



**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 553**

**[NHTSA-2013-0042]**

**RIN 2127-AL32**

**Direct Final Rulemaking Procedures**

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

**ACTION:** Final Rule.

**SUMMARY:** NHTSA is establishing direct final rulemaking (DFR) procedures for use in adopting amendments to its regulations on which the agency expects it would receive no adverse public comment were it to publish them as proposals in the Federal Register. This limitation means that NHTSA will not use direct final rule procedures for amendments involving complex or controversial issues. When the agency does not expect adverse public comments on draft amendments, it will issue a direct final rule adopting the amendments and stating that they will become effective in a specified number of days after the date of publication of the rule in the Federal Register, unless NHTSA receives written adverse comment(s) or written notice of intent to submit adverse comment(s) by the specified effective date. Adoption of these new procedures will expedite the promulgation of routine and noncontroversial rules by reducing the time and resources necessary to develop, review, clear and publish separate proposed and final rules.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** Docket: To access the docket and read comments received, go to <http://www.regulations.gov> and search by Docket ID number NHTSA-2013-0042 at any time.

Privacy Act: Anyone is able to search the electronic form of all comments received in 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 the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19476) or you may visit <http://www.dot.gov/individuals/privacy/privacy-policy>.

**FOR FURTHER INFORMATION CONTACT:** Analiese Marchesseault, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590; Telephone: (202) 366-2992.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 26, 2013, NHTSA proposed to establish direct final rulemaking (DFR) procedures for use in adopting amendments to its regulations on which no adverse public comment is expected by the agency.<sup>1</sup> The procedures were modeled after DFR procedures established by the Office of the Secretary of Transportation (OST) on January 30, 2004 in order to expedite the process adopting non-controversial rules issued by that office.<sup>2</sup> The agency also considered the DFR procedures adopted by several operating administrations within DOT since 2004.<sup>3</sup>

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<sup>1</sup> 78 FR 18285 (Mar. 26, 2013).

<sup>2</sup> See 48 CFR 5.35.

<sup>3</sup> See 14 CFR 11.31 (Federal Aviation Administration); 49 CFR 106.40 (Pipeline and Hazardous Materials Safety Administration); 49 CFR 211.33 (Federal Railroad Administration); 49 CFR 389.39 (Federal Motor Carrier Safety Administration); 49 CFR 601.36 (Federal Transit Administration).

NHTSA proposed to use the DFR process for a rule when the agency anticipates that the rule, if proposed, would not generate adverse comment and the final rule would therefore likely be identical to the proposal. In those instances, the agency believed that providing notice and opportunity for comment would not be necessary. Notice and comment rulemaking procedures are not required under the Administrative Procedure Act (APA) (5 U.S.C. 553) when an agency finds, for good cause, that using them would be unnecessary. *See* 5 U.S.C. 553(b)(3)(B). NHTSA said that it believed this procedural option would expedite the issuance of non-controversial rules, and thereby save time and agency resources. NHTSA emphasized that it would not use direct final rule procedures for complex or controversial issues.

In this final rule, NHTSA adopts DFR procedures that are similar to the proposed ones, except that the agency made some changes in response to public comments received by the agency. NHTSA received 16 comments, some of which were substantive and prompted NHTSA to change its proposed DFR procedures. The comments and NHTSA's responses to them are discussed below.

## **II. Responses to Comments on the Notice of Proposed Rulemaking**

Seven of the 16 comments received by NHTSA contained substantive reactions, suggestions, and recommendations. They are summarized below, along with the agency's responses. The remaining nine comments were nonsubstantive and/or did not apply to anything in the proposal, and therefore are not discussed below.

### **A. When the Use of a DFR Would be Appropriate**

Commenters expressed different positions on the circumstances in which they believed that issuance of a DFR would be most appropriate. The Alliance of Automobile Manufacturers (the "Alliance") and the Motor & Equipment Manufacturers Association (MEMA) stated that the primary determining factor in deciding whether a DFR would be appropriate should be whether

the action would generate public interest, not whether the agency would expect adverse comment. The Alliance suggested the agency ask whether a rule would be routine, insignificant, and inconsequential before using the DFR process, and cited a D.C. Circuit case noting that an agency does not create good cause to dispense with notice and comment procedures through an assertion that comments would not be useful.<sup>4</sup> MEMA suggested the agency ask whether the action would be so minor that the agency would expect no comments at all.

NHTSA agrees with the Alliance that asking whether an action is likely to generate public interest is an appropriate first step in deciding whether to use the DFR process, and that a belief that comments would not be useful to the agency does not create good cause. We also agree with the Alliance that “routine, insignificant, and inconsequential actions” could be appropriate for a DFR. However, the agency also believes that some actions appropriate for a DFR could sometimes be consequential, like technical corrections that could generate positive interest and have considerable impact for those affected by a rule, as EMA suggested in its comments.<sup>5</sup> Some rules that could be viewed as “routine and insignificant,” in contrast, could also be more appropriate for a notice of proposed rulemaking (NPRM) if they happen to be likely to generate adverse comment.

With regard to the comment from MEMA, NHTSA is concerned that initiating a DFR process only when we anticipate no comments at all would be too narrow of an inquiry, and could severely and unhelpfully curtail the usefulness of having DFR procedures. If the agency was considering a rule that would have a positive impact on stakeholders, and expected only

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<sup>4</sup> See Docket No. NHTSA-2013-0042-0013, Alliance of Automobile Manufacturers Comments at 3, citing *Action on Smoking and Health v. Civil Aeronautics Board*, 713 F.2d 795 (D.C. Cir. 1983).

<sup>5</sup> Docket No. NHTSA-2013-0042-0012.

supportive comments, it would not seem to make sense to issue an NPRM rather than a DFR simply because there would be comments.

For the above reasons, NHTSA continues to believe that asking whether adverse comment is likely serves as the most accurate and objective barometer of whether an action appropriately falls under the “unnecessary” exception to the APA’s prior notice and comment requirement. The use of this barometer is also consistent with the DFR procedures adopted by other parts of the Department.

### **B. Examples of Actions for Which a DFR May Be Appropriate**

In the NPRM, the agency listed a number of examples of actions for which a DFR would likely be appropriate, and received various comments in response. We emphasize that the purpose of the action finalized today is not to draw parameters around which rulemaking activities are subject to notice and comment procedures under the APA, but simply to prescribe specific procedures for the agency to follow with regard to certain actions that are not subject to notice and comment procedures under the APA. In light of that, and also to ensure that the agency has considered all relevant comments, the following discussion groups comments by the DFR examples in the NPRM, and provides the agency’s response to each:

#### **Non-substantive amendments, such as clarifications or corrections, to an existing rule:**

The Alliance and MEMA stated that a DFR would not be appropriate for a rule clarifying an existing rule. Instead, both suggested that the agency use a NPRM or the existing response letter process used for requests for interpretation. NHTSA agrees that for major clarifications, a NPRM would best accommodate any potential public input. The agency also agrees that the

existing process of issuing letter responses continues to adequately address situations where an interpretation is requested for a particular factual situation.

To be clear, the DFR process is not intended to replace either of the processes identified by commenters; rather, it can serve a supplementary role for minor clarifications or corrections that are not specific to a requestor's particular situation. One hypothetical example could be if the agency describes reporting details in a final rule preamble as applicable in all instances, but includes corresponding regulatory text providing those details for all applicable provisions except one. A rulemaking better aligning the appropriate details to all applicable provisions, as described in preamble but not clear in the regulatory text, could be one such clarification where a DFR would be appropriate. Therefore, consistent with the procedures adopted by OST and other parts of the Department, NHTSA is retaining this example in the final regulatory text.

**Updates to existing forms or rules, such as incorporation by reference of the latest technical standards, or changes affecting NHTSA's internal procedures:**

The Alliance suggested that updating forms did not need to be included in the list because that category is already excluded from notice and comment procedures under the APA as something that addresses "agency organization, procedure, or practice." The Alliance also agreed that NHTSA internal procedures would be an appropriate use of the DFR process.

The Alliance's comment combines two potential uses of a DFR that could be, but are not necessarily related. First, NHTSA agrees that forms dealing with rules of agency organization, procedure or practice, or any other rules dealing with those subjects, would be excluded from notice and comment procedures under 5 U.S.C. 553(b)(3)(A). Second, rulemakings regarding forms used by the agency that are not limited to internal functions, could be excluded from the

notice and comment requirements of the APA under 5 U.S.C. 553(b)(3)(B) if they meet the parameters described in today's final rule. As described above, today's action simply prescribes procedures for the agency to follow with regard to certain actions not subject to notice and comment under the APA. The procedures established under this rule could conceivably be applied to actions exempted from notice and comment under 5 U.S.C. 553(b)(3)(A) as well as 5 U.S.C. 553(b)(3)(B).

The Owner-Operator Independent Drivers Association (OOIDA) noted that not all changes in forms or incorporation of material will be noncontroversial, and suggested that NHTSA revise the procedures to specify that it will review each rule and determine whether it is controversial. The Alliance and the Rubber Manufacturers Association (RMA) argued that updating industry standards may not be appropriate for a DFR if the changes are substantive. The Alliance stated that most revisions to technical standards are substantive. RMA also suggested that an incorporation by reference of latest technical standards would raise concerns if a manufacturer was using previous standards based on earlier NHTSA requirements. In that instance, RMA suggested the use of initial voluntary compliance dates with a phase-in.

NHTSA appreciates the above concerns raised by commenters. NHTSA recognizes that the agency has typically deferred making updates to voluntary consensus standards until the standards have been changed in a substantively significant way. Again, the listed examples of situations where a DFR may be appropriate were not intended to imply that a DFR will always be used in those situations, or that the agency would shortcut its process of determining whether notice and comment are unnecessary under the APA. NHTSA will assess every potential DFR individually to determine whether using the DFR process would be appropriate. NHTSA will not use the DFR to make updates to existing forms or rules, such as an incorporation by

reference of the latest technical standards, that would involve complex or controversial issues. We have added this language to the final regulatory text to eliminate any confusion. We also emphasize, again, that if NHTSA ever errs in its judgment and issues a DFR for an action that should have been issued through an NPRM, the public will have an opportunity to file an adverse comment stating as such.

For the above reasons, and consistent with the procedures adopted by OST and other parts of the Department, NHTSA is retaining these examples in the final regulatory text.

**Minor substantive rules or changes to existing rules on which the agency does not expect adverse comment:**

The Alliance also argued that the category of “minor substantive rules or changes to existing rules on which the agency does not expect adverse comment” was too subjective. An individual commenter, Sam Creasey, also expressed concern with this provision, and stated that it should not replace the standard comment process. Related to its comment on when the use of a DFR would be appropriate, the Alliance stated that the standard should be that no substantive public comments are expected.

NHTSA disagrees with the Alliance’s position. As explained above, NHTSA is concerned that initiating a DFR process only when we anticipate no comments at all would be too narrow of an inquiry, and could severely and unhelpfully curtail the usefulness of having DFR procedures. Moreover, we could envision a scenario in which a DFR could be appropriate and we expect to receive only positive comments – whether substantive or not, if comments are only positive and do not provide the agency with information that would lead it to issue a final rule different from what was proposed, there would not appear to be any utility to going through

the notice and comment process. That said, NHTSA, like other agencies, has broad discretion under the APA to determine when prior notice and comment are necessary for a rulemaking.

As also explained above, NHTSA will assess every potential DFR individually, and will rely on notice and comment rulemaking when we believe that a DFR would not be appropriate. Again, this rule simply prescribes specific procedures for the agency to follow with regard to certain actions that are not subject to notice and comment procedures under the APA. It does not alter which actions are subject to such procedures. We continue to believe that some types of minor rules or changes properly fall into the category of actions for which notice and comment are unnecessary.

The Alliance listed an example of a past proposal on which issues raised during the comment process were likely unanticipated by NHTSA, and argued that this supported the Alliance's position that expectation of adverse comment would not be an appropriate standard for when the DFR process should be used. Sam Creasey also stated that one of the important purposes of the comment process is to help inform the agency of unexpected adverse consequences to its rules. NHTSA agrees that it is important for it to consider adverse comments, especially when initially unanticipated by the agency, but believes that the use of a comment period for DFRs, as established by these procedures, can easily accomplish this objective. If a situation similar to the example provided by the Alliance were to occur after issuance of these procedures, the agency would be required by the procedures to respond to its receipt of any adverse comment or notice of intent to submit adverse comment by withdrawing the controversial provisions of the DFR and, if the agency chose to move forward with the action, proceed with a new notice of proposed rulemaking, with its attendant notice and comment period. The standard of anticipated adverse comments would simply help to answer the question

of whether a particular action would be noncontroversial – it would not completely eliminate the need for that underlying analysis.

For the above reasons, and consistent with the procedures adopted by OST and other parts of the Department, NHTSA is retaining this example in the final regulatory text.

### **C. Definition of Adverse Comment**

Several commenters disagreed with NHTSA’s explanation of adverse comment in the preamble, although they supported the proposed regulatory text. The Alliance and MEMA argued that if a comment recommended additional changes, it should be considered adverse whether or not the comment explained why the notice would be ineffective without the change. The commenters argued that NHTSA’s proposed treatment of such a comment would be inconsistent with the Department’s Office of the Secretary (OST) DFR procedures, and would inappropriately transfer to the public a burden of “proving” that incorporation of their comment would be needed to make the proposed action effective. Both commenters stated that the proposed regulatory text, which, unlike the preamble, did not include the “why” language, appeared more consistent with the OST DFR procedures and the commenters’ own preferences. Global Automakers expressed similar concerns, arguing that a DFR could be effective without a change but also unwise or undesirable, in which case it should be considered adverse without commenters having to prove ineffectiveness.

NHTSA agrees that the proposed regulatory text was not intended to impose any obligation or expectation that a commenter “prove” anything related to a comment on a DFR, including effectiveness of the notice without it. We also agree that an action could be effective without a suggested additional change, but still have unanticipated adverse consequences. A

comment on a DFR could conceivably alert the agency to such effects without having to explain why the notice would be ineffective without the change. NHTSA is therefore maintaining the regulatory definition of “adverse comment” as proposed. This definition aligns with the definition adopted by OST in its DFR procedures and is consistent with the definitions adopted by other parts of the Department.

That said, however, we continue to believe that not all comments recommending additional actions should be automatically considered adverse. For example, it may not be appropriate to halt finalization of a necessary and noncontroversial action simply because it led a commenter to suggest an additional action that would also be beneficial. Several DOT operating administrations<sup>6</sup> specify in the regulatory text of their DFR procedures that a comment recommending additional rule changes would not be considered adverse unless it explained that the notice would be ineffective without the change. RMA suggested that NHTSA revise this explanation to state that the agency would not consider a comment recommending additional actions or changes “outside the scope of the rule” to be adverse, unless the comment also stated why the DFR would be ineffective without the additional actions or changes. We believe that this revision appropriately addresses both the commenters’ and the agency’s concerns, and are therefore adopting it.

Global Automakers asked NHTSA to follow the Administrative Conference of the United States (ACUS) recommendation<sup>7</sup> that “in determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, agencies should consider whether the comment

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<sup>6</sup> The Federal Motor Carrier Safety Administration (FMCSA), the Federal Aviation Administration (FAA), and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

<sup>7</sup> Administrative Conference of the United States Recommendation number 95-4 (January 15, 1995), “Procedures for Noncontroversial and Expedited Rulemaking,” at 3.  
<http://www.acus.gov/recommendation/procedures-noncontroversial-and-expeditedrulemaking>

raises an issue serious enough to warrant a substantive response in a notice-and-comment process.” We agree that such an adverse comment would appropriately result in a withdrawal of the portion of a DFR to which it applied. By the same reasoning, a frivolous or irrelevant comment would not result in a withdrawal, just as it would also not raise an issue serious enough to warrant a substantive response in a notice-and-comment rulemaking. We agree with this logic. We also believe these assessments will occur as part of the analysis of whether a potential action is complex or controversial. As stated in the proposal, NHTSA will not use the DFR process for complex or controversial actions.

RMA requested that NHTSA specify that objections about an effective or implementation date, cost or benefits estimates would be adverse comments. RMA also asked how NHTSA would treat general support but opposition to an effective date because of unnecessary burden without benefit – specifically, whether NHTSA would amend the effective date in the revised DFR or open another rulemaking. We would consider an effective or implementation date to be a “provision of the rule,” and therefore a comment objecting to an effective or implementation date would be considered a comment critical to a provision of the rule, and thus adverse. We believe that a comment objecting to cost or benefits estimates that also contained an objection to the adoption of the rule or any provision of the rule, including an objection based solely on the cost or benefits, would be adverse. However, an objection to the cost or benefits estimates alone would likely not be considered adverse.

OOIDA requested that NHTSA confirm that comments submitted through the website regulations.gov would be considered “received in writing” under the DFR procedures. We confirm this understanding.

#### **D. Content and Issuance of a DFR**

Several commenters asked for greater specification on the timing of different stages of a DFR. MEMA stated that NHTSA must specify and follow uniform timeliness throughout the issuance of a DFR. The Alliance asked for more clarification of when the “order is issued” for purposes of judicial review, and recommended that NHTSA state in the notice that the date of confirmation of rule is considered the promulgation date. We do not believe this would be consistent with what we consider the date of issuance for other rulemakings. As with other final rules, the date of publication of a direct final rule in the Federal Register is considered the date of issuance. Thus, for direct final rules, NHTSA would consider the publication date as the starting point for the purpose of calculating judicial review.

Global Automakers and MEMA requested that NHTSA specify it will always provide at least 30 days for comment. OOIDA and RMA requested that NHTSA specify a minimum 60-day comment period. RMA further asked that NHTSA explain in the rulemaking why a shorter period is necessary if 30 days are used instead. OOIDA also argued that failing to set any minimum comment period without noting what circumstances would affect the comment period length does not provide sufficient notice to the public. MEMA stated that if the agency believed more than 30 days were needed, a DFR may not be appropriate.

NHTSA believes that a minimum 30-day comment period is reasonable, and that the certainty of a minimum comment period could be useful to potential stakeholders. Therefore, we are amending the regulatory text to state that at least 30 days will be provided for comments. We do not agree that a minimum of 60 days should be mandatory, because in many instances, such as for actions with no anticipated stakeholder interest, a longer comment period would not

provide additional benefit. However, we continue to believe it is appropriate for the agency to use its discretion in providing a longer comment period when 30 days is anticipated to be insufficient for any reason. This will allow the agency to use a longer period for actions that may require more time for review either due to the nature of the action, or, as suggested by OOIDA, to ensure access for a key stakeholder group.

In establishing its DFR procedures, OST declined to specify any minimum comment period in the regulatory text, explaining that “In practice, it is in OST's interest to provide a comment period of sufficient length to allow interested parties to determine whether they wish or need to submit adverse comments. Too short a comment period could stymie the direct final rule process by forcing commenters to err on the side of caution and file an intent to submit adverse comment to stop the direct final rule process in cases involving any uncertainty of the effect of a direct final rule.” 69 FR 4456.

Stating that it would be consistent with an ACUS recommendation, Global Automakers requested that NHTSA specify in the final rule either that 1) the agency will issue a second notice confirming the DFR will go into effect at least 30 days after the first notice; or 2) unless the agency issues a notice withdrawing a DFR-issued rule by a particular date, the rule will be effective no less than 30 days after the specified date. MEMA requested that the regulatory text of the procedures specify exactly when a DFR would go into effect, and that a notice be published within 15 days either confirming no comments were received or noting the withdrawal of the notice due to comments received.

We agree that further specification would be useful, and believe the suggestion from Global Automakers would accomplish this effectively. Therefore, the regulatory text has been revised to state that if no written adverse comment or written notice of intent to submit adverse

comment is received, the rule will become effective no less than 45 days after the date of publication of the DFR. The regulatory text also specifies that NHTSA will publish a notice in the Federal Register if no adverse comment was received that confirms the rule will become effective on the date indicated in the DFR. The agency will either specify in the text of the DFR the exact period after which the rule will become effective, or issue a second notice confirming which date the DFR will go into effect. We believe that the minimum 45 day period between publication and effective dates will allow the agency to properly assess whether adverse comments were received, and to issue a confirmation notice if appropriate.

The Alliance stated that it supported the agency's proposed procedures for withdrawing a DFR either in whole or in part. RMA stated that this language was unprecedented in the DFR procedures of other DOT modes, and requested that NHTSA specify which parts of a DFR would be severable and which would be treated as whole units. RMA argued that if the agency did not do so, it would create uncertainty and could generate unnecessary comments where there otherwise would not have been any. An example given was a commenter that may object to only parts of a DFR being implemented.

NHTSA disagrees that language specifying that a DFR may be withdrawn in whole or in part is unprecedented in other DOT modes; the Federal Aviation Administration established DFR procedures with such a provision in 2000.<sup>8</sup> NHTSA agrees with RMA that it would alleviate uncertainty for the agency to know as precisely as possible which parts of the DFR should be severable in the case of adverse comments. However, we believe the potential variations of severability within a given notice could be endless, ranging from notices that are not severable at all to notices where each provision is severable. Therefore, it would be preferable for a

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<sup>8</sup> 14 CFR 11.31; 65 FR 50850.

commenter to specify to which aspects of the notice they intended their comment to apply than for the agency to outline every provision to be considered as a “whole” or “part.” NHTSA intends to remind commenters of the importance of specifying to which aspects of the notice their comment applies, to ensure that the agency withdraws only those areas that receive adverse comment.

OOIDA requested that NHTSA confirm it understands that the use of the DFR procedure would not relieve the agency of any obligation to perform a regulatory flexibility, Paperwork Reduction Act, or cost/benefit analysis for a given notice. NHTSA confirms this understanding.

Global Automakers asked NHTSA to adopt an ACUS recommendation<sup>9</sup> that a DFR include the full text of the regulation and supporting materials. NHTSA’s proposed procedures simply applied the existing requirement for notices of proposed rulemakings to DFRs, which is that rules provide “a description of the subjects and issues involved or the substance and terms of the rule.” NHTSA understands this concern. A DFR is, after all, a final rule, meaning that technically, the agency, under the proposed language, would not need to include the regulatory text in the notice, which would be problematic in the assumed ordinary instance where the agency does not receive adverse comment and does not need to pull back the initial final rule. NHTSA believes that its longstanding interpretation of the requirement is consistent with the ACUS recommendation, and, therefore, believes that this instance will not occur for DFRs. However, in order to alleviate any potential concerns, the agency has added new subsection (c) to make clear that all DFRs will include the full regulatory text of the final rule.

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<sup>9</sup> Administrative Conference of the United States Recommendation number 95-4 (January 15, 1995), “Procedures for Noncontroversial and Expedited Rulemaking,” at 2.  
<http://www.acus.gov/recommendation/procedures-noncontroversial-and-expeditedrulemaking>

RMA requested that NHTSA include the phrase “Direct Final Rule” under the “action” caption of DFRs. NHTSA agrees with this request and will do so.

### **III. Statutory and Executive Orders**

#### **Executive Orders 12866 and 13563**

NHTSA has determined that this action is not a significant regulatory action under Executive Orders 12866 and 13563, or under the Department's Regulatory Policies and Procedures. There are no costs associated with the rule. There will be some cost savings in Federal Register publication costs and efficiencies for the public and NHTSA personnel in eliminating duplicative reviews.

#### **Regulatory Flexibility Act**

NHTSA certifies that this rule will not have a significant impact on a substantial number of small entities.

#### **Executive Order 13132**

NHTSA does not believe that there will be sufficient federalism implications to warrant the preparation of a federalism assessment.

#### **Paperwork Reduction Act**

The rule does not contain any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### **Unfunded Mandates Reform Act of 1995**

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

#### **National Technology Transfer 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.

NHTSA has not identified any applicable voluntary consensus standards for this procedural rule.

### **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 comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more information on DOT's implementation of the Privacy Act, please visit: <http://www.dot.gov/privacy>.

## List of Subjects in 49 CFR Part 553

Administrative practice and procedure, Motor vehicle safety.

### Regulatory Text

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration is amending 49 CFR part 553 as follows:

#### **PART 553—RULEMAKING PROCEDURES**

1. The authority citation for part 553 is revised to read as follows:

**Authority:** 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

2. Add § 553.14 to read as follows:

#### **§ 553.14 Direct final rulemaking**

If the Administrator, for good cause, finds that notice is unnecessary, and incorporates that finding and a brief statement of the reasons for it in the rule, a direct final rule may be issued according to the following procedures.

(a) Rules that the Administrator judges to be non-controversial and unlikely to result in adverse public comment may be published as direct final rules. These may include rules that:

- (1) Are non-substantive amendments, such as clarifications or corrections, to an existing rule;
- (2) Update existing forms or rules, such as incorporations by reference of the latest technical standards where the standards have not been changed in a complex or controversial way;
- (3) Affect NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents;

(4) Are minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

(b) The Federal Register document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by NHTSA within the specified time after the date of publication of the direct final rule and that, if no written adverse comment or written notice of intent to submit adverse comment is received in that period, the rule will become effective a specified number of days (no less than 45) after the date of publication of the direct final rule. NHTSA will provide a minimum comment period of 30 days.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by NHTSA within the specified time after the date of publication in the Federal Register, NHTSA will publish a document in the Federal Register indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If NHTSA receives any written adverse comment or written notice of intent to submit adverse comment within the specified time after publication of the direct final rule in the Federal Register, the agency will publish a document withdrawing the direct final rule, in whole or in part, in the final rule section of the Federal Register. If NHTSA decides to proceed with a provision on which adverse comment was received, the agency will publish a notice of proposed rulemaking in the proposed rule section of the Federal Register to provide another opportunity to comment.

(e) An “adverse” comment, for the purpose of this subpart, means any comment that NHTSA determines is critical of any provision of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or

requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

3. In § 553.15, revise the section heading and paragraphs (a), (b)(1), and (b)(3) to read as follows:

**§ 553.15 Contents of notices of proposed rulemaking and direct final rules.**

(a) Each notice of proposed rulemaking, and each direct final rule, is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

(b) \* \* \*

(1) A statement of the time, place, and nature of the rulemaking proceeding;

\* \* \* \* \*

(3) A description of the subjects and issues involved or the substance and terms of the rule.

(c) In the case of a direct final rule, the agency will also include the full regulatory text in the document published in the Federal Register;

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4. Revise § 553.23 to read as follows:

**§ 553.23 Consideration of comments received.**

All timely comments are considered before final action is taken on a rulemaking proposal or direct final rule. Late filed comments will be considered to the extent practicable.

Issued in Washington, DC on June 18, 2015.

under authority delegated in 49 CFR 1.95.

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Mark R. Rosekind.  
Administrator

Billing Code: 4910-59-P

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