of transmitting the agreement is *de minimis*.

D. Formal Agreement

The commenter noted that NHTSA has already developed the language incorporated into the agreement and that the importer is only required to fill in blank spaces with identifying information on itself and the nonconforming vehicle that it seeks to enter. The commenter further noted that after the importer completes and signs the agreement, it must be returned to the agency for signature by an official authorized to sign on the agency's behalf. In light of these formalities, the commenter observes that the agency should not charge the importer for the actions it takes at this step in the process.

In its analysis, the agency estimated that it would take 10 minutes to prepare the formal agreement for transmittal to the importer. This total includes staff time expended to locate and retrieve the agreement from a computer hard drive, to review the document and make any changes to the agreement that may be required to accommodate the importer's unique circumstances, to print out a hard copy of the document, and to otherwise prepare the document for transmittal to the importer. Because agency resources are expended at this step in the process for the benefit of an individual importer, there is clear justification for the government to be reimbursed for those expenses. As noted in this analysis, the agency will not be charging importers for the time it originally expended to develop the agreement in the format now being used.

E. Receipt and Transmittal of Cash Deposits

The commenter asked why the agency is charging for receiving in the mail and transmitting to responsible agency staff,

the cash deposit and formal agreement sent to the agency by an importer.

As discussed above, the agency provided an itemization of its direct and indirect costs associated with each step of the process of administering cash deposits. The agency attributed 10 minutes of contractor time to processing mail containing the importer's cash deposit and delivering the cash deposit to agency staff. The agency attributed an additional 5 minutes of contractor time to receiving mail containing the formal agreement executed by the importer and delivering the signed agreement to agency staff. The difference in processing time is attributable to additional controls associated with the handling of cash and cash equivalents. Because the contractor time expended on these two occasions is a direct cost incurred by the agency in administering cash deposits, the agency is fully justified in obtaining reimbursement for this expense.

F. Approval of Formal Agreement

The commenter questioned whether it in fact takes six government employees 70 minutes to prepare and approve the agreement.

As reflected in the first table in Appendix A to this notice, one government employee spends an average of 20 minutes preparing a memo to transmit the formal agreement up the chain of command and three managers spend an average of no more than 10 minutes each to review and forward the agreement for the signature of the NHTSA manager who is authorized by regulation to enter such agreements on the agency's behalf. Four agency employees are involved in this process and the total average time for all of these steps is 50 minutes. Because this is another direct cost incurred by the agency in processing cash deposits, the agency is fully justified in obtaining reimbursement for this cost.

G. Importer Approval Letter

The commenter questioned why the agency would use its resources to create and mail a letter notifying the importer that the agency representative has signed the formal agreement and that the agency has authorized the entry of the importer's vehicle. The importer stated that after both parties sign the formal agreement, the agency notifies CBP by letter that the importer's vehicle may be imported. The commenter stated that in lieu of creating a separate letter to the importer, the agency could send to the importer a courtesy copy of the letter it sends to CBP and eliminate the agency's cost to create the importer's letter.

The agency believes that when an importer enters into an agreement with, and sends a cash deposit to the government, a proper practice is for the agency to provide a written acknowledgment that the agreement is in place and that the agency has deposited the importer's cash deposit into the non-interest bearing commercial bank account the agency established for holding these funds. The letter provides the importer with a written record that its funds are in the government's hands. The agency would be remiss in its responsibility as the custodian of those funds if it were not to provide the importer with this acknowledgment. This is another expense that the government is fully justified to collect.

H. Disbursement of Cash Deposits

The commenter questioned why the agency attributed 60 minutes of staff time to sending back to the importer a check in the amount of the cash deposit.

As part of the analysis for the fee proposed in the NPRM, the agency estimated that it would take one hour of the NHTSA finance manager's time to travel to the bank, be issued a check drawn on the agency's account, and return to DOT headquarters. The agency stated in the NPRM that these tasks must be accomplished in person at the agency's designated bank by the NHTSA official authorized to withdraw funds from the agency's bank account. As explained in section V of this notice under the heading "Fee Computation," the agency has now opened a non-interest bearing commercial account for which it will not be charged

transactional fees at a bank that is close to the DOT Headquarters Building at the Southeast Federal Center in Washington, DC. This will reduce from one hour to 15 minutes the time needed to deliver the importer's cash deposit to the bank, and reduce from one hour to 15 minutes the time needed to withdraw that deposit once the agency receives satisfactory evidence that all needed conformance modifications have been completed on the vehicle for which the cash deposit was made. On account of this reduction in staff time needed to process a cash deposit, the agency will be charging \$459.00 for that processing, as opposed to the \$598.00 it originally proposed.

No other issues were raised in the one comment submitted in response to the NPRM. As is evident from the above discussion, the agency has found no basis in the issues that were raised in the comment to make any other changes in the rule as originally proposed.

VII. Statutory Basis for the Final Rule and Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to "review and make appropriate adjustments at least every 2 years in the amounts of the fees" relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to "establish the fees for each fiscal year before the beginning of that year." Fiscal Year 2009 begins on October 1, 2008. In the NPRM, we proposed to make this rule effective October 1, 2008, and did not receive any comments on this issue.

Accordingly, the effective date of this final rule is October 1, 2008.

VIII. Petitions for Reconsideration

Petitions for reconsideration of this final rule must be received by NHTSA not later than the date specified in the "Dates: Petitions for reconsideration:" heading at the beginning of this notice. Petitions received after that date will be considered petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. Chapter 301. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. The statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitive petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effective date of the final rule.

IX. Appendix A

The following tables provide an itemization of the time expended, hourly rates, and direct and indirect costs associated with NHTSA's receipt, handling, processing, and disbursement of cash deposits submitted to the agency in lieu of sureties on DOT conformance bonds:

RECEIPT, PROCESSING, AND HANDLING OF CASH DEPOSITS [CASH]

Step of process	Staff *	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Cash received and delivered	C	10	\$50.50	\$8.42	\$51.77	\$8.63
Agreement obligations discussed with importer	E	10	89.88	14.98	92.64	15.44
Prepare formal agreement	E	10	89.88	14.98	92.64	15.44
Agreement faxed for importer's signature				(¹)		(¹)
Signed agreement received and delivered	C	5	50.50	4.21	51.77	4.31
Prepare agreement approval memo	E	20	89.88	29.96	92.64	30.88
Agreement review and signature	E	10	98.52	16.42	101.61	16.94
	E	10	98.52	16.42	101.61	16.94
	E	10	98.52	16.42	101.61	16.94
Prepare CBP letter approving vehicle entry	E	10	89.88	14.98	92.64	15.44
Fax CBP letter				(¹)		(¹)
Prepare importer letter approving vehicle entry	E	10	89.88	14.98	92.64	15.44
Transmit letter to importer by fax				(¹)		(¹)
Create database record	C	5	50.50	4.21	51.77	4.31
Prepare and deliver memo/cash to finance	E	10	89.88	14.98	92.64	15.44
Deposit cash in bank	E	15	89.88	22.47	92.64	23.16
Subtotal				193.43		199.31

* Staff Notes: (C) is contractor and (E) is employee.

¹ Toll charge.

HANDLING AND DISBURSEMENT OF CASH DEPOSITS [CASH]

Step of process	Staff *	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Importer notifies NHTSA that vehicle conformance obligations are met	E	10	\$89.88	\$14.98	\$92.64	\$15.44
Prepare memo requesting check to importer	E	10	89.88	14.98	92.64	15.44
Withdraw funds from bank by check	E	15	89.88	22.47	92.64	23.16
Deliver check	E	5	89.88	7.49	92.64	7.72
Notify NHTSA Finance Director	E	5	89.88	7.49	92.64	7.72
Prepare letter with check enclosure	E	10	89.88	14.98	92.64	15.44
Mail letter and check to importer				(¹)		(¹)
Review monthly bank statements	E	5	89.88	7.49	92.64	7.72
Subtotal				89.88		92.64

* Staff Notes: (C) is contractor and (E) is employee.

¹ Postage.

OTHER DIRECT COSTS

Direct costs	Time mins.	FY 07 rate	FY 07 cost	FY 08 rate	FY 08 cost
Computer and Computer Maintenance	85	\$1.86/hr	\$158.10	\$1.86/hr	\$158.10
Postage		3.00	3.00	3.00	3.00
Toll Calls (3)		1.92	5.75	1.92	5.75
Subtotal			166.85		166.85

Subtotals	FY 07 cost	FY 08 cost
Subtotal	\$193.43	\$199.31
Subtotal	89.88	92.64
Subtotal	166.85	166.85
Total	450.16	458.80

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT 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 a "significant regulatory 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 governments 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 rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. This rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Based on the level of the fees and the volume of affected vehicles, NHTSA has concluded that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. Because NHTSA's acceptance of the cash deposits is a necessary predicate to the release of the vehicle into the commerce of the United States, NHTSA has concluded that the expense incurred by the agency (the subject of this rulemaking) to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 3014(a)(3)(A).

This action does not involve any substantial public interest or controversy. It has no substantial effect upon State and local governments and imposes no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBFEFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or a final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." See 13 CFR § 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBFEFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the amendment it adopts will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendment will primarily

affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act. Of the 67 such entities that are currently licensed with NHTSA, only a few have furnished the agency with cash deposits in lieu of sureties on DOT conformance bonds. Despite the fact that they qualify as small businesses, the agency has no reason to believe that these companies will be unable to pay the adopted fee. Moreover, consistent with prevailing industry practices, the fee should be passed through to the ultimate purchasers of any vehicle for which a cash deposit in lieu of sureties is given to the agency. The cost to owners or purchasers of these vehicles may be expected to increase to the extent necessary to reimburse the RI for the fee payable to the agency for the cost of processing a cash deposit.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." Executive Order 13132 defines the term "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The amendment adopted in this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. That is because this final rule applies to importers of motor vehicles and registered importers, and not to State or local governments. Thus, the

requirements of Section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through RIs would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," the agency has considered whether the amendment adopted in this final rule will have any retroactive effect. NHTSA concludes that the amendment will not have any retroactive effect. Judicial review of this final 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.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule does not require the expenditure of resources beyond \$100 million annually, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 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 collection of information resulting from the RI program, including 49 CFR Part 594, has been approved by OMB and assigned OMB Control No. 2127-0002, "Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards." The expiration date is 11/30/2010. The clearance covers 63,818 respondents, and is for 42,413 hours. Today's final rule only establishes a fee for a collection of information that has already been approved by OMB, and does not affect the scope of the approved collection.

H. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk that will have a disproportionate effect on children. It therefore is not subject to the Executive Order.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113 (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there

are no voluntary consensus standards applicable to this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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).

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 that appears

in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

■ In consideration of the foregoing, part 594, Schedule of Fees Authorized by 49 U.S.C. 30141, in Title 49 of the Code of Federal Regulations is amended as follows:

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

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

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Section 594.9 is amended by:

■ a. Revising the section heading;

■ b. Adding paragraph (d); and

■ c. Adding paragraph (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(d) Each importer must pay a fee based upon the direct and indirect costs the agency incurs for receipt, processing, handling, and disbursement of cash deposits or obligations of the United States in lieu of sureties on bonds that the importer submits as authorized by § 591.10 of this chapter in lieu of a conformance bond required under § 591.6(c) of this chapter.

(e) The fee for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond, is \$459.00.

Issued on: June 25, 2008.

Nicole R. Nason,

Administrator.

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