DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 592

[Docket No. NHTSA–2013–0041; Notice 2]

RIN 2127–AL43

Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

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

ACTION: Final rule.

SUMMARY: This document amends the regulations on registered importers (''RIs'') of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards. The amendment requires RIs to certify to NHTSA that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The amendment restores text that was inadvertently omitted when the regulations were last revised.

DATES: The amendment made by this final rule will become effective on August 5, 2014. Petitions for reconsideration must be received by NHTSA no later than September 19, 2014.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received no later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered as 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. Unless otherwise specified in the final rule, 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 repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202) 366–5288. For legal issues, you may contact Nicholas Englund, Office of Chief Counsel, NHTSA (202) 366–5263.

SUPPLEMENTARY INFORMATION:

Introduction

This rule was preceded by a notice of proposed rulemaking (NPRM) published on December 5, 2013 (78 FR 73169). As explained in the NPRM, NHTSA published a final rule on August 25, 2011 (76 FR 53072) amending parts 567, 591, 592, and 593 of title 49 to address issues related to the RI program. In amending the regulations, the agency inadvertently deleted from 49 CFR 592.6(d)(1) text under paragraphs (i) and (ii) that requires the RI to certify to NHTSA, as appropriate, that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541) or that the vehicle complies with those requirements as manufactured, or as modified prior to importation.

Comments

One comment was submitted in response to the NPRM, from Ms. Karen Jackson. Ms. Jackson expressed support for the proposed rule, ''as long as the amended compliance includes the same standards required of manufacturers in the United States.'' Ms. Jackson cautioned, however, that the amended regulations ''must not be price fixed to support another manufacturer or holder.'' In response, the agency notes that the amendments adopted by this final rule apply to RIs, which are businesses located in the United States. The amendments require RIs to certify to NHTSA that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The agency has established no fees for an RI to make this certification and there is no price fixing associated with the certification. Because all RIs will be required to make the certifications to NHTSA, no competitive advantage can be gained by any individual RI in making this certification.

Background and Amendments

The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562, ''the 1988 Act''), which became effective on January 31, 1990, limited the importation of vehicles that did not comply with the Federal Motor Vehicle Safety Standards (FMVSS) to those capable of being modified to comply. To enhance oversight, the 1988 Act required that necessary modifications be performed by RIs. RIs are business entities that have demonstrated to NHTSA that they are technically and financially capable of importing nonconforming motor vehicles and of performing the necessary modifications on those vehicles so that they conform to all applicable FMVSS. See generally, 49 U.S.C. 30141–30147. As discussed in the January 14, 2011, proposed rulemaking that preceded the final rule (76 FR 2631), NHTSA proposed certain amendments to the RI regulations to protect the integrity of the RI program and to clarify RI requirements. In the final rule that was published on August 25, 2011 (76 FR 53072), CFR 592.6(d)(1) was amended by adding language requiring that RIs certify to NHTSA that they destroyed or exported nonconforming motor vehicle equipment that was removed from imported vehicles during conformance modifications. The remaining text of the paragraph remained unchanged and read:

The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

In the regulatory text of the final rule, NHTSA inadvertently failed to properly mark subparagraphs (i) and (ii), resulting in the deletion of those paragraphs. In this rulemaking, the agency is restoring the language that was originally in subparagraphs (i) and (ii).

This amendment does not change the meaning or application of the regulations, as explained in the preamble of the final rule at 76 FR 53072.

Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, 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.

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This action was reviewed by the Office of Management and Budget under E.O. 12866. This rulemaking is not significant. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be 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 (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or 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.'' (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 SBREFA 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 adopted amendments 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 amendments will primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies will be unable to certify that either: (i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or (ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.'' 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 implications, 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.

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. 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 registered importers 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 this final rule will have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In the NPRM, NHTSA requested public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking. No comments were received regarding this matter.

G. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA. As noted above, this final rule is not significant under E.O. 12866. NHTSA also believes that this final rule would not have any effect on the supply, distribution or use of energy.

H. 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 will not require the expenditure of resources beyond $100 million annually, this rulemaking action is not subject to the requirements of Sections 202 and 205 of the UMRA.

I. 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. Part 592 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,'' approved through January 31, 2014. A request for OMB to extend its approval of this information collection is currently pending. See notice at 78 FR 72749 (December 2, 2013). This final rule will not affect the burden hours associated with Clearance No. 2127–0002 because we are only reinstating regulatory text that was inadvertently omitted when the regulations were last amended. This final rule does not impose new collection of information requirements or otherwise affect the scope of the program.

J. 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.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (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, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule reinstates regulatory text that was inadvertently omitted when the regulations at issue were last amended and it creates no substantive changes to the vehicle import program or any action that would require the use of voluntary consensus standards. For these reasons, Section 12(d) of the NTTAA does not apply.

L. 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 592

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR part 592 as follows:

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 592 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 592.6 to add paragraphs (d)(1)(i) and (ii) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(d) * * *

(1) * * *

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

* * * * *

Issued On: July 22, 2014.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2014–17844 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–P