Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–34229 Filed 12–24–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5350

Types of Contracts

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 48, Chapter 53 of the CFR by removing Part 5350, Extraordinary Contractual Actions. This rule is removed because it is outdated and was deleted from the Air Force Federal Acquisition Regulation Supplement (AFFARS) by Air Force Acquisition Circular (AFAC) 96–1 in June 1997.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Powell, SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330–1060, telephone (703) 588–7062.

SUPPLEMENTARY INFORMATION:

Authority: 5 U.S.C. 301 and FAR 1.301.

PART 5350—[REMOVED]

Accordingly, 48 CFR, Chapter 53, is amended by removing Part 5350.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 98–34192 Filed 12–24–98; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–4934]

RIN 2127—AH24

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule, correcting amendment.

SUMMARY: This document amends a final rule that was published in March 1997 that expedites the depowering of air bags. This correcting amendment clarifies that: The ''corridor'' defining the bounds of permissible sled acceleration will be shifted to contain the time at which the sled acceleration first reaches 0.5 g, to account for ''lag'' in the components of the sled system. This will make the sled test easier to conduct because early variations in sled acceleration lag will not in themselves cause the sled pulse to be outside the required acceleration corridor. While the neck injury criteria for flexion bending moment and extension bending moment are intended to be measured by the six-axis load cell, located in the dummy head, the values measured at that point will be mathematically corrected to reflect the corresponding values at the occipital condyle, a lower point near the base of the dummy's skull. Prior to testing, the engine, transmissions, axles, exhaust, vehicle frame, and vehicle body must be rigidly secured to the vehicle and/or the sled. Fluids, batteries and unsecured components will be removed. These steps will prevent spikes in the acceleration curve during the test that would result from these components moving.

DATES: *Effective Date:* The amendments made to this final rule are effective December 28, 1998.

Petitions: Petitions for reconsideration must be received by February 11, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemaking: Visit the NHTSA web site at http://www.nhtsa.dot.gov and click on the icon ''Air Bag Page''.

For technical issues: Mr. John Lee, Office of Safety Performance Standards, NPS–10, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–4924. Fax: (202) 493–2739.

For legal issues: Mr. Paul Atelsek, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On March 19, 1997, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard 208, ''Occupant Crash Protection'' to temporarily permit a supplemental test procedure for air bag restraint systems (62 FR 12960–12975). The intent of the optional test procedure, known as the sled test, was to enable vehicle manufacturers to expedite their efforts to depower the air bags in their vehicles by 20 to 35 percent. The agency estimated that this amount of depowering would reduce the risk of injury and death to out-of-position child passengers, and small statured drivers and passengers.

In the final rule, the agency added a new section to Federal Motor Vehicle Safety Standard 208, ''Occupant Crash Protection,'' S13, ''Alternative unbelted test for vehicles manufactured before September 1, 2001.'' This new optional compliance test can be used as a substitute for the 30 mile-per-hour unbelted barrier test for air bag-equipped vehicles. The new sled test procedure involved mounting a full (i.e., completed) vehicle equipped with two unbelted 50th percentile adult male Hybrid III dummies on a sled. The sled is accelerated very rapidly backwards (relative to the direction that the occupants would be facing) by a piston mounted in front of the sled, thus simulating the deceleration that would be experienced in a 30 mph crash. The standard specifies the ranges within which the level of acceleration must fall at stated time intervals. This is referred to as the ''sled pulse.'' The standard specifies ranges, instead of an exact single level of acceleration since defining an exact sled pulse is impracticable due to vehicle and equipment variations. The ranges of acceleration at each moment of the test collectively define a corridor within which the actual test acceleration must fall. The air bags are triggered 20 ms after the sled acceleration reaches 0.5 g. The standard also specifies neck injury criteria for the dummies.

When the final rule was issued, neither the agency nor the automotive industry had much experience with full-vehicle sled testing. Therefore, some of the test conditions and definitions used in the procedure were only partially defined. When manufacturers began to follow the optional sled test procedure, they encountered problems. Recently, several manufacturers approached the agency requesting clarifications of technical issues involving the final rule. The following is a discussion of these technical issues.

II. Issues

Two manufacturers and a vehicle test laboratory have approached the agency with specific questions concerning the

sled test. In April, Morton International Automotive Safety Products (Morton) approached the agency with questions concerning the test setup and the neck injury criteria. On June 10, 1997, Honda visited NHTSA and presented specific concerns similar to the Morton questions, dealing with the test setup and the neck injury measurement. Honda has also submitted a request for interpretation for three of their issues, in a letter dated June 30, 1997. On September 12, 1997, the Motor Industry Research Association (MIRA) sent NHTSA a letter reporting a problem with the definition of ''time zero.'' The following is a discussion of these issues.

1. Practicality of Sled Testing a Full Vehicle

Morton and Honda believe that a full vehicle may exceed the system size and weight capacity of a smaller sled system powered by a 12-inch piston. Sled systems are classified by the size of the propulsion system. For example, they are referred to as a 12-inch or a 24-inch diameter piston. The larger a piston's diameter, the more weight the sled can handle without exceeding its design parameters. The agency's Vehicle Research and Test Center uses the Transportation Research Center (TRC) sled, which is equipped with a 24-inch piston. Most other sled facilities are equipped with a 12-inch piston. Morton and Honda suggested that the weight of a vehicle plus a 2000-pound carriage may exceed the 7,000 pound capacity of some 12-inch sled systems.

The agency considered this issue in the final rule (at 62 FR 12971):

AAMA, Subaru, and Volvo stated that manufacturers typically conduct partial vehicle tests. Nevertheless, AAMA stated that such sled tests could be conducted on either the full vehicle or partial vehicle. Similarly, Ford stated that ''audit testing with an entire vehicle on a sled would be acceptable, even though vehicle manufacturers typically test with only the passenger compartment or the front portion of the passenger compartment.'' AVS [Technologies] and Morton stated that it is impractical and infeasible to test the entire vehicle on the sled given a vehicle's weight and size.

* * *

The agency's Vehicle Research Test Center (VRTC) has analyzed the size and power of the equipment used to conduct sled tests. Based on the available information, the agency believes that the current-design sled at Transportation Research Center (TRC) can be used to evaluate a full vehicle's response to a 125 ms pulse. Memoranda in the docket summarize discussions between agency and General Motors personnel indicating that the readily available 12 inch diameter cylinder sled is capable of producing the required acceleration pulse for any complete vehicle subject to Standard No. 208.

The agency still does not have specific evidence to indicate that a full range of vehicle sizes cannot be tested on the smaller test sleds. Neither Morton nor Honda reported that the full-vehicle test would exceed the power requirement or the safety parameters of their sleds.

The agency notes that manufacturers can reduce the weight of the vehicles in their tests if they choose, because only the agency compliance tests are required to use the full vehicle. Vehicle manufacturers are sufficiently familiar with their vehicles to be able to remove vehicle components during certification testing that would not contribute to the vehicle structure, and therefore would not affect the restraint system performance during NHTSA's compliance test. For example, the agency does not believe that the engine block head contributes to the performance of the restraint system during the sled test. To stay within the corridor, NHTSA will normally have to secure the engine. In addition, S13.4 specifies that NHTSA will remove the tires and wheels prior to the sled test. Removing these components could reduce the mass of the test vehicle, if the manufacturers so chose.

Both Morton and Honda stated that the excessive weight would make it difficult or impossible for their facilities to achieve the specified pulse within the specified corridor. This final rule clarifies the definition of ''Time-Zero,'' to make it easier for test facilities to achieve the specified pulse.

Morton and Honda also raised the issue of whether the lengths of some vehicles would exceed the 12-foot-sled length. Apparently, some facilities are designed with the front of the sled directly in contact with a wall. This is sufficient when testing partial vehicles, but a full vehicle may hang over the front of the sled, and interfere with the sled contacting the propulsion system. The agency believes any test laboratory could overcome this problem by adding an extension either to the front of the sled or to the end of the piston driving the sled.

2. Securing the Vehicle Parts

To ensure that the specified sled pulse is achieved, the vehicle and its components must accelerate as a rigid unit. Both Morton and Honda asked whether they could secure the transmission and engine to the frame of the vehicle. Honda provided comparative sled pulse plots showing the variation, including an acceleration trace spike, caused by the ''floating'' components.

The agency agrees that it is appropriate to secure masses that are not rigidly secured prior to the sled test. As Honda pointed out, large parts that shift during a test will cause sled acceleration trace variations and repeatability problems. Shifting masses will cause vibrations and variations in the acceleration traces. These vibrations will appear as ''blips'' in the traces. They may even be significant enough to go outside of the test corridor. In one of the agency's research sled tests, the agency observed shifting of the vehicle body.

This conclusion about the appropriateness of securing masses that are likely to shift during the test was evident in the final rule, in which the agency noted in response to similar concerns from Ford that ''if necessary, the frame of a vehicle will be rigidly attached to the vehicle body during testing such that the specified pulse is registered on the vehicle body.'' This conclusion was reflected in the agency compliance test procedure (TP–208S–01, Laboratory Test Procedure for FMVSS 208, Occupant Crash Protection Sled Test) which includes instructions for securing ''the engine, transmission, axles, and exhaust to either the vehicle body, vehicle frame, interface frame or sled. If the vehicle has a frame, rigidly attach the body to the frame. If the vehicle is not attached directly to the sled, rigidly attach the vehicle/interface frame unit to the sled.''

However, the agency now agrees that the specification of rigid securement should have been reflected in the standard itself, rather than just in the compliance test procedure. Therefore, NHTSA is adding a provision to the standard on vehicle securing. The agency emphasizes that the sole objective of securing the vehicle components, and of removing some unsecured components, is to produce a crash pulse within the corridor. Which components are secured or removed and how they are secured is within NHTSA's discretion. Any crash pulse within the corridor is sufficient evidence that the test procedures were followed and that the vehicle's components were rigidly secured and that shifting of masses was adequately addressed.

Morton had suggested cutting the vehicle at the firewall and welding it to a bulkhead-type fixture. The agency intended no such radical alteration of the vehicle structure, and will not do this in its compliance tests. There is no clear way of defining this alteration. Further, the alteration may change the performance of the vehicle restraint system. The agency notes again that the

vehicle manufacturer has the option of using data from certification testing which deviates from NHTSA's compliance test procedure in the way Morton suggests. However, in this case, the manufacturer may want to have a larger margin of compliance to compensate for the greater deviation from the test procedures.

3. Potential Residual Test-Buck Damage Resulting From ''Pulse Tuning''

In determining whether the sled pulse will stay within the specified pulse corridor, laboratories have been conducting pre-test sled runs. These ''dry runs'' may potentially result in residual damage, such as roof deformation, that would affect test repeatability. Morton requested permission to remove all non-structural underbody components, the rear-end suspension assembly, and the engine, and then add an L-shaped mounting surface and secure the structural stability of the frame, including the roof line.

The agency does not intend to conduct pre-runs or preliminary sled tests during compliance tests. The agency is concerned with the repeatability of the results of a test using a vehicle that has already been exposed to the effects of a pre-run or preliminary sled test. Therefore, NHTSA will not base any enforcement action on the failure of a vehicle to meet the sled test requirements unless that vehicle failed its initial test.

As to the request by Morton to permit vehicle modifications to ensure repeatability in multiple tests, a change in the test procedure is not necessary to enable Morton to make those changes. While Morton can deviate from the specified test procedure, vehicle modifications such as the removal of structural components may lead to test setup confusion and test variability. Since the agency does not plan to make such modifications, it does not need to amend the standard to permit the agency to make them.

4. Where to Measure for Neck Injury Criteria

Paragraph S13.2 of the final rule specifies the neck moments be ''measured with the six axis load cell.'' Morton and Honda pointed out that the final rule's neck measurement procedure and the procedure under S572.33 (the neck section in Part 572, *Anthropomorphic Test Devices,* or test dummies) may appear to differ. In 572.33, the neck moments are defined at the occipital condyle (Moment=My $-$ 0.058 $\times$ Fe). (The occipital condyle is located on the skull where it meets the first vertebra, instead of higher up where the load cell is located.) Morton and Honda believe the proper procedure should have been the one specified in S572.33.

Honda and Morton are correct. Although the measurement is indeed made with the load cell, the value ultimately calculated is the moment at the occipital condyle, instead of the moment at the load cell. The NPRM, and the source document referenced in the NPRM (AGARD Conference Proceedings of NATO, July 1996, titled ''Anthropomorphic Dummies for Crash and Escape Systems'') base the criteria for the flexion bending moment and the extension bending moment on the values measured by the load cell as corrected to represent the moment at the dummy's occipital condyle. However, there was no mention of this correction in the final rule. Biomechanical references [1] deal with the measurement at the occipital condyle, not at the transducer, as the appropriate location when referring to neck-head movement on a dummy. Additionally, the location of the transducer may shift, depending on the dummy design, and may be difficult to define. An additional indication of the agency's intention was the subsequent May 20, 1997 Interim Final Rule (62 FR 27511), which upgraded the neck instrumentation on the Hybrid III dummy. It specified the conversion calculation in S572.31(a)(3) for adjusting the neck moment from the point of measurement within the transducer to the occipital condyle. Therefore, there is ample evidence that the neck moment injury criteria value was intended to be the value at the occipital condyle, not at the transducer. The rule is being amended to specify this explicitly.

5. Definition of Time Zero

Honda and MIRA stated that the final rule was unclear regarding the definition of the Time-Zero (T–0, or start) for the actual sled test. They asked whether Time-Zero in Figure 6 of the final rule sled pulse represents (a) the instant when the sled system in activated, or (b) the instant when the sled reaches 0.5 g's. They believe there are problems in either case. If T–0 is the time when the sled is activated, some sleds will have extreme difficulty fitting in the corridor. If T–0 is the point at which the sled reaches 0.5 g's, initial noise in the acceleration curve as the sled begins moving makes measurement difficult. (This point was raised above, in issue 1). Some laboratories reportedly use 1.0 g's as a timing point, with adjustments back to the approximate 0.5 g point.

For the purposes of discussion, four start times could conceivably be used: (1) $T–0_{Activation}$, the moment the sled electronics are activated, (2) $T–0_{Movement}$, when the sled begins moving, which also represents the start of the test calculating a Delta V value, (3) $T–0_{Test}$, which represents the start of the test for fitting the pulse corridor to the acceleration curve, and (4) $T–0_{Air\text{-}bag}$, start of timing for the air bag deployment count-down.

The time when the sled system is activated, $T–0_{Activation}$, is not relevant to the performance criteria of the sled pulse. When the system is activated, there is a lag time until the system actually starts moving. This response lag is due to the fact that the electrical and mechanical systems of the sled do not react instantaneously.

Figure 6 of the March 19 final rule indicates that the test begins when the sled actually starts to move, at 0.0 g acceleration, but that too is impractical. In its June 10 presentation, Honda provided initial sled pulse traces for both the VRTC 24-inch piston and a 12-inch piston. These traces indicated that the 24-inch cylinder sled took 18.1 milliseconds to achieve 0.5 g's, yet the corridor ends at the 0.5 g's level at 6.5625 ms. Therefore, even the faster acceleration of the 24-inch sled would be outside the corridor, if $T–0_{Test}$ started at 0.0 g acceleration, when the sled starts to move. It appears that even after the sled begins moving (although it moves only the width of a pencil line), the time lag before it begins significant acceleration is so great that no existing sled can produce an acceleration curve that stays within the corridor. This time lag has no counterpart in rigid barrier vehicle crash tests because the deceleration is instantaneous when the vehicle hits the barrier. The figure in the final rule portrayed unrealistically rapid increases in acceleration from the start of movement.

The intent of the sled pulse corridor is to ensure a specific change of acceleration (g) with respect to time. The important portion of the curve for determining fit within the corridor is not the small acceleration that occurs while the sled systems fully charge, but the rapid acceleration that occurs afterward. The final rule assumed that manufacturers would be able to produce

[1] ''To assess the fore-and-aft bending biofidelity of the neck * * *. The resulting moment about the occipital condylar axis versus the head to pendulum angle must lie within the prescribed corridor.'' Advisory Group for Aerospace Research and Development (AGARD) Advisory Report 330, Anthropomorphic Dummies for Crash and Escape System Testing, AGARD–AR–330, North Atlantic Treaty Organization.

sled test acceleration curves within the corridor.

To carry out this intent, it makes sense to shift the corridor with respect to time to align it with the true sled pulse, rather than having the sled pulse aligned with the corridor. As long as the shape of the corridor is not changed, the crash pulse will be no different from the standpoint of designing safe air bags. It will just be easier to run the test, without affecting the outcome. To accomplish the process of fitting the corridor to the sled pulse, $T–0_{Test}$ should be determined by a specific acceleration level for the sled which corresponds to a time at which the most rapid acceleration begins, at about 0.5 g's. Computationally shifting the corridor to align with the curve is far easier than trying to mechanically get the sled pulse curve to begin rapid acceleration within the corridor. Starting at 0.5 g will also eliminate much of the problem mentioned above in issue 1 concerning noise during the earliest part of the test acceleration.

Therefore, S13.1 and Figure 6 are being amended to reflect that the sled test start time for purposes of meeting the requirement of being in the corridor, $T–0_{Test}$, is when the sled achieves 0.5 g's. Many test laboratories use $T–0_{Test}$ equal to a specific acceleration (g) level, often 0.5 g's. The vehicle will still have to achieve the specified range of acceleration during the test. Similarly, the time at which the air bag fires is only relevant if it relates to when the sled starts accelerating at a significant rate, such as 0.5 g's. Therefore, the air bag deployment timing should also be timed from the time at which the sled reaches 0.5 g acceleration. $T–0_{Test}$ and $T-0_{Air\text{-}bag}$ coincide.

6. Delta V Requirement

Honda asks whether the agency had intended to require the sled to achieve a velocity of 28 to 30 miles per hour, or just to stay in the corridor. In other words, it asks whether the final velocity specified in S13.1 and Figure 6 of the final rule is a guideline or a requirement. If the final velocity is a requirement, then Honda believes it is very difficult to consistently stay in the corridor. It also asks whether the velocity may be calculated by integrating the acceleration data or must the actual velocities be measured with a speed device.

The agency clearly intended the specifications for the final velocity to be included in the standard as a requirement during agency compliance testing. The change in velocity is specified in S13.1 and in Figure 6 of the final rule as Delta V=30 (+0, −2) miles per hour, or between 28 and 30 mph. As discussed in the preceding section, the agency has made a correction that allows the pulse corridor to be moved to fit the sled pulse. This should assist the test laboratories in keeping within this sled pulse corridor.

The agency has not specified a method of determining the Delta V. TRC measures the velocity directly. However, laboratories without the capability to directly measure velocity may mathematically calculate the change in velocity by integrating the entire sled pulse starting from zero acceleration ($T–0_{Movement}$). As in the March 19th final rule, the agency does not recommend a specific procedure.

The agency notes that, even though the regulation is a specification of the parameters to be used in agency compliance tests, there is nothing to preclude vehicle manufacturers from actually exceeding the change in velocity specified in the standard. The agency would consider a test at a higher-than-required Delta V to be an acceptable basis for certification.

7. Signal Problems, Filtering

Honda reports that it is hard for some laboratories to determine the exact 0.5 g level, because of test startup noise. Probably the most significant problem is that the air bag initiation time is determined by adding 20 milliseconds (+/−2 ms) after the sled achieves 0.5 g acceleration. If the instrumentation is incapable of discerning the point at which 0.5 g acceleration is reached, the air bag activation time may be incorrect. Honda pointed out that much of the noise in the instrumentation occurs only at the beginning of the test, and that the problem immediately clears up. Honda reports that some laboratories are timing the air bag activation from 1.0 g, by applying a mathematical time conversion factor to account for the time back to the approximate 0.5 g point, based on experience with the equipment.

NHTSA will follow the Standard No. 208 test requirements during compliance testing. However, manufacturers may use any method during testing that gives them confidence enough to assure that the vehicle will comply when tested by the agency. No clarification of the rule is necessary.

8. Loading Requirements and Test Attitude

Honda asks whether the loaded requirement should be applied to the actual sled test, or to be used just prior to the test to determine the vehicle attitude.

The load requirement specified in S8.1 of FMVSS 208, as it applies to the sled test, is only specified for pre-test loading, to determine the vehicle attitude. The vehicle attitude is then used for defining the sled-mounting attitude. As discussed in Issues 1 and 2, the sled configuration may be slightly modified by removing fluids, battery, and unsecured weight, and securing loose parts, but these modifications will not affect the test attitude.

III. Effective Date

The agency finds that there is good cause to make this rule effective immediately. These amendments do not impose any new requirements. Instead, they relieve some of the testing burden imposed on the manufacturers by the March 19, 1997 final rule. It will be easier for manufacturers to test by aligning the corridor with the sled pulse, as specified in these amendments. Also, the smooth sled pulse that will result from rigidly securing the engine, transmissions, axles, exhaust, vehicle frame, and vehicle body and removing the fluids, batteries and unsecured components will make testing easier. A delayed effective date would impose a needless compliance burden on the vehicle manufacturing industry and would provide no safety benefits.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this correcting amendment under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, ''Regulatory Planning and Review.'' This document amends an action that was determined to be ''significant'' under the Department of Transportation's regulatory policies and procedures because of the degree of public interest in this subject. However, today's rule simply clarifies the existing requirements and makes the test procedures easier to perform. This correcting amendment does not alter the costs or benefits of that rule significantly. It merely clarifies the intended application of the rule and provides guidance regarding test procedures. Therefore, a regulatory analysis is not warranted.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the

Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this rule will not have an economic impact on any manufacturer or other entity, except for a small beneficial impact in promoting ease of testing.

This correcting amendment slightly increases manufacturer flexibility in testing. Most of the changes are interpretations and clarifications of the existing language, not changes in requirements that impose new burdens. The changes in requirements are designed to make vehicles with air bags easier for manufacturers to test their vehicles, not to change the vehicle performance. As a result, some businesses that otherwise would have had to buy sophisticated testing equipment will not need to do so. Therefore, there will be no new significant impact on small businesses.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include 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 annually. This rule does not meet the definition of a Federal mandate, because it adds no additional cost to the completely permissive final rule which it is clarifying.

Civil Justice Reform

This final rule has no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

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

1. The authority citation for part 571 continues to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by replacing the 8th sentence of § 13.1 with the four sentences shown below, by revising § 13.2, and by adding § 13.5 to read as follows:

* * * * *

§ 571.208 Occupant Crash Protection.

* * * * *

§ 13.1. *Instrumentation Impact Test—Part 1—Electronic Instrumentation.* * * * The total change in velocity (Delta V) shall be determined from the integration of the entire acceleration versus time curve from the sled. The Delta V shall include the period of time in which the sled is accelerating to 0.5 g. All points on the acceleration versus time curve at and beyond 0.5 g must be contained within or on the corridor defined in Figure 6. The agency may shift the curve with respect to time in order to fit the curve within the corridor. * * *

§ 13.2 *Neck injury criteria.* A vehicle certified to this alternative test requirement shall, in addition to meeting the criteria specified in § 13.1, meet the following injury criteria for the neck, measured with the six axis load cell (ref. Denton drawing C–1709) that is mounted between the bottom of the skull and the top of the neck as shown in Drawing 78051–218, in the unbelted sled test:

(a) Flexion Bending Moment (calculated at the occipital condyle)—190 Nm. SAE Class 600.

(b) Extension Bending Moment (calculated at the occipital condyle)—57 Nm. SAE Class 600.

* * * * *

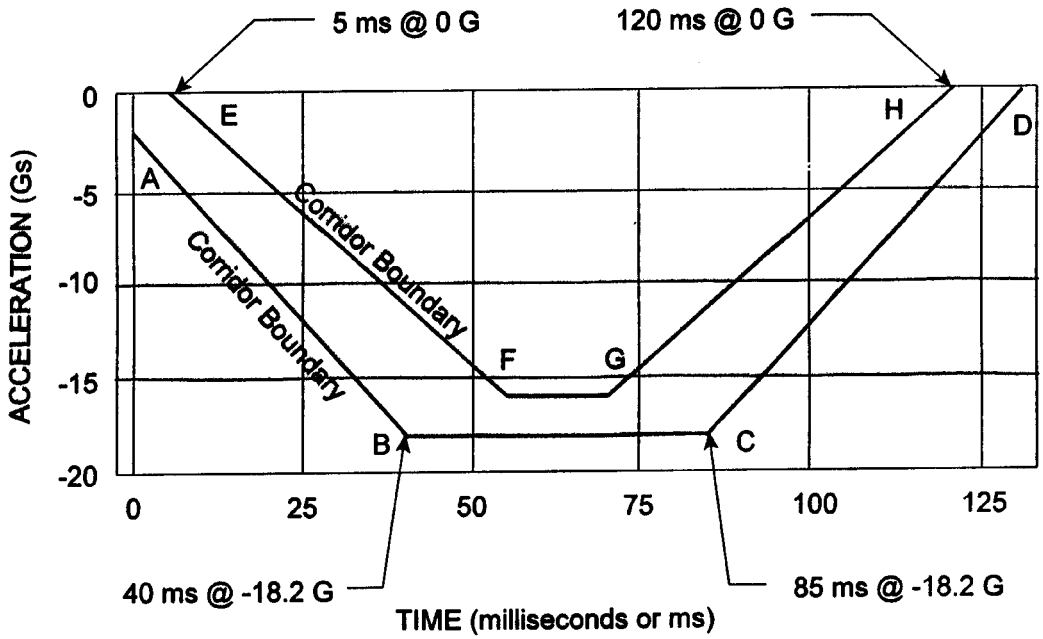
§ 13.5. *Vehicle Securing.* The engine, transmissions, axles, exhaust, vehicle frame, and vehicle body may be rigidly secured to the vehicle and/or the sled, and fluids, batteries and unsecured components may be removed, in order to assure that all points on the crash pulse curve are within the corridor defined in Figure 6.

* * * * *

3. Figure 6 is revised to appear as follows:

BILLING CODE 4910–59–P

SLED PULSE WITH MAXIMUM AND MINIMUM CORRIDORS



Sled pulse for delta V = 30(+0,-2) mph. The Time Zero for the test is defined by the point when the sled acceleration achieves -0.5 G's.

SLED PULSE AND COORDINATES

REFERENCE POINT	t (ms)	ACCELERATION (G)
A	0	-2
B	40	-18.2
C	85	-18.2
D	130	0
E	5	0
F	55	-16
G	70	-16
H	120	0.00

Figure 6 - Sled Pulse and Coordinates

Issued on: December 18, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–34249 Filed 12–24–98; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1146 and 1147

[STB Ex Parte No. 628]

Expedited Relief for Service Inadequacies

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) is issuing final rules establishing procedures for obtaining temporary alternative rail service when there has been a substantial measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier.

DATES: These rules are effective January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In April 1998, the Board conducted hearings, at the request of Congress, to examine issues of rail access and competition in today's railroad industry. A recurring complaint voiced by rail shippers at those hearings was the delay and ineffectiveness of existing procedures for obtaining relief from localized service failures, and the railroads agreed that we should reexamine how such service failures can best be addressed.[1] Accordingly, in a notice of proposed rulemaking in this proceeding served May 12, 1998, and published in the **Federal Register** on May 18, 1998 (63 FR 27253) (*May Notice*), we sought comments on a proposal to establish expedited procedures for shippers to obtain localized temporary alternative rail service from another carrier when the incumbent carrier cannot properly serve them.

Under the proposed procedures, parties could seek alternative rail service, under 49 U.S.C. 10705, 11102, or 11123, when, over an identified time period, there has been a substantial measurable deterioration in the rail service provided by an incumbent carrier. We did not list particular factors to be used in making that assessment, or propose a specific test period, but rather sought to retain the flexibility needed to address widely varying circumstances. We explained, however, that these procedures were not meant to redress minor service disruptions, but rather would be directed only at substantial service problems that cannot readily be resolved by the incumbent railroad. Petitioners would be required to first discuss and assess with the incumbent carrier whether adequate service would be restored within a reasonable time (and, if not, to explain why not); to obtain from another railroad the necessary commitment'should it be afforded access—to meet the service needs; and to describe how the new service could be provided safely, without degrading service to its existing customers and without unreasonably interfering with the incumbent's overall ability to provide service. Where relief is granted and the incumbent carrier can later demonstrate that it has restored, or is prepared to restore, adequate service, it could petition to terminate that relief.

In a supplemental notice of proposed rulemaking served October 15, 1998, and published in the **Federal Register** on October 20, 1998 (63 FR 55996) (*October Notice*), we sought comments on a request by the American Short Line and Regional Railroad Association (ASLRRA) for similar expedited procedures for Class II and Class III railroads to obtain temporary access to an additional carrier under similar circumstances.

We have received comments in response to both the *May Notice*[2] and the *October Notice*.[3] The comments express near-universal support for both proposals,[4] although the commenting parties differ somewhat on what the rules should provide and how they should be applied. After considering the comments,[5] we are clarifying and modifying the earlier proposals and are adopting the rules set forth below, to be codified at 49 CFR Parts 1146 and 1147.

Discussion and Conclusions

Overview

The procedures we are adopting here are designed to enable the Board to provide temporary relief from serious, localized railroad service problems more quickly and effectively. They do not provide permanent remedies; to the contrary, they include specific procedures for terminating the relief as soon as the incumbent carrier is ready and able to serve the traffic again. Moreover, they are not intended to address demands for more competitive service. The ''competitive access'' regulations, at 49 CFR 1144, remain available for obtaining more permanent relief where the incumbent railroad has acted in a way ''that is contrary to the competition policies of 49 U.S.C. 10101[] or is otherwise anticompetitive,'' 49 CFR 1144.5(a)(1)(i).

Choice of Remedies

In the *May Notice* we proposed a single set of procedures under which parties could seek temporary alternative rail service under either the ''access'' provisions of sections 10705 or 11102 or the ''emergency service'' provisions of

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[1] *See Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served Apr. 17, 1998) (*Review*), slip op. at 6–7.

[2] Comments were submitted by ACE Cogeneration Company (ACE); Alliance for Rail Competition; AmerenUE; ASLRRA; Arkansas, Louisiana & Mississippi Railroad Company (AL&M); Association of American Railroads (AAR); BHP Copper Inc. (BHP); California Public Utilities Commission (CPUC); Cemex USA Management, Inc. (Cemex); Chemical Lime Company (CLC); Chemical Manufacturers Association (CMA); Edison Electric Institute, Farmland Industries, Inc. and The Fertilizer Institute (Edison-Farmland-Fertilizer); Empire Electric District Company (Empire); Entergy Services, Inc. and Entergy Arkansas, Inc. (Entergy); International Paper Company (IPC); Lower Colorado River Authority and the City of Austin, TX (LCRA); National Grain and Feed Association (NGFA); National Industrial Traffic League (NITL); National Lime and Stone Company; National Mining Association (NMA); North Dakota Grain Dealers Association, North Dakota Public Service Commission, and North Dakota Wheat Commission (North Dakota); Ohio Rail Development Commission, Public Utilities Commission of Ohio, and Ohio Attorney General Antitrust Section; PP&L, Inc. (PP&L); Shell Oil Company and Shell Chemical Company (Shell); Society of Plastics Industry, Inc. (SPI); Swanson-Superior Forest Products, Inc.; United States Department of Agriculture; United States Department of Transportation (DOT); United Transportation Union (UTU); U.S. Clay Producers Traffic Associations, Inc. (US Clay); Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU–IL); and Western Coal Traffic League (WCTL).

Replies were filed by AL&M; AAR; BHP; CPUC; Empire; Entergy; IPC; LCRA; NITL, CMA, Edison-Farmland-Fertilizer, NMA, SPI, US Clay, AmerenUE, and PP&L (NITL et al.); Shell; and WCTL.

[3] Supplemental comments were filed by AL&M; CPUC; Cemex; Edison-Fertilizer; Empire; Farmrail System, Inc. (Farmrail); NGFA; NITL; Reagent Chemical & Research, Inc.; UTU; UTU–IL; WCTL; and Western Railroad Company, Inc.

Supplemental replies were filed by AAR; ASLRRA; Edison-Fertilizer; Farmrail; and DOT.

[4] UTU–IL is the only commenter opposing the proposals. It argues that new procedures are unnecessary. Its assertion, however, is belied by the overwhelming consensus, expressed in the comments of the shipper and railroad communities alike, that such procedures would be useful and would assist parties in overcoming temporary service problems.

We also note that the national UTU, while voicing ''serious concerns'' about issues that could arise in individual cases regarding safety and adverse effects on rail employees, does not oppose the proposals.

[5] Individual suggestions or arguments not specifically referenced here are embraced by our general discussion in this decision setting forth the positions of various groups and our response thereto.