

monitoring systems that warn the driver when a tire is significantly under-inflated. On June 5, 2002, NHTSA published the first part of a two-part final rule amending Standard No. 101, "Controls and displays," adding a new Standard No. 138, "Tire Pressure Monitoring Systems," and amending and re-titling Part 590, "Tire Pressure Monitoring System Phase-In Reporting Requirements" (67 FR 38704). That document established two compliance options for the short-term (*i.e.*, for the period between November 1, 2003, and October 31, 2006). The second part of the final rule will be issued by March 1, 2005, and will establish performance requirements for the long-term (*i.e.*, for the period beginning on November 1, 2006).

Both the notice of proposed rulemaking (NPRM) (66 FR 38982, July 26, 2001) and the first part of the final rule discussed a phase-in of compliance with the new TPMS requirements, although the NPRM did not propose any specific phase-in plan for discussion. The final rule requires a manufacturer to certify at least ten percent of its vehicles manufactured between November 1, 2003 and October 31, 2004 (inclusive) as compliant with the new TPMS requirements. The percentage of compliant vehicles is determined based on: (a) The manufacturer's average annual production of vehicles manufactured on or after November 1, 2000, and before November 1, 2003; or (b) the manufacturer's production on or after November 1, 2003, and before November 1, 2004. Based upon a similar calculation, for vehicles manufactured on or after November 1, 2004, and before November 1, 2005, the number of vehicles complying with the standard must not be less than thirty-five percent of production, and for vehicles manufactured on or after November 1, 2005, and before November 1, 2006, the figure must rise to not less than sixty-five percent of production. The phase-in period ends on November 1, 2006, at which time all vehicles covered by the standard must comply with the new requirements.

The final rule contains an exclusion of small volume manufacturers from the requirements of the standard during the phase-in period. We provided this exclusion pursuant to a public comment request by Vehicle Services Consulting, Inc. (VSC), a representative of small volume vehicle manufacturers.

No commenter requested that final-stage manufacturers of vehicles built in two or more stages be excluded from the phase-in. However, NHTSA has historically excluded final-stage manufacturers from the phase-in

requirements of its various safety standards. Despite this practice, the agency inadvertently omitted such an exclusion from the TPMS final rule.

Since the publication of the June 2002 final rule, NHTSA has received thirteen petitions for reconsideration from: (1) Ferrari S.P.A.; (2) Delphi Auto Inc.; (3) Japan Automobile Tyre Manufacturers Association, Inc. (JATMA); (4) Johnson Controls, Inc.; (5) Volkswagen of America, Inc.; (6) Bureau de Normalisation de l'Automobile (BNA) ISO/TC22/WG12; (7) Porsche Cars North America, Inc.; (8) Alliance of Automobile Manufacturers (Alliance); (9) Rubber Manufacturers Association (RMA); (10) Aviation Upgrade Technologies; (11) Vehicle Services Consulting, Inc. (VSC); and (12) DENSO International America, Inc. (DENSO); and (13) Maserati S.P.A. NHTSA will respond to those petitions through a subsequent notice to be published in the **Federal Register**. However, it should be noted that none of the petitions stated any opposition to an exclusion from the phase-in for final-stage manufacturers.

Further, on October 2, 2002, the National Truck Equipment Association (NTEA) submitted a request for legal interpretation asking for guidance on whether final-stage manufacturers are required to provide tire pressure monitoring systems during the phase-in period under the new and amended regulations, even when the incomplete vehicle is not so equipped by the incomplete (chassis) manufacturer. If that were indeed the case, NTEA asked that its request be treated as a petition for rulemaking to exclude final-stage manufacturers and alterers from the TPMS phase-in.

II. Summary of the Corrections

Instead of granting NTEA's petition for rulemaking, NHTSA has decided to publish a correcting amendment because it inadvertently omitted from the final rule an exclusion for final-stage manufacturers and alterers from compliance with the TPMS standard until the final year of the phase-in. As discussed below, the phase-in of the TPMS requirements has the potential to create significant problems for many final-stage manufacturers and alterers. Again, while NHTSA did not discuss in the NPRM the specific requirements that would be associated with a phase-in, the agency has addressed that issue in several recent rulemakings that provided a similar exclusion for final-stage manufacturers.

The current situation impacting final-stage manufacturers is similar to the one that the agency encountered during the phase-in that extended the quasi-static

side door strength requirements of FMVSS No. 214, "Side Impact Protection," to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less (LTVs) (57 FR 30917, July 13, 1992). Like other manufacturers, final-stage manufacturers must certify that their vehicles meet all applicable safety standards. However, final-stage manufacturers complete or modify vehicles supplied by incomplete vehicle manufacturers and often rely on the representations in those manufacturers' incomplete vehicle document (IVD) as a basis for certification. Final-stage manufacturers and alterers have no control over the year of the phase-in in which a particular vehicle model will be certified as complying with the new requirements. Typically, a major manufacturer will elect to meet the phase-in requirements by scheduling its changes so that some of its models are changed in each year of the phase-in, instead of changing all models in a single year. While this practice allows the manufacturers to meet the phase-in requirements with minimal disruption to their manufacturing processes, it may significantly complicate final-stage manufacturers' efforts to secure appropriate compliant vehicles to either complete or modify as part of their standard operations. Put simply, final-stage manufacturers may have difficulty meeting the phase-in schedule because they have no control over when particular incomplete vehicles will be brought into compliance with the performance requirements being phased-in.

The difficulties faced by final-stage manufacturers and alterers in meeting the TPMS phase-in requirements are no less compelling than the difficulties they faced in the context of other phase-ins. Accordingly, NHTSA is correcting the June 2002 final rule to exclude final-stage manufacturers from compliance with the FMVSS No. 138 until the end of the phase-in (*i.e.*, November 1, 2006). This is the same approach for phase-ins that the agency has followed in a number of other recent rulemakings, including: Standard No. 208's automatic crash protection requirements for LTVs (56 FR 12472, 12479-80, March 26, 1991) and its more recently published advanced air bag requirements (65 FR 30680, 30721, May 12, 2000); Standard No. 214's extension of quasi-static door strength requirements to trucks, buses, and multipurpose passenger vehicles (57 FR 30917, 30921, July 13, 1992); Standard No. 201's requirements for protection for when an occupant's head