

instruction as to how weight is to be distributed on a vehicle under test conditions. NHTSA is not adopting Alliance's recommendation to retain the language that addressed distribution when the axle's proportional share is exceeded. While the revised provision eliminates that language, it does provide that weight is to be distributed as *nearly as possible* in proportion to the GAWR.

NHTSA is not adopting GM's recommendation that the agency replace the language in S8.1.1 of Standard No. 208, S6.1 of Standard No. 212, S7.7 of Standard No. 219, S7.1.6 of Standard No. 301, S7.1.6 of Standard No. 303, and S7.2.3 of Standard No. 305 with identical language. The agency believes that such revisions are outside the scope of this rulemaking. However, the agency will treat GM's recommendation as a petition for rulemaking and will make a decision on whether or not to grant the petition within the next 120 days.

NHTSA is also not adopting GM's and VW's suggested revision of S7.1.6(a). The agency believes that the language in that paragraph is sufficiently clear.

6. Lowering the Barrier Face

For the reasons discussed above in the section on Rear Impact Test Procedure, the agency is specifying that the barrier face in the rear impact test procedure is lowered 50 mm (2 inches).

7. Pole Side Impact Test

NHTSA agrees with the comments from the Alliance, GM, DC, Porsche, and Ford that the agency must assess the safety basis for a pole side impact test, as well as develop an objective, repeatable test procedure, including pole contact locations, closing velocities, pole sizes, and modes of testing, before the agency proposes such a test. Any future proposals to utilize a pole side impact test will address these issues.

8. Prohibiting Fuel Leakage in Frontal Impact Crash Tests

NHTSA agrees with the comments from the Alliance and GM that the agency should consider a future revision limiting fuel system leakage in any Standard No. 208 crash test to the levels currently specified in Standard No. 301. In frontal impacts at 35 mph (56 km/hr) into the barrier, there have been 10 failures out of 406 NCAP (New Car Assessment Program) tests, since 1979. While rare, the agency will continue to monitor fuel system leakage in the NCAP tests to determine whether future upgrades would be appropriate.

9. Compliance Responsibility of Second-Stage Manufacturers

NHTSA believes that there will be no change to the certification responsibilities of second-stage and final-stage manufacturers as a result of this rulemaking. The agency has reviewed the conformity statements from first-stage manufacturers submitted by the NTEA and believes them to be reasonable. Under these conformity statements, the first-stage manufacturer installs the entire fuel system, and the second-stage or final-stage manufacturer can make minor alterations without violating the pass-through certification from the first-stage manufacturer.²⁸ Further, vehicles manufactured in two or more stages will not be required to comply with the rear impact upgrade until the final stage of the phase-in.

In cases in which the second-stage or final-stage manufacturers make significant changes to the fuel system, they may not be able to use the pass-through certification, and may have to certify that the vehicle complies with Standard No. 301. If it is not economically feasible for these manufacturers to perform the compliance testing or engineering analysis, the manufacturers may apply for a temporary exemption under 49 CFR Part 555.

The agency also notes that it is currently involved in a negotiated rulemaking process with the NTEA, first-stage manufacturers, and other stakeholders regarding the certification process for vehicles manufactured in two or more stages. The agency intends to develop changes to the regulations governing the certification of such vehicles through this process.

10. Fuel Siphoning

The issues raised by Dynamic Safety concerning fuel siphoning and by IIHS and Advocates concerning fuel cutoff devices all pertain to frontal fire protection. NHTSA research identified rear impacts as the most common type of crashes that result in fires. The agency would need to conduct research to determine the extent of the problem related to fuel siphoning as described by Dynamic Safety. If future NHTSA analysis of real-world crash data indicates that there is a safety problem that warrants further regulatory action, the agency will consider additional changes to Standard No. 301. The

²⁸ The first-stage manufacturer typically certifies that the incomplete vehicle meets the requirements of Standard No. 301. This relieves second-stage or final-stage manufacturers of the burden of conducting Standard No. 301 compliance tests, unless those manufacturers make substantial changes to the fuel system.

agency notes that preliminary research of frontal impacts under the GM settlement agreement indicated that the vehicles equipped with fuel cutoff devices performed similarly to vehicles without such devices. Consequently, the agency does not anticipate that any real world benefits would result if the agency required fuel cutoff devices.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures and has determined that it is not significant.

NHTSA has prepared a Final Regulatory Evaluation (FRE) describing the economic and other effects of this final rule.²⁹ If only minor modifications are needed to comply with the upgraded rear impact test, the agency estimates that the average cost for vehicles that will need to be modified is \$5.31 per vehicle. The agency estimates that 46 percent of the vehicle fleet does not currently meet the upgraded rear impact test and that approximately 16.7 million vehicles are sold each year in the U.S. Together, this information indicates that the total cost for the fleet will be approximately \$41 million per year. To the extent that any vehicles need more than minor modifications, the total cost may be higher. However, none of the

²⁹ A copy of the FRE has been placed in the docket.