

#### 4. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

#### B. Paperwork Reduction Act Analysis

18. This NPRM does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. See 44 U.S.C. 3506(c)(4).

#### C. Ex Parte Presentations

19. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.

#### D. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 6, 2007, and reply comments June 13, 2007. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also

submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: <http://www.bcpweb.com>; phone: 1–800–378–3160;

- (2) Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B540, Washington, DC 20554; e-mail: [Antoinette.Stevens@fcc.gov](mailto:Antoinette.Stevens@fcc.gov).

21. For further information regarding this proceeding, contact Ted Burmeister,

Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–7389, or [theodore.burmeister@fcc.gov](mailto:theodore.burmeister@fcc.gov), or Katie King, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7491, or [katie.king@fcc.gov](mailto:katie.king@fcc.gov).

#### III. Ordering Clauses

22. Pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 214, 254, and 403, this *Notice of Proposed Rulemaking* is adopted.

23. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–2003–15227]

#### Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems, Air Brake Systems

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

**ACTION:** Denial of petition for reconsideration.

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**SUMMARY:** This document responds to a petition for reconsideration of our 2003 final rule establishing a braking-in-a-curve performance requirement for single unit trucks and buses. The braking-in-a-curve requirement has applied to air-braked truck tractors since 1997 and we determined that the requirement should also apply to single-unit trucks and buses. The requirement ensures that a vehicle’s antilock brake system (ABS) maintains adequate stability and control during a hard stop on a curved, slippery road surface. A petition for reconsideration was received from the National Truck Equipment Association (NTEA), which seeks to exclude vehicles built in two or

more stages and altered vehicles from the braking-in-a-curve requirement if such vehicles are manufactured or altered by a final stage manufacturer or alterer that builds no more than 250 affected vehicles per year. The agency is denying the petitioner's request for the reasons discussed in this document.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Jeff Woods, Office of Crash Avoidance Safety Standards at (202) 366-2720. For legal issues, you may contact Rebecca Schade, Office of Chief Counsel, at (202) 366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Background
- II. Petition for Reconsideration and Agency Response
  - A. Pass Through Certification
    - 1. Auxiliary Axles
    - 2. Wheelbase Modifications
  - B. Testing Costs and Alternatives to Testing
  - C. New Temporary Exemption Procedure in Part 555
- III. Conclusion

**I. Background**

A braking-in-a-curve performance requirement was added for single-unit trucks and buses in a final rule published on August 11, 2003 (68 FR 47485; Docket No. NHTSA-2003-15277). The agency determined that such a requirement is necessary to ensure the safe performance of an antilock braking system (ABS), which is required equipment on these vehicles. Testing by the agency and information provided by industry indicated that the braking-in-a-curve test specified previously for truck-tractors could be applied to single-unit trucks and buses. The requirement ensures that an ABS installed on a vehicle helps the driver maintain vehicle control and stability during a hard stop on a curved, slippery road surface.

In the final rule, the agency specified that the braking-in-a-curve is only conducted with these vehicles at lightly loaded vehicle weight (LLVW). The LLVW condition was determined to be the worst-case loading condition for ABS performance testing on single unit trucks. Test data indicated that testing a vehicle fully loaded to its gross vehicle weight rating (GVWR) did not provide for additional benefits in vehicle safety when compared to the testing in the LLVW condition. Therefore, a requirement for single-unit trucks and buses to comply when tested at GVWR

was not included in the final rule. Limiting the requirement to the LLVW condition also had the additional benefit of reducing the certification cost.

As we stated in the final rule, the braking-in-a-curve performance test is necessary to ensure that the benefits of ABS are realized. Merely requiring ABS does not ensure that an ABS system will provide an acceptable level of performance. The added performance test provides such an assurance.

As established in the final rule, vehicles built in two or more stages must meet the braking-in-a-curve performance requirements on and after July 1, 2006.

**II. Petition for Reconsideration and Agency Response**

The National Truck Equipment Association (NTEA) submitted a petition for reconsideration asking NHTSA to exclude vehicles built in two or more stages and altered vehicles from the braking-in-a-curve requirement if such vehicles are manufactured or altered by a final stage manufacturer or alterer that builds no more than 250 affected vehicles per year. NTEA did not assert that such vehicles are unable to comply, but instead stated that it is not practicable for small final stage manufacturers and alterers to certify compliance with the requirement. NTEA argued that contrary to the agency's determination in the final rule, final stage manufacturers and alterers are unable to rely on guidance from incomplete vehicle manufacturers in order to certify to the braking-in-a-curve performance requirement. Specifically, the petitioner stated that the agency failed to appropriately consider the impact of aftermarket axles and modifications to a vehicle's wheelbase on the ability of final stage manufacturers and alterers to rely on guidance from incomplete vehicle manufacturers. Further, NTEA stated that the agency's cost estimates were too low and that the agency failed to provide sufficient guidance on alternatives to testing that would constitute due care for purposes of certification of compliance with the requirement.

*A. Pass-Through Certification and Compliance Envelopes*

Final stage manufacturers complete the manufacture of incomplete vehicles and alterers perform modifications to completed and certified vehicles. Manufacturers of incomplete vehicles and original vehicle manufacturers often provide guidance on how a vehicle may be completed or altered to comply with all applicable FMVSSs. Guidance from

incomplete manufacturers may permit an incomplete vehicle to be completed in a manner that permits a final-stage manufacturer or alterer to rely on pass-through certification. Incomplete vehicle manufacturers provide this information in incomplete vehicle documents (IVD). 49 CFR 568.5 requires incomplete vehicle manufacturers to provide IVDs to final stage manufacturers. Manufacturers of completed vehicles may provide alterers with a "compliance envelope," i.e., guidance as to the modifications that can be made to a vehicle that will not remove the vehicle from compliance under the original certification. NHTSA stated in its final rule that the occurrences where final stage manufacturers may not rely on pass-through certification, or on data provided by incomplete vehicle manufacturers, will be rare and would represent a significantly smaller percentage of the affected vehicles than the 20 percent claimed by NTEA in its comments to the NPRM.

In its petition for reconsideration, NTEA provided additional clarification that the 20 percent value it cited represents vehicles for which no pass-through certification exists.<sup>1</sup> NTEA stated that when considering the number of vehicles that are completed or altered outside the guidelines for pass-through certification or the compliance envelope, the number of incomplete and altered vehicles for which certification guidance is not available may perhaps be as high as 60 percent. NTEA stated that incomplete vehicle manufacturers and original vehicle manufacturers have an incentive to keep pass-through certification guidance narrow in order to limit potential liability from non-compliant final stage manufacture and alteration. The petitioner provided several IVDs that it argued demonstrated that final stage manufacturers and alterers effectively cannot rely on these documents for certification of compliance with the braking-in-a-curve requirement.

NHTSA has reviewed the IVDs provided by NTEA in its petition for reconsideration, and also obtained additional IVDs for other types of chassis. We found no instance of an incomplete chassis-cab for which pass-through certification for FMVSS Nos. 105 or 121 was unavailable to final stage manufacturers and alterers. The typical incomplete vehicle configuration, a

<sup>1</sup> It was not clear to NHTSA from the petition whether NTEA was referring to pass-through certification for all FMVSSs, or was limiting its comments to pass-through certification to the braking standards, FMVSS Nos. 105 and 121.

single-unit truck equipped with a completed cab, had pass-through certification for the braking standards so long as a final stage manufacturer completed the vehicle without modifying the brake system and followed other routine measures.

Aside from the IVDs provided by the petitioner, NHTSA reviewed the IVD for a Ford F 53 basic stripped chassis<sup>2</sup> without a cab or any exterior bodywork. Page 9 of the Ford IVD specifies that if the chassis is completed within the guidelines identified for system or component modification, minimum body weight, vertical and longitudinal center-of-gravity specifications, and axle and gross vehicle weight ratings, it will conform to FMVSS No. 105. The IVD also provides a table of all U.S. and Canadian motor vehicle safety standards which show that this chassis can be completed as a bus (other than a school bus) or a multipurpose vehicle and still utilize pass-through certification for the hydraulic brake system requirements.

In sum, NHTSA was unable to identify an IVD for which no pass-through certification was provided for the brake standards. Moreover, the petitioner did not provide examples of incomplete vehicles for which no pass-through certification was provided in general.

NTEA did cite two vehicle modifications for which it stated that pass-through certification was not sufficient, installation of auxiliary axles and modifications to a vehicle's wheelbase.<sup>3</sup> The issues raised by these types of modifications are addressed below.

### 1. Auxiliary Axles

A common modification to air-braked trucks is the installation of one or more auxiliary axles to increase the GVWR to provide for increased cargo-carrying capacity. NTEA estimated that 25,000 auxiliary axles are installed annually by final stage manufacturers and alterers. The petitioner stated that incomplete vehicle manufacturers typically do not provide compliance information to final stage manufacturers with regard to the installation of such axles, and noted that the agency did not test vehicles configured with auxiliary axles for the August 2003 final rule.

<sup>2</sup> The IVD for the 2003 F-Super Duty Class A Motorhome Chassis is available from the Ford Web site at <http://www.fleet.ford.com/truckbbas/topics/incomp.html>.

<sup>3</sup> NTEA did not specify whether auxiliary axle and wheelbase modifications account for the 60 percent of vehicles that are unable to rely on a pass-through certification, or if other modifications, including those not related to braking, also contribute to this value.

We note that auxiliary axles can be configured as either liftable or non-liftable axles. A liftable axle can be raised and lowered by means of an air suspension system operated by a control switch provided for the driver. Whether an auxiliary axle is liftable or non-liftable relates to how the vehicle is tested in the braking-in-a-curve test. The braking-in-a-curve test procedure specified in the final rule states that single-unit trucks and buses are tested only in a LLVW condition. S6.1.12 of FMVSS No. 121 states that when a vehicle with a liftable axle is tested at lightly loaded vehicle weight, the liftable axle is to be raised. Thus, the wheels on a liftable axle would not be in contact with the pavement during the test, and would have no appreciable impact on the ability of a straight truck or bus to comply with the braking-in-a-curve test procedure. As noted in the final rule, lighter vehicle weights typically perform worse than heavier vehicle weights during the braking-in-a-curve test. The axle would add weight to a vehicle, but so long as the installation of the axle did not place the vehicle outside the envelope for weight distribution or center of gravity requirements in the IVD, a liftable axle (when raised) may even improve a vehicle's performance in the braking-in-a-curve test.

Installations of non-liftable axles could affect the braking-in-a-curve test performance for a modified vehicle, because the wheels of these axles would be in contact with the pavement during the braking-in-a-curve test. Therefore, if a non-liftable axle is installed on a vehicle outside the scope of the pass-through certification, the party performing the installation must certify that the altered vehicle does comply with FMVSS No. 121. The costs to perform a certification test and alternatives to conducting the braking-in-a-curve test are discussed below.

The agency estimates that a majority of auxiliary axles are liftable axles. Information provided by a major supplier of truck suspensions indicated that 99 percent of the auxiliary axle suspensions it sells are the liftable type.<sup>4</sup> Based on NTEA's estimates of the number of auxiliary axles installed annually and on the distribution of axles between liftable and non-liftable, if each non-liftable axle were installed on a separate vehicle, the number of affected vehicles would be approximately 250 a year. However, vehicles can be equipped with more

<sup>4</sup> See memo regarding conversation with Hendrickson Int'l., Docket No. NHTSA-2003-15277-4.

than one auxiliary axle. Therefore, the number of vehicles with non-liftable axles is likely lower, which suggests to the agency that this is a less serious problem than NTEA implies.

### 2. Wheelbase Modifications

NTEA also asserted that with regard to the braking-in-a-curve test, "no certification pass-through is available for any vehicle with a wheelbase modification." NTEA stated that under the previous regulations, if a final stage manufacturer or alterer stayed within the chassis manufacturers' wheelbase range for a given model, it could be reasonably assured that the brake system was designed to perform within this range for stopping distance requirements. Additionally, NTEA stated that if a final stage manufacturer or alterer completes or alters a vehicle such that the wheelbase is modified outside the scope of an IVD, compliance with the brake standards should be assured if:

- The GVWR and gross axle weight rating are not re-rated;
- Tire or other suspension components are not changed or modified;
- Added brake lines meet the requirements of FMVSS 106, brake hoses; and
- Modifications are consistent with design guidelines from the chassis manufacturer.

However, because of the new braking-in-a-curve test, NTEA argued that "wheelbase changes will nullify both the hydraulic and air brake system conformity statements of the chassis manufacturer, and place the full burden of compliance with the [final stage manufacturer]."

We disagree with the petitioner that wheelbase changes will necessarily "nullify" chassis manufacturers' conformity statements. Data reviewed by the agency indicates that final stage manufacturers and alterers can modify wheelbases such that the vehicle continues to comply with the braking-in-a-curve test. For example, data provided by the Truck Manufacturers Association (TMA) in response to the NPRM indicated that for 31 trucks tested by TMA's member companies with a wheelbase range of 152 to 300 inches, each vehicle successfully passed the braking-in-a-curve test (Docket No. NHTSA-1999-6550-13). The agency has also observed that typical hydraulic-braked and air-braked ABS electronic control units (ECU) will perform satisfactorily on several types of hydraulic-braked or air-braked vehicles,

respectively, including trucks, tractors, and buses.<sup>5</sup>

Thus, no alterations are needed to the ECU: it functions properly regardless of the wheelbase that is used. There are data available for a variety of vehicle configurations that a final stage manufacturer or alterer may be able to rely on for purposes of certification (*e.g.*, the range of available wheelbases that are offered by the chassis manufacturer). We further note that final stage manufacturers and alterers may obtain technical support from the ABS suppliers or from the body builder advisory service that is available from many chassis manufacturers.

However, if a final stage manufacturer or alterer were to modify a vehicle outside the scope of the IVD and for which no compliance data were available, such as a very short wheelbase beyond the range of what is offered by a chassis manufacturer, such a modification could degrade the vehicle's handling characteristics beyond the performance capabilities of the vehicle's ABS. A very short wheelbase could result in extreme weight transfer during the stopping distance tests on dry pavement and failure to stay within the 12-foot wide lane if, for example, the rear wheels lifted off the ground during the stop. In such a case, there would be problems complying with the both the braking-in-a-curve test and the stopping distance test. In such cases, the final stage manufacturer or alterer would be responsible for ensuring that the vehicle's ABS performed as necessary to comply with the braking-in-a-curve test.

#### *B. Testing Costs and Alternatives to Testing*

In the NPRM, NHTSA estimated the cost of conducting a braking-in-a-curve test at \$1,500, if performed as a stand-alone test, or \$1,000, if performed as part of a complete FMVSS No. 105 or

121 certification test.<sup>6</sup> In its petition, NTEA commented that because currently other braking requirements can be certified without testing, as discussed above, the braking-in-a-curve test would likely be a stand-alone test. In addition to the cost of the test itself, NTEA argued that final stage manufacturers and alterers would be faced with the cost of transporting the vehicle to the testing site, as well as the loss in value of the tested vehicle as it could not be sold as new.

NTEA also stated its concern of the cost on the industry as a whole. NTEA again argued that based on the number of auxiliary axle installations and wheelbase modifications, 35,000 vehicles will be produced for which there is no pass-through certification available. The petitioner further stated that because of the competitive nature of the industry and the number of vehicle configurations in the market place, consortium testing as a means to reduce certification costs for individual businesses is not a practical option.

In response, as discussed above, some vehicle configurations will indeed require a final stage manufacturer or alterer to certify a vehicle's compliance with the braking-in-a-curve test. However, the agency does not believe that this test will be prohibitive relative to the total vehicle cost. We estimate that the cost of a specialized heavy duty truck with auxiliary axles, an altered wheelbase, and custom body and work equipment may be in the range of \$100,000 to \$500,000, so the additional cost of a braking-in-a-curve test, in the range of \$1,000 to \$6,000, should not be hugely consequential. Also, we note that FMVSS No. 105 or 121 certification testing (*e.g.*, the braking-in-a-curve test) is non-destructive to the vehicle. A vehicle can still be sold even if testing is required.

The agency recognizes that there may be a small loss in the value of a new vehicle that requires certification testing for the braking-in-a-curve requirements, but reiterates that some highly-specialized vehicles may require actual testing, even though the majority of vehicles may not. We are aware that custom heavy vehicles sometimes need brake system certification testing prior to delivery to the customer, and that manufacturers and alterers are able to accommodate such situations. The brake

burnish specifications in FMVSS Nos. 105 and 121 both specify 500 brake snubs from 40 mph to 20 mph at 1 mile intervals, which would add 500 miles to the odometer of a test vehicle, with the remaining portions of the brake system certification test under each standard adding several more miles. Thus, if a vehicle intended for a customer were tested for certification, it would accumulate slightly over 500 miles prior to delivery. Heavy vehicles often travel several hundreds of thousands of miles over their lifetime, and NHTSA believes that adding 500 miles of use to a vehicle for a brake system certification test only occasionally necessary would not appreciably devalue it.

However, the agency believes that the vast majority of vehicles completed by final stage manufacturers and alterers will continue to use pass-through certification and will not need to be individually tested. As stated above, auxiliary lift installations and wheelbase modifications can be made such that a final stage manufacturer or alterer can rely on the IVD or engineering analysis to certify compliance with FMVSS No. 121. Additionally, we note that many chassis manufacturers offer chassis with many non-standard configurations of axles. Promotional information from Kenworth, Peterbilt, Oshkosh, and Western Star truck manufacturers indicates that these chassis manufacturers can provide a wide range of axle configurations, including lift axles, dual-steering front axles, all-wheel drive, tridem drive axles, and bridge-formula tag axles. NTEA did not provide data indicating how many of the vehicle configurations offered by their member final stage manufacturers are so specialized that these configurations are not available from a chassis manufacturer with full brake system certification.

Additionally, while NTEA stated that consortium testing would not be a practical solution for the industry, such testing is currently being performed by the industry in Canada. Consortium testing is an approach in which a parent organization or group of member companies develops and conducts certification testing and provides the results to each member company. This lowers testing costs per unit produced, sold, or manufactured, as compared to each company performing its own certification tests. Consortium testing is being used by the Canadian Transportation Equipment Association (CTEA) to compile certification data for Canadian Motor Vehicle Safety

<sup>5</sup> For example, the Body Builder's Book Bulletin BB-2, Rev. A, states that "When lengthening the wheelbase on vehicles with Anti-lock Brake Systems (ABS), the wiring for the wheel speed sensors and ABS components cannot and should not be altered, cut, spliced, or repaired. The use of approved ABS extension cables is recommended whenever a wheelbase is lengthened. Whenever the wheelbase is shortened, ensure that excess ABS cables are securely tied to the inside of the frame rail to prevent interference. Refer to UD Parts Bulletin UD99-116 for ABS extension cable information." Based on the thoroughness of this explanation of necessary steps for preserving ABS when changing a wheelbase, we believe it is reasonable to assume that no changes to the ECU are necessary. Body Builder's Book Bulletin BB-2, Rev. A, Nissan Diesel America Inc. (September 20, 2004), available at [http://www.udtrucks.com/Q\\_Tech\\_Notes/BBB2%20Rev.pdf](http://www.udtrucks.com/Q_Tech_Notes/BBB2%20Rev.pdf).

<sup>6</sup> In response to the NPRM, the TMA provided an upper range estimate for the stand-alone test of \$6,000. However, the TMA provided no data in support of the estimate. TMA stated that this cost included the cost of transporting a vehicle and conducting the brake burnish specified in the standard. However, TMA did not itemize these costs. See 68 FR at 47491.

Standard No. 121, *Air brake systems*,<sup>7</sup> on axles that are installed by manufacturers in Canada. CTEA also sponsors testing on altered vehicles, as described in the report *Stability and Handling Characteristics of a Straight Truck with a Self-steering Pusher Axle* (Centre for Surface Transport Technology, National Research Council Canada, Technical Report CSTT-HVC-TR-057, August 9, 2002).<sup>8</sup> Thus the Canadian industry is able to provide consortium testing that results in reduced certification testing costs and offers valuable information on the alteration of heavy vehicles to consortium member companies.

The agency notes that a consortium of individual final stage manufacturers and alterers might also develop engineering modeling or installation guidelines that could permit, for certain vehicles, certification without the need for performance testing of each individual vehicle. We suggest that a vehicle dynamics simulation program could be enhanced to include elements such as auxiliary axles. However, we recognize that an auxiliary axle component of the model would need to be developed and likely validated through road testing. A braking-in-a-curve testing program could explore several parameters to determine if there are limits at which the braking-in-a-curve test performance becomes unacceptable with a particular auxiliary axle configuration (e.g., minimum curb weight), and describe conditions under which appropriate countermeasures such as installing an ABS system on the auxiliary axle(s) are appropriate.

### C. New Temporary Exemption Procedure in Part 555

On February 14, 2005, the agency published in the **Federal Register** (70 FR 7414) a final rule which, among other things, created new procedures under which manufacturers of vehicles built in two or more stages and alterers could obtain temporary exemptions from certain dynamic performance requirements. These procedures were established as Subpart B of Part 555.

The new procedures streamline the temporary exemption process by allowing an association or another party representing the interests of multiple manufacturers to bundle exemption petitions for a specific vehicle design, thus permitting a single explanation of the potential safety impact and good

faith attempts to comply with the standards. The procedures specify that each manufacturer seeking an exemption is required to demonstrate financial hardship and good faith efforts to comply with applicable requirements. Exemptions based on financial hardship are available to companies manufacturing fewer than 10,000 vehicles per year, and any single exemption cannot apply to more than 2,500 vehicles per year.

On May 15, 2006, NHTSA published in the **Federal Register** (71 FR 28168) a final rule in response to a petition submitted by NTEA requesting reconsideration of the February 2005 final rule. See Docket No. NHTSA-2006-24664. While the agency had limited the new procedures to FMVSS requirements that incorporate dynamic crash tests, NTEA argued that they should apply to all standards that are based on dynamic testing and not just dynamic crash testing.

In response to NTEA's petition, the agency reconsidered its previous position with respect to scope of relief available under Subpart B. On reconsideration, in the May 2006 final rule, it amended Part 555 to permit the manufacturers of multistage vehicles to petition for temporary exemption from requirements that incorporate various dynamic tests and not exclusively dynamic crash tests. This would include the braking-in-a-curve test.

In the May 2006 final rule, the agency observed that small volume manufacturers were already able to petition the agency for temporary exemptions from all Federal standards under Subpart A. Therefore its reconsideration as to the scope of Subpart B related to the availability of the more streamlined procedures rather than to the possibility of a manufacturer obtaining an exemption in appropriate circumstances.

Second, NHTSA noted that under § 555.13(a) and (b) of Subpart B, in order to petition for an exemption, the petitioner must show why the test requirements of a particular standard would cause substantial economic hardship. This showing must include detailed financial information, and a complete description of each manufacturer's good faith efforts to comply with the standards. Specifically, the petitioner must explain the inadequacy of the IVD document furnished by an incomplete vehicle manufacturer or by a prior intermediate-stage manufacturer pursuant to Part 568. The petitioner must also show why generic or cooperative testing is impracticable. Finally, the petitioner must explain the difficulty in procuring

goods and services necessary to conduct dynamic tests. We also noted that, in addition to showing of hardship, each petitioner is required to explain under § 555.13(c) why the requested temporary exemption would not unreasonably degrade safety.

In the May 2006 final rule, we also stated that for both dynamic crash tests and other dynamic tests, we believe that given the other relief provided in the February 2005 final rule, including greater ability to use pass-through certification, we expect that the number of cases for which exemptions are needed will be relatively small.

For purposes of this response to NTEA's petition concerning the braking-in-a-curve test, we note that the new streamlined temporary exemption procedures will be available for this test requirement. Thus, this relief will be available should it be necessary and appropriate.

Moreover, the agency provided a considerable amount of information and analysis in its May 2006 document in connection with arguments raised by NTEA concerning multistage manufacturers and alterers. In addition to issues related to the new Part 555 temporary exemption procedures, the agency included extensive discussion as to why the current multistage vehicle certification scheme is workable. Because many of the issues we discussed in that document are relevant to the issues raised by NTEA in connection with the braking in a curve test, we refer the reader to that document and its supporting record. See 71 FR 28196 (May 15, 2006) and Docket No. NHTSA-2006-24664.

### III. Conclusion

For the reasons discussed above, the agency is denying the petition for reconsideration from the NTEA to exclude certain small volume final stage manufacturers and alterers from certifying to the braking-in-a-curve performance requirements. Other than auxiliary axle and wheelbase modifications, NTEA did not provide any data showing specifically what modifications or deviations to IVD guidelines are occurring to incomplete or complete vehicles such that they cannot use pass-through certification for the brake system requirements. With regard to wheelbase modifications, the agency has determined that IVDs typically provide guidance on how such modifications can be performed while maintaining pass-through certification. Moreover, final stage manufacturers and alterers have considerable choice in purchasing chassis with different wheelbases and configuration of axles

<sup>7</sup> We note that Canadian Motor Vehicle Safety Standard No. 121 is virtually identical to FMVSS No. 121.

<sup>8</sup> Available for public inspection in NHTSA's Office of Rulemaking, 400 Seventh Street, SW., Washington, DC 20590.

certified as complying by the original vehicle manufacturer.

We recognize that pass-through certification is not available for all modifications, including the addition of some types of auxiliary axles. However, these types of modifications would not necessarily result in the need for certification testing. For example, with the addition of a lift axle, a manufacturer or final stage manufacturer may be able to rely on engineering analysis to certify compliance with the requirements of FMVSS Nos. 105 and 121.

In the rare cases in which certification testing may be required, the testing is non-destructive and the industry has options available to minimize the cost of any testing that is required. While the agency recognizes that some modifications might be beyond the envelope of pass-through certification, final stage manufacturers and alterers must certify that vehicles with such modifications continue to comply with FMVSS Nos. 105 and 121, to ensure that purchasers and other motorists have the full benefit of the required ABS.

Finally, as discussed earlier, the new streamlined exemption procedures are available for this test requirement, providing relief if it is necessary and appropriate.

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

Issued on: May 18, 2007.

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