

nor requires that the label have an outline.

We agree with the Alliance that the standard does not require an outline. Instead of simply reversing the legal interpretation, we believe it is more appropriate to resolve the matter by issuing a correcting amendment to the standard.

On August 6, 1996, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (61 FR 40784, Docket No. NHTSA-97-2705) proposing the adoption of new, attention-getting air bag warning labels. The regulatory text in the NPRM simply stated that the labels "shall conform in size, content, color, and format" to the labels shown in the figures. No other requirements regarding label size, content, color or format were included in the regulatory text. Figures 6a through 8 depicted the messages and, if any, pictogram for each label. The figures also contained instructions specifying color and size of each label.<sup>2</sup>

In their comments on the NPRM, vehicle manufacturers requested that only the content of the labels be required to conform to the figures.

In the final rule (61 FR 60206, NHTSA Docket No. NHTSA-97-2716, November 27, 1996), NHTSA agreed there was no need to specify either the arrangement of the information on the labels or the shape of the labels, both of which it characterized as formatting. It also determined that it did not need to specify the size of the label or typeface, although it did specify minimum areas for the message text and pictogram.

Accordingly, the agency replaced the proposed requirement in the regulatory text that labels "shall conform in size, content, color, and format" with the figures with a narrower requirement that labels "shall conform in content" with

the figures. At the same time, it expanded the regulatory text by adding requirements that restated most, but not all, of the color instructions in the figures. The agency also deleted the instructions about minimum size of the labels.

There are two instructions in Figures 6a and 6b and one instruction in Figure 7 that are not restated in any requirements in the regulatory text. One is a format/color instruction about a black outline. The other is a color instruction about using red for bullets in the message area. Figure 7 contains only the format/color instruction about the black outline.

The presence of the instructions creates an ambiguity as to whether the black outline instruction and the red bullet instruction are required components of the standard. The labels proposed in the NPRM and those adopted in the final rule are different. Accordingly, it is not possible to argue that the instruction in the figures that the labels be outlined with horizontal and vertical black lines was an inadvertent remnant of the proposed labels. However, there is nothing in the preamble to the final rule to suggest that the agency intended to require these format/color instructions. Rather, as the new labels went through various iterations before the agency decided on a final version, the reference was inadvertently left in the figures, even though the agency ultimately decided not to specify these format and color instructions in the regulatory text.

We believe that these instructions in the figures are more akin to format than to content and were not specifically included in the regulatory text because the agency did not wish to require them. This position is bolstered by the language of the regulatory text in S4.5.1(b)(1) which states that the labels shall conform in content with the referenced figures and meet the requirements listed in S4.5.1(b)(1)(i)

through S4.5.1(b)(1)(iv) and similar language in S4.5.1(b)(2) and in S4.5.1(e)(1) and S4.5.1(e)(2). These requirements include the limitations on color provided in the figure instructions, but do not include the instruction regarding an outline or bullets.

Accordingly, we are amending Figures 6a, 6b and 7 of FMVSS No. 208 to remove the reference to a black outline. We are also amending Figures 6a and 6b to delete the reference to red bullets. We are likewise amending Figures 8 and 9. Figure 8 was based, in large part, on Figures 6a and 6b. Figure 9 was based on Figure 7. When the advance air bag final rule incorporating Figures 8 and 9 was published (65 FR 30680, Docket No. NHTSA-00-7013, May 12, 2000), the agency had already indicated in the earlier rollover label rulemaking that it did not believe the outline in Figures 6a, 6b and 7 were required. The instruction should not have been included in Figures 8 and 9, since we made no findings in that rulemaking that our previous position was incorrect.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising Figures 6a, 6b, 7, 8, and 9 to read as follows:

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<sup>2</sup>NHTSA ultimately decided against adopting one of the proposed labels. In the final rule, the labels were depicted in Figures 6a, 6b, 6c, and 7.