

the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Administrator acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FRA in its guarantee.

(c) The Administrator may guarantee an Applicant's obligation to any lender provided such lender can establish to the satisfaction of the Administrator that it has the legal authority and sufficient expertise and financial strength to operate a successful lending program. Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect the loans.

(d) The lender may sell all of the guaranteed portion of the loan on the secondary market, provided the loan is not in default, or retain the entire loan.

(e) When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the loan guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the loan guarantee and the provisions of this part. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

#### **§ 260.55 Lenders' functions and responsibilities.**

Lenders have the primary responsibility for the successful delivery of the program consistent with the policies and procedures outlined in this part. All lenders obtaining or requesting a loan guarantee from the Administrator are responsible for:

(a) *Loan processing.* Lender shall be responsible for all aspects of loan processing, including:

(1) Processing applications for the loan to be guaranteed;

(2) Developing and maintaining adequately documented loan files;

(3) Recommending only loan proposals that are eligible and financially feasible;

(4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;

(5) Supervising construction, where appropriate;

(6) Distributing loan funds;

(7) Servicing guaranteed loans in a prudent manner, including liquidation if necessary; and

(8) Obtaining the Administrator's approval or concurrence as required in the loan guarantee documentation;

(b) *Credit evaluation.* Lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures;

(c) *Environmental responsibilities.* Lender has a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lender must alert the Administrator to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lender must assist borrowers as necessary to comply with the environmental requirements outlined in this part. Additionally, lender will assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems;

(d) *Loan closing.* The lender will conduct or arrange for loan closings; and

(e) *Fees and Charges.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other Applicants for the same type of loan in the ordinary course of business.

#### **§ 260.57 Lender's loan servicing.**

(a) The lender is responsible for servicing the entire loan and for taking all servicing actions that are prudent. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the loan documents, obtaining and analyzing financial statements, verification of tax payments, and insurance premiums, and maintaining liens on collateral.

(b) The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually.

(c) At the Administrator's request, the lender will periodically meet with the Administrator to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan documents are being enforced.

(d) The lender must obtain and forward to the Administrator the Borrower's annual financial statements within 120 days after the end of the Borrower's fiscal year and the due date of other reports as required by the loan documents. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the Borrower.

(e) Neither the lender nor the holder shall alter, nor approve any amendments of, any loan instrument without the prior written approval of the Administrator.

Issued in Washington, D.C. on May 13, 1999.

**Donald M. Itzkoff,**

*Acting Administrator.*

[FR Doc. 99-12542 Filed 5-19-99; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Parts 567 and 568**

**[Docket No. NHTSA-99-5673]**

**RIN 2127-AE27**

#### **Vehicles Built in Two or More Stages**

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

**ACTION:** Notice of intent to form a negotiated rulemaking advisory committee.

**SUMMARY:** NHTSA proposes to establish a Negotiated Rulemaking Committee to develop recommended amendments to the existing NHTSA regulations governing the certification of vehicles built in two or more stages (49 CFR Part 567, 568), so that certification responsibilities can be more equitably assigned among the various participants in the multi-stage vehicle manufacturing process. The Committee would develop its recommendations through a negotiation process. The Committee would consist of persons who represent the interests affected by the proposed rule, such as first-stage, intermediate and final-stage manufacturers of motor vehicles, equipment manufacturers, vehicle converters, trade associations that represent various manufacturing groups, as well as consumers. The purpose of this document is to invite interested parties to submit comments on the issues to be discussed and the

interests and organizations to be considered for representation on the Committee.

**DATES:** You should submit your comments or applications for membership or nominations for membership on the negotiated rulemaking committee early enough to ensure that Docket Management receives them not later than June 21, 1999.

**ADDRESSES:** You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590.

You may call the Docket at 202-366-9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Charles Hott, Office of Crashworthiness Standards, at 202-366-4920.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202-366-2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Regulatory Negotiation**

NHTSA intends to use the negotiated rulemaking procedure in accordance with the Negotiated Rulemaking Act of 1990, Pub. L. 101-648 (NRA) (5 U.S.C. 561, *et seq.*). The agency will form an advisory committee consisting of representatives of the affected interests and the agency for the purpose of reaching consensus on the proposed rule. The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the NRA, the head of an agency must consider whether:

- There is a need for the rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the interests identified; and (2) are willing to negotiate in good faith to reach a consensus on the rulemaking;
- There is a reasonable likelihood that a committee will reach a consensus on the rulemaking within a fixed period of time;
- The negotiated rulemaking process will not unreasonably delay the

development and issuance of a final rule;

- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

- The agency, to the maximum extent possible consistent with its legal obligations, will use the consensus of the committee with respect to developing the rule proposed by the agency for public notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in the rule. If consensus is reached, the agency undertakes to use the consensus as the basis of the proposed rule, to the extent consistent with its legal obligations. The negotiated rulemaking process does not otherwise affect the agency's obligations under FACA, the Administrative Procedure Act and other statutes, including all economic, paperwork and other regulatory analyses.

NHTSA invites comments on the appropriateness of regulatory negotiation for a proposed rule on vehicles built in two or more stages.

### **II. Subject and Scope of the Rule**

#### **A. Need for the Rule**

The certification problems of multistage manufacturers have troubled NHTSA almost since the agency's creation. An early set of NHTSA regulations on this subject was overturned almost twenty-five years ago. *Rex Chainbelt v. Volpe*, 486 F.2d 757 (7th Circuit 1973; *appeal after remand*, *Rex Chainbelt v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975). To resolve that lawsuit, the agency amended 49 CFR Part 568 to define "chassis cabs" and establish special certification requirements for chassis cab manufacturers, which are usually large companies such as General Motors Corporation and Ford Motor Company. However, the amended regulations do not impose corresponding certification responsibilities on manufacturers of incomplete vehicles other than "chassis cabs."

A further amendment to 49 CFR Part 567 has become necessary as a result of another judicial decision that invalidated NHTSA's 1989 amendment of Federal Motor Vehicle Safety Standard (FMVSS) No. 204 (Steering Column Displacement) with respect to light trucks and vans with gross vehicle weight ratings of up to 10,000 pounds

that are manufactured in two or more stages. *National Truck and Equipment Association v. NHTSA*, 919 F.2d 1148 (6th Cir. 1990). A majority of the court concluded that the challenged rule was not practicable for final stage manufacturers that cannot "pass through" the certification of the incomplete vehicle manufacturer. The court cited NHTSA's acknowledgment in the regulatory preamble that most final stage manufacturers are not capable of performing dynamic testing or in-house engineering analysis, as well as the fact that "pass through" certification is not available under existing regulations unless the incomplete vehicle is a chassis cab.

In response to the *NTEA* decision, on December 3, 1991, NHTSA published a notice of proposed rulemaking (NPRM) (56 FR 61392) to extend the certification requirements that currently apply only to manufacturers of chassis-cabs to all incomplete vehicle manufacturers, and to permit all final stage manufacturers to "pass through" the certification of the incomplete vehicle under certain circumstances. That NPRM engendered considerable controversy and virtually no support. In the comments, there was a clear division in positions among the various segments of the multistage vehicle industry.

On November 17, 1995, NHTSA published a Notice announcing that it would hold a public meeting to seek information from final stage and intermediate manufacturers of vehicle built in two or more stages, manufacturers of incomplete vehicles, and the public on certification of vehicles that are manufactured in stages and suggestions for action with respect to NHTSA's regulations and Federal Motor Vehicle Safety Standards that govern the manufacture of vehicles in stages (60 FR 57694). In the notice, the agency stated its belief that multistage vehicle certification is an area in which negotiated rulemaking may be beneficial, and invited comments on the advisability of conducting negotiated rulemaking in this area.

The public meeting was held on December 12, 1995. Companies, trade associations, and individuals made presentations at the meeting and/or submitted written comments for the record. Many of the comments endorsed using regulatory negotiation for this rulemaking; none opposed the process. Based on this response, NHTSA has determined that establishing an ad hoc advisory committee on this subject is in the public interest.

### B. Issues and Questions To Be Resolved

NHTSA has tentatively identified major issues that should be considered in this negotiated rulemaking. Listed below are subjects which NHTSA presently believes the negotiation process should address:

- Equitable and effective allocation of certification responsibility;
- Enforcement issues relevant to each stage of manufacturing;
- Costs to regulated parties of testing or certification;
- Effects on safety;
- Effects on small businesses;
- Enforceability against later stage manufacturers of standards that include dynamic testing;
- Feasibility and cost effectiveness of alternate methods (e.g., testing, computer modeling, or other as-yet-unspecified methods) to ensure compliance of completed vehicles with requirements of applicable FMVSS's;
- Mechanisms for incorporating alternate methods of ensuring compliance into these regulations;
- Mechanisms for sharing costs of testing;
- Requirements tailored to the capabilities and circumstances of each class of vehicles;
- Extended leadtime for implementation of FMVSSs for final-stage manufacturers;
- Recall and warranty responsibilities of manufacturers;
- Pass-through certification as a compliance option;
- Relative administrative/compliance burdens of certification on first stage and later stage manufacturers; and
- Scope of compliance "envelopes" prescribed by first stage manufacturers and ability of intermediate and final stage manufacturers to stay within those envelopes.<sup>1</sup>

<sup>1</sup> Compliance envelopes represent the level of certification attested to by incomplete vehicle manufacturers of chassis cabs. There are three compliance statements which the first level manufacturer can make with regard to an incomplete vehicle. The manufacturer may affix to the vehicle a statement that:

- (1) the vehicle, when completed, will conform to the safety standard if no alterations are made in the identified components of the incomplete vehicle;
- (2) there are specific conditions of final manufacture under which the manufacturer specifies that the completed vehicle will conform to the safety standard; or
- (3) conformity with the safety standard is not substantially affected by the design of the incomplete vehicle and no representation is made as to conformity with that safety standard.

Any safety standards for which the first level manufacturer has not certified the vehicle must be certified by the final stage manufacturer, and all other work must be performed within the terms of the incomplete vehicle manufacturer's certification to allow that certification to remain valid.

NHTSA invites comment on whether additional issues should be addressed by the negotiating committee.

### III. Procedures and Guidelines

The following proposed procedures and guidelines will apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

#### A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a federal advisory committee. It is the purpose of this Notice to indicate NHTSA's intent to create a federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

#### B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist Committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

#### C. Representation

The Committee will include representatives from NHTSA and from the organizations and interests listed below. Each representative may also name an alternate, who will be encouraged to attend all Committee meetings and will serve in place of the representative if necessary. The NHTSA representative is the Designated Agency Official (DAO) as required by FACA (5 U.S.C. 10) and will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. The DAO will be authorized to fully represent the agency in the

discussions and negotiations of the Committee.

NHTSA intends to invite the following organizations and interests to participate in the negotiated rulemaking by identifying an individual to serve as a member of the Committee. The organizations listed have been contacted by the facilitator and have indicated a willingness to serve on the Committee. NHTSA believes that, in addition to the organizations listed, there may be other interests that should be included on the Committee.

The organizations and interests that should participate in the negotiated rulemaking are:

- Representatives of large, incomplete vehicle manufacturers (e.g., Ford Motor Company, General Motors Corporation);
- Representatives of specialty domestic manufacturers (e.g., Navistar, Freightliner);
- Representatives of component manufacturers (e.g., Atwood Mobile Products, Delphi Chassis Systems, Bornemann Products, Inc.);
- National Truck and Equipment Association;
- Recreational Vehicle Industry Association;
- School Bus Manufacturers Technical Council;
- Mark III;
- National Automobile Dealers Association;
- Veridian Engineering (formerly Calspan);
- Association of Fleet Operators;
- Paralyzed Veterans of America;
- National Mobility Equipment Dealers Association;
- Representatives from Consumer Groups.

NHTSA will consider applications for representation from organizations or interests not appropriately represented by those listed above. Please identify such organizations and interests if they exist and explain why they should have separate representation on the Committee.

#### D. Applications for Membership

Each application for membership or nomination to the Committee should include: (i) the name of the applicant or nominee and the interest(s) such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith. Please be aware that each individual or organization affected by a final rule need not have its own representative on the Committee and

that the size of the Committee is limited by statute. Rather, each interest must be adequately represented, and the Committee should be fairly balanced.

#### *E. Good Faith*

Participants must be committed to negotiate in good faith. Therefore, it is important that senior officials within each interest group be designated to represent that interest. No individual will be required to "bind" the interests he or she represents, but the individual should be able to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

#### *F. Notice of Establishment*

After evaluating comments received as a result of this Notice, NHTSA will issue a notice announcing the establishment and composition of the Committee, unless it determines that such action is inappropriate in light of comments received. After the Committee is chartered, the negotiations will begin.

#### *G. Administrative Support and Meetings*

Staff support will be provided by NHTSA, and meetings will take place in Washington, DC.

#### *H. Consensus*

The purpose of the Committee is to develop consensus on an outline for a proposed rule. "Consensus" means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition.

#### *I. Notice of Proposed Rulemaking*

The Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking. This report may also include suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small businesses. To this end, NHTSA expects the Committee to address cost/benefit, paperwork reduction and regulatory flexibility requirements. If consensus cannot be achieved for some issues, the report will identify the areas of agreement and disagreement, and explanations for any disagreement. NHTSA will use the Committee report to draft a notice of proposed rulemaking, regulatory evaluation, and other analyses, as appropriate.

NHTSA will accept the Committee proposal, keeping in mind its statutory

authority and other legal requirements. In the event that the agency must reject an issue within the proposal, the preamble to a NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the agency decision to reject the Committee recommendations.

#### *J. Committee Procedures*

Under the general guidance of the facilitator, and subject to legal requirements, the Committee will establish detailed procedures for the meetings. The meetings of the Committee will be open to the public. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

#### *K. Record of Meetings*

In accordance with FACA requirements, the facilitator will prepare minutes of all Committee meetings. These minutes will be placed in the public docket for this rulemaking.

#### *L. Tentative Schedule*

NHTSA plans to convene the first of five monthly meetings approximately fifteen days after publication of a notice of establishment of the advisory committee. The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last two to three days each. The negotiation process will proceed according to a schedule of specific dates that the Committee devises at its first meeting. NHTSA will publish a single notice of the schedule of all future meetings in the **Federal Register**, but will amend the notice through subsequent **Federal Register** notices if it becomes necessary to do so.

The first meeting will commence with an orientation and regulatory negotiation training program conducted by the facilitator.

### **IV. Comments**

#### *How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

#### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

#### *Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

#### *How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the

Department of Transportation (<http://dms.dot.gov/>).

2. On that page, click on "search."

3. On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the

Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: May 14, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99-12629 Filed 5-19-99; 8:45 am]

BILLING CODE 4910-59-P