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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 543

Docket No. NHTSA-2014-0007

RIN 2127-AL08

Exemption from Vehicle Theft Prevention Standard

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In this rulemaking action, NHTSA proposes to amend its procedures for obtaining an exemption from the vehicle theft prevention standard for vehicles equipped with immobilizers. NHTSA proposes to simplify the exemption procedure for immobilizer-equipped vehicles by adding performance criteria for immobilizers. The adoption of the proposed performance criteria for immobilizers would have the effect of bringing the U.S. anti-theft requirements more into line with those of Canada. This harmonization of U.S. and Canadian requirements is being undertaken pursuant to ongoing bilateral regulatory cooperation efforts.

DATES: Comments to this proposal must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on amendments to an information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to the information collection requirements to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER]. Comments to OMB are most useful if submitted within 30 days of publication.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building, Ground Floor, Room W12-140, Washington, D.C. 20590.
- Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building, Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202-366-9826.

Comments regarding the proposed information collection should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention: NHTSA Desk Officer.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information

section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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 (65 FR 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Hisham Mohamed, Office of Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590 (Telephone: (202) 366-0098) (Fax: (202) 366-7002).

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE, West Building, Washington, DC 20590 (Telephone: (202) 366-2992) (Fax: (202) 366-3820).

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
- II. Background
- III. Effectiveness of Immobilizers in Reducing or Deterring Theft
- IV. U.S. Canada Regulatory Cooperation Council

- V. Canadian Motor Vehicle Safety Standard No. 114
- VI. Agency Proposal
- VII. Costs, Benefits, and the Proposed Compliance Date
- VIII. Rulemaking Analyses and Notices
- IX. Public Participation

I. Executive Summary

This rulemaking action proposes to amend 49 C.F.R. Part 543, Exemption from Vehicle Theft Prevention Standard, by adding performance criteria for immobilizers. The agency has granted many exemptions from the theft prevention standard to vehicle lines on the basis that they were equipped with immobilizers. In support of petitions for these exemptions, manufacturers have provided a substantial amount of data seeking to demonstrate the effectiveness of immobilizers in reducing motor vehicle theft.

The proposed criteria, which roughly correlate with the types of qualities for which petitioners have been submitting testing and technical design details under existing procedures, closely follow the immobilizer performance requirements in the anti-theft standard of Canada. For those performance requirements, the Canadian standard also sets forth tests that manufacturers of vehicles to be sold in Canada must certify to Canadian authorities that they have conducted.

Adopting the proposed performance criteria would simplify the exemption process for manufacturers who installed immobilizers meeting those criteria. Currently, in their petitions for exemption, vehicle manufacturers describe the testing that they have conducted on the immobilizer device and aspects of design of the immobilizer that address the areas of performance which the agency has determined are important to gauge the effectiveness of the

immobilizer in reducing and deterring motor vehicle theft. Adding performance criteria for immobilizers as another means of qualifying for an exemption from the theft prevention standard will allow manufacturers that are installing immobilizers as standard equipment for a line of motor vehicles in compliance with Canadian theft prevention standards to more easily gain an exemption. This proposal would reduce the amount of material that manufacturers would need to submit to obtain an exemption because manufacturers would only be required to indicate that the immobilizer met the proposed performance criteria, was certified to the Canadian standard and was durable and reliable in addition to the statutorily required information to be eligible for an exemption.

The adoption of the proposed performance criteria for immobilizers would have the effect of bringing the U.S. anti-theft requirements more into line with those of Canada. This harmonization of U.S. and Canadian requirements is being undertaken pursuant to ongoing bilateral regulatory cooperation efforts.

We are proposing to retain the current criteria for gaining an exemption from the vehicle theft prevention standard. Therefore, manufacturers would still be able to petition the agency to install other anti-theft devices as standard equipment in a vehicle line to obtain an exemption from the theft prevention standard. While NHTSA has granted many petitions for exemption from the theft prevention standard for vehicle lines equipped with an immobilizer type anti-theft device, we note that a manufacturer is not required to install an immobilizer in order to gain an exemption. We note also that this proposal would not increase the number of exemptions from the theft prevention standard available to a manufacturer.

II. Background

The Motor Vehicle Theft Law Enforcement Act (the Theft Act), 49 U.S.C. § 33101 et seq., directs NHTSA¹ to establish theft prevention standards for light duty trucks and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 6,000 pounds (lb) or less and passenger cars. The Theft Act also allows NHTSA to exempt one vehicle line per model year per manufacturer from the theft prevention standard if the vehicle is equipped with an anti-theft device that the agency “decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the [theft prevention] standard.” 49 U.S.C. § 33106(b). The statute states that in order to obtain an exemption, manufacturers must file a petition that describes the anti-theft device in detail, states the reason that the manufacturer believes that the device will be effective in reducing or deterring theft, and contains additional information that NHTSA determines is necessary to decide whether the anti-theft device “is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the [theft prevention] standard.” Id.

Pursuant to the Theft Act, NHTSA issued 49 C.F.R. Part 541, Federal Motor Vehicle Theft Prevention Standard, which requires manufacturers of vehicles identified by the agency as likely high-theft car lines to inscribe or affix vehicle identification numbers (VINs) or symbols on certain components of new vehicles and replacement parts. The agency refers to this requirement as the parts marking requirement. Part 541 requires the following major parts to be marked: the engine, the transmission, the hood, the right and left front fenders, the right and left front doors, the right and left rear door (four-door models), the sliding or cargo doors, the decklid, tailgate or hatchback (whichever is present), the front and rear bumpers, and the right

¹ The Secretary of Transportation’s responsibilities under the Theft Act have been delegated to NHTSA pursuant to 49 C.F.R. § 1.95.

and left quarter panels. The right and left side assemblies must be marked on MPVs and the cargo box must be marked on light duty trucks.

NHTSA promulgated Part 543 to establish the process for submitting petitions for exemption from the parts marking requirements in the theft prevention standard. A manufacturer may petition the agency for an exemption from the parts marking requirements for one vehicle line per model year if the manufacturer installs an anti-theft device as standard equipment on the entire line. In order to be eligible for an exemption, Part 543 requires manufacturers to submit a petition explaining how the anti-theft device will promote activation, attract attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, prevent defeat or circumvention of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device. Based on the materials in the petition, NHTSA decides whether to grant the petition in whole or in part or to deny it.

Under existing Part 543, manufacturers choose how they wish to demonstrate to the agency that the anti-theft device they are installing in a vehicle line meets the factors listed in § 543.6. Manufacturers provide differing levels of detail in their exemption petitions. Manufacturers typically provide engineering diagrams of the immobilizer device, a description of how the device functions, and testing to show that the device is durable and reliable in their petitions for exemption. Manufacturers also describe how the design of the immobilizer satisfies the factors listed in § 543.6.

III. Effectiveness of Immobilizers in Reducing or Deterring Theft

More than 700,000 motor vehicle thefts took place in the U.S. in 2011, causing a loss of mobility and economic hardship to those affected.² The Federal Bureau of Investigation's (FBI) 2011 Uniform Crime Report (UCR) reveals that, in the U.S., vehicle theft remains the nation's number one property crime.³ The estimated value of motor vehicles stolen in 2011 was \$4.3 billion averaging \$6,089 per stolen vehicle.⁴ Although the estimated number of motor vehicle thefts declined 3.3 percent from 2010, 35.0 percent from 2007, and 42.6 percent from 2002, vehicle theft remains an ongoing problem in the U.S.

An immobilizer is a type of anti-theft device based on microchip and transponder technology and combined with engine and fuel immobilizer components. When activated, an immobilizer device disables the vehicle's electrical or fuel systems at several points and prevents the vehicle from starting unless the correct code is received by the transponder.

NHTSA is aware of several sources of information demonstrating the effectiveness of immobilizer devices in reducing motor vehicle theft. In the 1980s, General Motors Corporation (GM) used an early generation of microchip devices, which later developed into the rolling code transponder device, which is currently installed in GM as well as many other vehicles.

According to the Highway Loss Data Institute (HLDI), immobilizer devices are up to 50 percent effective in reducing vehicle theft.⁵ The September 1997 Theft Loss Bulletin from the HLDI reported an overall theft decrease of approximately 50 percent for both the Ford Mustang and Taurus lines upon installation of an immobilizer device. Ford Motor Company claimed that its MY 1997 Mustang vehicle line (with an immobilizer) led to a 70 percent reduction in theft

² <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/property-crime/motor-vehicle-theft>. (as seen on September 28, 2012)

³ The UCR – data compiled from monthly law enforcement reports or individual crime incident records transmitted directly to the FBI or to centralized agencies that then report to the FBI.

⁴ Nearly 73 percent of all motor vehicles reported stolen in 2010 were passenger cars. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/property-crime/motor-vehicle-theft>.

⁵ See http://www.iihs.org/news/2000/hldi_news_071900.pdf.

compared to its MY 1995 Mustang (without an immobilizer).⁶ Chrysler Corporation informed the agency that the inclusion of an immobilizer device as standard equipment on the MY 1999 Jeep Grand Cherokee resulted in a 52 percent net average reduction in vehicle thefts.⁷

Mitsubishi Motors Corporation informed the agency that the theft rate for its MY 2000 Eclipse vehicle line (with an immobilizer device) was almost 42 percent lower than that of its MY 1999 Eclipse (without a immobilizer device).⁸ Mazda Motor Corporation reported that a comparison of theft loss data showed an average theft reduction of approximately 50 percent after an immobilizer device was installed as standard equipment in a vehicle line.⁹ In general, the agency has granted many petitions for exemptions for installation of immobilization-type devices. Manufacturers have provided the agency with a substantial amount of information attesting to the reduction of thefts for vehicle lines resulting from the installation of immobilization devices as standard equipment on those lines.

IV. U.S.-Canada Regulatory Cooperation Council

On February 4, 2011, the U.S. and the Canadian governments created a United States–Canada Regulatory Cooperation Council (RCC), composed of senior regulatory, trade and foreign affairs officials from both governments. In recognition of the two countries' \$1 trillion annual trade and investment relationship, the RCC is working together to promote economic growth, job creation and benefits to consumers and businesses through increased regulatory transparency and coordination.¹⁰

The RCC has stated that regulatory cooperation can spur economic growth in each country; fuel job creation; lower costs for consumers, producers, and governments; and

⁶ 77 FR 1974, Thursday, January 12, 2012

⁷ 76 FR 68262, Thursday, November 3, 2011

⁸ 77 FR 20486, Wednesday, April 4, 2012.

⁹ 76 FR 41558, Thursday, July 14, 2011

¹⁰ http://www.whitehouse.gov/sites/default/files/omb/oira/irc/us-canada_rcc_joint_action_plan.pdf

particularly help small and medium-sized businesses. The U.S. and Canada intend to eliminate unnecessary burdens on cross-border trade, reduce costs, foster cross-border investment and promote certainty for businesses and the public by coordinating, simplifying and ensuring the compatibility of regulations, where feasible.

The RCC has further stated that while the U.S. and Canadian regulatory systems are very similar in the objectives they seek to achieve, there is value in enhancing the mechanisms in place to foster cooperation in designing regulations or to ensure alignment in their implementation or enforcement. Unnecessary regulatory differences and duplicative actions hinder cross-border trade and investment and ultimately impose a cost on our citizens, businesses and economies. Given the integrated nature of the two countries' economies, greater alignment and better mutual reliance in regulatory approaches would lead to lower costs for consumers and businesses, create more efficient supply chains, increase trade and investment, generate new export opportunities and create jobs on both sides of the border.

On December 7, 2011, the RCC established an initial Joint Action Plan that identified 29 initiatives where the U.S. and Canada will seek greater alignment in their regulatory approaches. The Joint Action Plan highlights the areas and initiatives which were identified for initial focus. These areas include agriculture and food, transportation, health and personal care products and workplace chemicals, environment and cross-sectoral issues. One of the topics for regulatory cooperation identified in the transportation area is to pursue greater harmonization of existing motor vehicle standards. Theft prevention is one of the harmonization opportunities identified by the Motor Vehicles Working Group.

V. Canadian Motor Vehicle Safety Standard No. 114

In addition to the theft and rollaway prevention requirements included in the U.S. version of the standard, CMVSS No. 114 requires the installation of an immobilization system for all new passenger vehicles, MPVs and trucks certified to the standard with a gross vehicle weight rating (GVWR) of 4,536 kg or less with some exceptions. CMVSS No. 114 contains four different sets of requirements for immobilizers. The four sets of requirements are National Standard of Canada CAN/ULC-S338-98, Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization; United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS); UN/ECE Regulation No. 116 (ECE R116), Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use; and a set of requirements derived from the CAN/ULC 338-98 standard and ECE R97 developed by Transport Canada to increase manufacturer design flexibility. Vehicles certified to CMVSS No. 114 must be equipped with an immobilizer meeting one of these four sets of requirements. Used motor vehicles imported into Canada must also be equipped with immobilizers meeting CMVSS No. 114. This requirement makes it more difficult to import motor vehicles manufactured in the U.S. that are not equipped with an immobilizer meeting CMVSS No. 114 into Canada. In such cases, an immobilizer that complies with CMVSS No. 114 must be added to the vehicle before it can be imported into Canada.

CAN/ULC-S338-98 contains design specifications, activation and deactivation requirements, durability tests, and tests to assess the resistance to physical attack for immobilizers. ECE R97 and ECE R116 contain design specifications, activation and deactivation requirements, durability tests, and tests to assess the resistance to physical attack for

immobilizers similar to those contained in CAN/ULC-S338-98. The fourth set of requirements for immobilizers in CMVSS No. 114 contains design specifications, activation and deactivation requirements, and requirements testing the ability of the immobilizer to resist deactivation by physical attack derived from the other standards. The fourth set of requirements, however, does not include the environmental tests and durability requirements which are included in CAN/ULC-S338-98, ECE R97 and ECE R116.

In adopting the fourth set of performance requirements for immobilizers contained in CMVSS No. 114, Transport Canada stated that some of the environmental and durability requirements for immobilizers contained in CAN/ULC-S338-98, ECE R97, and ECE R116 were developed for aftermarket immobilizers and should not be applied to immobilizers that are installed as original equipment on a vehicle.¹¹ Transport Canada also stated that those three standards contained requirements specific to particular immobilizer designs, had the potential to restrict the design of immobilizers, and had the potential to prevent the introduction of new and emerging technologies such as keyless vehicle technologies, key-replacement technologies and remote starting systems. Transport Canada stated that for these reasons it established a set of performance requirements without the environmental and durability requirements contained in CAN/ULC-S338-98, ECE R97, and ECE R116.

VI. Agency Proposal

The agency is proposing to include performance criteria for immobilizers in Part 543 so that manufacturers may more easily apply for exemptions from the parts marking requirements for vehicles lines with immobilizers conforming to CMVSS No. 114. The agency is planning to add performance criteria to Part 543 to make our theft prevention standards more in line with

¹¹ See SOR/2007-246 November, 2007 “Regulations Amending the Motor Vehicle Safety Regulations (Theft Protection and Rollaway Prevention — Standard 114)” 2007-11-14 Canada Gazette Part II, Vol. 141, No. 23.

those of Canada. In order to be eligible for an exemption under this proposal manufacturers would be required to state that the immobilizer device they are installing in the vehicle line meets the proposed performance criteria, has been certified to the Canadian standard and is durable and reliable.

The agency believes that adding performance criteria from CMVSS No. 114 to Part 543 is the simplest way to make our anti-theft regulations more in line with that standard and to reduce the burden to manufacturers, who are already installing immobilizers in compliance with that standard, of applying for an exemption from the parts marking requirements. The agency could not add performance requirements for immobilizers as part of Federal Motor Vehicle Safety Standard (FMVSS) No. 114, Theft Protection and Rollaway Prevention, since doing so would require a determination that the additional requirements would be consistent with the National Traffic and Motor Vehicle Safety Act (Motor Vehicle Safety Act).¹² Further, the agency is unable to issue a theft prevention standard under the Theft Act to require the installation of immobilizers because that Act limits the agency's standard setting authority to issuing standards that require parts marking.¹³ Manufacturers are allowed to install immobilizers in lieu of parts marking, but under an exemption from the theft standard, not as a compliance alternative included in the theft standard.

Currently, NHTSA has not formally or informally adopted any technical performance criteria for anti-theft devices. While NHTSA has granted many petitions for exemption from the parts marking requirements for vehicle lines equipped with an immobilizer type anti-theft device, a manufacturer is not required to install an immobilizer in order to gain an exemption. The agency is planning to retain the current exemption process so that manufacturers would still be

¹² 49 U.S.C. 30101 et seq.

¹³ See 49 U.S.C. 33101(11) (defining "vehicle theft prevention standard" as a performance standard for identifying major vehicle parts by affixing numbers or symbols to those parts).

able to gain an exemption for installing anti-theft devices that do not conform to the proposed performance criteria for immobilizers. The number of exemptions available to manufacturers would not increase as a result of this proposal. Thus, manufacturers will continue to be eligible for an exemption from the parts marking requirements for only one vehicle line per model year.

The agency has tentatively decided to propose only the fourth set of performance criteria for immobilizers contained in CMVSS No. 114 for inclusion in Part 543. The agency is proposing to adopt only this one set of performance criteria because of the factors articulated by Transport Canada discussed above. Furthermore, the agency has tentatively concluded that adopting only this one set of performance criteria is the simplest way to harmonize anti-theft regulations between the U.S. and Canada. The agency does note that, should this proposal be made final, vehicles equipped with immobilizers meeting the performance criteria in CAN/ULC-S338-98, ECE R97, or ECE R116 would still be able to obtain an exemption from the theft prevention standard via a petition filed under the current exemption procedures. We seek comment on whether adding the performance criteria in CAN/ULC-S338-98, ECE R97 and ECE R116 to Part 543 in addition to the performance criteria proposed below would better accomplish the agency's goal of harmonizing the process for obtaining an exemption with the Canadian theft prevention standard. We also seek comment on the number of manufacturers that are complying with CMVSS No. 114 by installing immobilizers that conform to the requirements in CAN/ULC-S338-98, ECE R97 or ECE R116 in their vehicles.

The agency has tentatively concluded that immobilizers meeting the proposed performance criteria are likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements in Part 541. As stated above, the agency has granted numerous exemptions from the theft prevention standard for vehicle lines equipped with

immobilizers based on data submitted by manufacturers indicating that immobilizers were as effective in reducing and deterring motor vehicle theft as compliance with that standard. Several studies have also indicated that immobilizers designed to meet technical performance criteria are effective in reducing and deterring motor vehicle theft. Studies in Australia and Canada on the effectiveness of immobilization systems (which meet CAN/ULC-S338-98 or ECE R97 and ECE R116) have shown reduced incidence of theft compared to vehicles that were not equipped with immobilizers.¹⁴ For these reasons, the agency has concluded that establishing performance criteria for immobilizers as a means of getting an exemption from the theft prevention standard is consistent with 49 U.S.C. § 33106 of the Theft Act. That section requires the agency to determine that an anti-theft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements in Part 541 in order to grant an exemption from those requirements.

The proposed performance criteria for immobilizers include specifications for when the immobilizer should arm after the disarming device is removed from the vehicle. The performance criteria state that, when armed, the immobilizer should prevent the vehicle from moving more than three meters under its own power by inhibiting the operation of at least one of the vehicle's electronic control units (ECU). The performance criteria state that, when armed, the immobilizer should not disable the vehicle's brake system. During the disarming process, the immobilizer should send a code to the inhibited ECU to allow the vehicle to move under its own power. The immobilizer should be configured so that disrupting the device's normal operating voltage cannot disarm the immobilizer. The performance criteria state that the immobilizer must

¹⁴ See Principles for Compulsory Immobilizer Schemes, prepared for the National Motor Vehicle Theft Reduction Council by MM Starrs Pty Ltd., ISBN 1 876704 17 9, Melbourne, Australia, October 2002; Matthew J Miceli "A Report on Fatalities and Injuries as a Result of Stolen Motor Vehicles (1999-2001)," prepared for The National Committee to Reduce Auto Theft Project #6116 and Transport Canada, December 10, 2002.

have a minimum capacity for 50,000 code variants and shall not be capable of processing more than 5,000 codes within 24 hours unless the immobilizer uses rolling or encrypted codes. The performance criteria state that it shall not be possible to replace the immobilizer without the use of software. In order to satisfy the performance criteria, the immobilizer in a vehicle must be designed so that it is not possible to disarm it using common tools within five minutes.

In order to promote understanding of the new terms used in the regulatory text, the agency is also proposing definitions for “immobilizer” and “accessory mode.” We seek comment on these definitions.

The agency plans on ensuring that immobilizer devices which manufacturers are installing to obtain an exemption conform with the proposed performance criteria by requiring manufacturers to state that they have certified the immobilizer installed on the vehicle to CMVSS No. 114. Manufacturers must provide Transport Canada with evidence that the immobilizer complies with CMVSS No. 114, along with all other applicable Canadian Standards, prior to certifying the vehicle under the Canadian Motor Vehicle Safety Act.¹⁵ NHTSA believes that it can rely on the information that manufacturers have provided to Transport Canada regarding their certification to CMVSS No. 114 to ensure that immobilizers manufacturers install in order to obtain an exemption conform to the proposed performance criteria. Therefore, we are proposing to require manufacturers to submit the documentation provided to Transport Canada regarding their certification to CMVSS No. 114 to NHTSA as part of the petition. We do not believe that requiring this information as part of the petition would place a burden on manufacturers because they are already compiling this information to provide

¹⁵ Motor Vehicle Safety Act. R.S.C., ch. 16 § 5(1)(e) (1993) (Can.). The Canadian Motor Vehicle Safety Act requires a manufacturer to certify that its vehicles comply with all applicable Canadian Motor Vehicle Safety Standards before the vehicles can be sold in Canada.

to Transport Canada when certifying their vehicles under the Canadian Motor Vehicle Safety Act.

The proposed regulatory text does not include a requirement that manufacturers provide a detailed description of the immobilizer device as part of the petition because we believe that the documentation that manufacturers are providing to Transport Canada, and would be required to provide to NHTSA, describes the immobilizer device in sufficient detail for the agency to be able to determine whether the device satisfies the performance criteria.

The proposed performance criteria do not include specifications that address the durability and reliability of immobilizers because the agency is concerned about the impacts of such specifications on immobilizer design. Part 543 currently requires manufacturers to explain how the design of their immobilizer device ensures that it is durable and reliable in order to be eligible for an exemption.¹⁶ Because the agency believes that it is possible for the durability and reliability of an immobilizer to impact its effectiveness, we have tentatively decided to retain this criterion of eligibility as part of the proposed performance criteria. We have tentatively concluded that requiring manufacturers to submit a statement regarding the durability and reliability of the immobilizer is the best way to ensure that immobilizers are durable and reliable without impacting the ability of manufacturers to create new immobilizer systems. We believe manufacturers will submit statements similar to the ones they are currently submitting as part of their exemption applications to demonstrate that their immobilizers are durable and reliable.

We seek comment on our decision to require manufacturers to submit a statement on the durability and reliability of the device as part of an application for exemption from the theft prevention standard. We also seek comment on the impact that our adoption of the durability and environmental resistance performance criteria in CAN/ULC-S338-98, ECE R97 and ECE

¹⁶ 49 CFR 543.6(a)(3)(v).

R116 might have on the introduction of new and emerging immobilizer and ignition technologies.

The agency believes that the proposed performance criteria are consistent with the following anti-theft device attributes that are currently contained in Part 543:

- The specification in the proposed performance criteria that the immobilizer arm after the disarming device is removed from the vehicle will facilitate activation of the immobilizer by the driver and prevent unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle.¹⁷
- The specification in the proposed performance criteria that the immobilizer have certain code processing capabilities and be resistant to physical attack will ensure that the immobilizer is designed to prevent defeat or circumvention by persons entering the vehicle by means other than a key.¹⁸

The proposed performance criteria correspond to the aspects of performance of immobilizer devices that manufacturers now qualitatively describe in their exemption petitions. Manufacturers are currently demonstrating the effectiveness of immobilizers by describing the testing the immobilizer has been subjected to, how the immobilizer is activated, how the immobilizer interacts with the key to allow the vehicle to start and the encryption of electronic communications between the key and the immobilizer. These characteristics correspond to performance criteria in the proposal for how the immobilizer must arm, preventing the vehicle from moving under its own power, how the immobilizer must disarm to allow the driver to start the vehicle, the minimum number of code variants that the immobilizer is able to process, and

¹⁷ See 49 CFR 543.6(a)(3)(i), (iv)(stating that the application for exemption must include an explanation of how the anti-theft device facilitates activation by the driver and prevents unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle).

¹⁸ See 49 CFR 543.6(a)(3)(iii)(iv)(stating that the application for exemption must include an explanation of how the anti-theft device prevents defeat or circumvention of the device by an someone without the vehicle's key and prevents unauthorized persons who have entered the vehicle by means other than a key from operating the vehicle).

the immobilizer's resistance to manipulation and physical attack. The proposed performance criteria simplify the process for applying for an exemption because manufacturers would no longer need to describe how the immobilizer achieves these aspects of performance. Instead, manufacturers would only need to state that their immobilizer device conforms to the performance criteria, is certified to the Canadian standard and is durable and reliable.

In order to allow manufacturers to more easily apply for an exemption from the theft prevention standard and to reduce the burden to the agency in processing exemption petitions we have tentatively decided that we will notify manufacturers of decisions to grant or deny exemption petitions by notifying them of the agency's decision in writing. Under this proposal the agency would not publish notices of our decisions to grant or deny exemption petitions from the theft prevention standard based on the manufacturer having satisfied the performance criteria in the Federal Register. Should this proposal become final the agency would inform the public and law enforcement that a particular vehicle line has an exemption based on satisfaction of the performance criteria by updating the list of exempt vehicle lines in Appendix A-I to Part 541. We seek comment on our decision not to publish notices of our decisions to grant or deny exemption petitions from the theft prevention standard based on the manufacturer having satisfied the performance criteria in the Federal Register.

VII. Costs, Benefits, and the Proposed Compliance Date

Today's proposed rule would amend Part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114. Because the agency is retaining the current exemption process as a means of gaining an exemption from the theft prevention standard, the addition of performance criteria to Part 543 would result in no costs to manufacturers.

Manufacturers would not be required to make any changes to products in order to retain eligibility for an exemption.

The agency cannot quantify the benefits of this rulemaking. The agency does, however, expect some benefits to accrue from making the exemption process in Part 543 more closely harmonized with CMVSS No. 114. Adding the proposed performance criteria would allow manufacturers that are installing immobilizers as standard equipment for a line of motor vehicles in compliance with CMVSS No. 114 to more easily gain an exemption from the parts marking requirements. The agency believes this would reduce the cost to manufacturers of applying for an exemption from the parts marking requirements. Adding performance criteria to Part 543 would also result in a reduction in vehicle theft in cases for which the proposed rule improves the effectiveness of the anti-theft devices chosen by manufacturers.

If the proposed rule encourages more manufacturers to install immobilizers meeting CMVSS No. 114 on vehicles sold in the United States, it could result in cost saving to consumers seeking to import used vehicles into Canada. Importing used vehicles that already comply with CMVSS No. 114 into Canada saves consumers from having to pay to have an aftermarket immobilizer installed in the vehicle.

The agency proposes an effective date of 60 days after the date of issuance of the final rule, should one be issued, so that manufacturers would be eligible for an exemption for installing an immobilizer meeting the proposed performance criteria as soon as possible.

VIII. Regulatory Notices and Analyses

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." It is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures.

Today's proposed rule would amend Part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard.

The agency concludes that the impacts of the proposed changes would be so minimal that preparation of a full regulatory evaluation is not required. This proposal would not result in any costs to manufacturers because the current exemption process would be left in place. Manufacturers would not be required to make any changes to current vehicles to retain eligibility for an exemption. It is also possible that this proposal would result in a reduction in motor vehicle thefts if immobilizers meeting the proposed performance criteria are more effective than current designs.

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.

NHTSA is issuing this proposal pursuant to a regulatory cooperation agreement between the United States and Canada. This proposal would more closely harmonize vehicle theft regulations in the United States with those in Canada.

NHTSA requests public comment on whether there are any “regulatory approaches taken by foreign governments” concerning the subject matter of this rulemaking, beyond those already mentioned in this notice, which the agency should consider.

National Environmental Policy Act

We have reviewed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

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 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 the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of the proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposal would amend Part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard. This proposal would not significantly affect any entities because it would leave in place the current exemption process so that manufacturers would not need to make any changes to products to retain eligibility for an exemption. Accordingly, we do not anticipate that this proposal would have a significant economic impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings

before they may file suit in court. NHTSA has considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes 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 in any one year (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and 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.

This proposed rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually. The cost impact of this proposed rule is expected to be \$0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This proposal

would decrease the materials that a manufacturer would need to submit to the agency to obtain an exemption from the vehicle theft prevention standard in certain instances.

In compliance with the PRA, we announce that NHTSA is seeking comment on a revision of a currently approved collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 543, Petitions for Exemption from the Vehicle Theft Prevention Standard.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2127-0542

Form Number: The collection of this information uses no standard form.

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

Summary of the Collection of Information:

This collection consists of information that motor vehicle manufacturers must submit in support of an application for an exemption from the vehicle theft prevention standard.

Manufacturers wishing to apply for an exemption from the parts marking requirement because they have installed immobilizers meeting the proposed performance criteria would be required to submit a statement that the entire line of vehicles is equipped with an immobilizer, as standard equipment, that meets the performance criteria contained in that section, a statement that the immobilizer has been certified to the Canadian theft prevention standard, documentation provided to Transport Canada to demonstrate that the immobilizer was certified to the Canadian theft prevention standard, and a statement that the immobilizer device is durable and reliable.

The proposed rule would not change the information that manufacturers would need to submit if

seeking an exemption in accordance with the current process used for petitions seeking an exemption based on the installation of immobilizers.

Description of the Need for the Information and Use of the Information:

The information is needed to determine whether a vehicle line is eligible for an exemption from the vehicle theft prevention standard.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):

Currently, nineteen manufacturers have one or more car lines exempted. We expect, should this proposal be made final, that twelve manufacturers would apply for an exemption per year: ten under the current process and two under the proposed performance criteria.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

We estimate that the burden for applying for an exemption under this proposal would be 2300 hours. The burden for applying for an exemption under the current process is estimated to be 226 hours x 10 respondents = 2260 hours. The burden for apply for an exemption under the proposed performance criteria is estimated to be 20 hours x 2 respondents = 40 hours

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **FEDERAL REGISTER**.

The agency recognizes that the collection of information contained in today's final rule may be subject to revision in response to public comments.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any technical performance criteria for immobilizers issued by voluntary consensus standards bodies in the United States. National Standard of Canada CAN/ULC-S338-98, Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization is the only voluntary consensus standard of which the agency is aware that contains performance criteria for immobilizers. The performance criteria in the proposal are substantially similar to those contained in that standard. For the reasons discussed in this notice, the agency has tentatively determined that the simplest way to harmonize Part 543 with Canadian theft prevention regulations was to adopt only the performance criteria for immobilizers proposed below.

Executive Order 13211

Executive Order 13211¹⁹ 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.

This proposal would amend Part 543 to add performance criteria for immobilizers that are contained in CMVSS No. 114 to allow manufacturers who are installing immobilizers in compliance with that standard to more easily obtain an exemption from the theft prevention standard. Therefore, this proposed rule would not have any significant adverse energy effects. Accordingly, this proposed rulemaking action is not designated as a significant energy action.

Regulation Identifier Number (RIN)

¹⁹ 66 FR 28355 (May 18, 2001).

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.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language.

Application of the principles of plain language includes consideration of the following questions:

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

If you have any responses to these questions, please include them in your comments on this proposal.

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 organization, 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://www.dot.gov/privacy.html>

IX. Public Participation

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.²⁰ 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 your comments by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

²⁰ See 49 CFR § 553.21.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.²¹

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at [http:// www.whitehouse.gov/omb/fedreg/reproducible.html](http://www.whitehouse.gov/omb/fedreg/reproducible.html).

DOT's guidelines may be accessed at <http://dmses.dot.gov/submit/DataQualityGuidelines.pdf>.

How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and 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. 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.²²

²¹ Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

²² See 49 CFR § 512.

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider 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 materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under ADDRESSES. The Docket Management Facility is open between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

List of Subjects in 49 CFR Part 543

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

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Chapter V as set forth below.

PART 543—EXEMPTION FROM VEHICLE THEFT PREVENTION STANDARD

1. The authority citation for part 543 of title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 33101, 33102, 33103, 33104 and 33105; delegation of authority at 49 CFR 1.95.

2. Amend § 543.4 by adding, in alphabetical order, the following definitions of Accessory mode and Immobilizer in paragraph (b) to read as follows:

§ 543.4 Definitions.

* * * * *

(b) * * *

Accessory mode means the ignition switch setting in which certain electrical systems (such as the radio and power windows) can be operated without the operation of the vehicle's propulsion engine.

Immobilizer means a device that, when activated, is intended to prevent a motor vehicle from being powered by its own propulsion system.

* * * * *

3. Amend § 543.5 by:

a., Revising paragraphs (b)(2), (b)(6), and (b)(7)

b. Adding paragraphs (b)(8), and (b)(9) to read as follows:

§ 543.5 Petition: General requirements.

* * * * *

(b) * * *

(2) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

* * * * *

(6) Identify whether the exemption is sought under § 543.6 or § 543.7.

(7) If the exemption is sought under § 543.6, set forth in full the data, views, and arguments of the petitioner supporting the exemption, including the information specified in that section.

(8) If the exemption is sought under § 543.7, a statement that the entire line of vehicles is equipped with an immobilizer, as standard equipment, that meets the performance criteria contained in that section and has been certified to C.R.C, c. 1038.114, Theft Protection and Rollaway Prevention, documentation provided to Transport Canada to show the basis for certification to C.R.C, c. 1038.114, Theft Protection and Rollaway Prevention, a statement that the immobilizer device is durable and reliable, and reasons for the petitioner's belief that the immobilizer will be effective in reducing and deterring motor vehicle theft.

(9) Specify and segregate any part of the information or data submitted which the petitioner requests be withheld from public disclosure in accordance with part 512, Confidential Business Information, of this chapter.

* * * * *

4. Redesignate §§543.7 through 543.9 as §§543.8 through 543.10.

§§ 543.7 through 543.9 [Redesignated as §§ 543.8 through 543.10]

5. Add new section §543.7 to read as follows:

§ 543.7 Technical performance criteria for immobilizers.

(a) In order to be eligible for an exemption under this section, the entire vehicle line must be equipped with an immobilizer meeting the following criteria:

(1) Subject to paragraph (a)(2) of this section, an immobilization system shall arm automatically within a period of not more than 1 minute after the disarming device is removed

from the vehicle, if the vehicle remains in a mode of operation other than accessory mode or on throughout that period.

(2) If the disarming device is a keypad or biometric identifier, the immobilization system shall arm automatically within a period of not more than 1 minute after the motors used for the vehicle's propulsion are turned off, if the vehicle remains in a mode of operation other than accessory mode or on throughout that period.

(3) The immobilization system shall arm automatically not later than 2 minutes after the immobilization system is disarmed, unless:

- (i) Action is taken for starting one or more motors used for the vehicle's propulsion;
- (ii) Disarming requires an action to be taken on the engine start control or electric motor start control, the engine stop control or electric motor stop control, or the ignition switch; or
- (iii) Disarming occurs automatically by the presence of a disarming device and the device is inside the vehicle.

(4) If armed, the immobilization system shall prevent the vehicle from moving more than 3 meters (9.8 feet) under its own power by inhibiting the operation of at least one electronic control unit and shall not have any impact on the vehicle's brake system except that it may prevent regenerative braking and the release of the parking brake.

(5) During the disarming process, a code shall be sent to the inhibited electronic control unit in order to allow the vehicle to move under its own power.

(6) It shall not be possible to disarm the immobilization system by interrupting its normal operating voltage.

(7) When the normal starting procedure requires that the disarming device mechanically latch into a receptacle and the device is physically separate from the ignition switch key, one or

more motors used for the vehicle's propulsion shall start only after the device is removed from that receptacle.

(8)(i) The immobilization system shall have a minimum capacity of 50,000 code variants, shall not be disarmed by a code that can disarm all other immobilization systems of the same make and model; and

(ii) Subject to paragraph (a)(9), it shall not have the capacity to process more than 5,000 codes within 24 hours.

(9) If an immobilization system uses rolling or encrypted codes, it may conform to the following criteria instead of the criteria set out in paragraph (a)(8)(ii) of this section:

(i) The probability of obtaining the correct code within 24 hours shall not exceed 4 per cent; and

(ii) It shall not be possible to disarm the system by re-transmitting in any sequence the previous 5 codes generated by the system.

(10) The immobilization system shall be designed so that, when tested as installed in the vehicle neither the replacement of an original immobilization system component with a manufacturer's replacement component nor the addition of a manufacturer's component can be completed without the use of software; and it is not possible for the vehicle to move under its own power for at least 5 minutes after the beginning of the replacement or addition of a component referred to in this paragraph.

(11) The immobilization system's conformity to paragraph (a)(10) of this section shall be demonstrated by testing that is carried out without damaging the vehicle.

(12) Paragraph (a)(10) does not apply to the addition of a disarming device that requires the use of another disarming device that is validated by the immobilization system.

(13) The immobilization system shall be designed so that it can neither be bypassed nor rendered ineffective in a manner that would allow a vehicle to move under its own power, or be disarmed, using one or more of the tools and equipment listed in paragraph(a)(14);

(i) Within a period of less than 5 minutes, when tested as installed in the vehicle; or

(ii) Within a period of less than 2.5 minutes, when bench-tested outside the vehicle.

(14) During a test referred to in paragraph (a)(13) of this section, only the following tools or equipment may be used: scissors, wire strippers, wire cutters and electrical wires, a hammer, a slide hammer, a chisel, a punch, a wrench, a screwdriver, pliers, steel rods and spikes, a hacksaw, a battery operated drill, a battery operated angle grinder; and a battery operated jigsaw.

* * * * *

6. Amend redesignated § 543.8 by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 543.8 Processing an exemption petition.

* * * * *

(f) If the petition is sought under § 543.6, NHTSA publishes a notice of its decision to grant or deny an exemption petition in the FEDERAL REGISTER, and notifies the petitioner in writing of the agency's decision.

(g) If the petition is sought under § 543.7 NHTSA notifies the petitioner in writing of the agency's decision to grant or deny an exemption petition.

* * * * *

7. Redesignated § 543.9 is revised to read as follows

§ 543.9 Duration of exemption.

Each exemption under this part continues in effect unless it is modified or terminated under § 543.10, or the manufacturer ceases production of the exempted line.

* * * * *

Issued in Washington, DC on January 10, 2014 under authority delegated in 49 CFR part 1.95.

Christopher J. Bonanti
Associate Administrator
for Rulemaking

Billing Code: 4910-59-P

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