Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–133; RM–9086]

Radio Broadcasting Services; Lake City, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A to Lake City, Minnesota, as that community's second FM broadcast service in response to a petition filed by Phoenix Media Group, Inc. *See* 62 FR 27711, May 21, 1997. The coordinates for Channel 235A at Lake City are 44–22–58 and 92–21–45. There is a site restriction 10.6 kilometeres (6.6 miles) southwest of the communtiy. With this action, this proceeding is terminated.

DATES: Effective November 3, 1997. The window period for filing applications for Channel 235A at Lake City, Minnesota, will open on November 3, 1997, and close on December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–133, adopted September 10, 1997, and released September 19, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 235A at Lake City.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–25590 Filed 9–26–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 97–046; Notice 2]

RIN 2127–AG73

Schedule of Fees Authorized by 49 U.S.C. 30141; Fee for Review and Processing of Conformity Certificates for Nonconforming Vehicles

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

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's regulations that prescribe a schedule of fees authorized by 49 U.S.C. 30141 for various functions performed by the agency with respect to the importation of motor vehicles. The amendment establishes a fee for the agency's review and processing of statements that registered importers submit to certify that vehicles that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards have been brought into conformity with those standards. The fee, which is set at $14.00 for fiscal year 1998, applies to all vehicles for which conformity certificates are submitted to NHTSA, including vehicles imported from Canada, which currently account for over 98 percent of the nonconforming vehicles that are processed by NHTSA.

DATES: The amendment established by this final rule will become effective on October 29, 1997.

Any petitions for reconsideration must be received by NHTSA not later than November 13, 1997.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–2830). For legal issues: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on July 15, 1997 (62 FR 37847), proposing to establish a fee for the agency's review and processing of conformity certificates submitted by registered importers and to set the fee for fiscal year (FY) 1998 at $17.00 per vehicle. The NPRM stated that 49 U.S.C. 30141 permits an importer who is registered with NHTSA (a ''registered importer'') to import a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS), provided that NHTSA has decided that the vehicle is eligible for importation. Once a motor vehicle has been declared eligible for importation, it is imported under bond by a registered importer or by an individual who has executed a contract or other agreement with a registered importer to bring the vehicle into compliance with applicable FMVSS. When the registered importer completes all necessary alterations, it must certify to NHTSA that the vehicle meets the FMVSS. See 49 U.S.C. 30146(b) and 49 CFR 592.6(e). This is accomplished by submitting, in accordance with regulations and guidance issued by NHTSA, a package containing photographic and documentary evidence of the vehicle's conformance with each applicable FMVSS. Each of these packages is reviewed by NHTSA's Office of Vehicle Safety Compliance (OVSC) to verify the accuracy of the information it contains. If NHTSA questions the registered importer's certification of compliance, the registered importer is notified pursuant to 49 CFR 592.8(c) to hold the vehicle for inspection. Acceptance of the certification ends the agency's involvement with the vehicle.

The NPRM noted that NHTSA staff expends much time reviewing and evaluating routine compliance packages, and even more time if a package does not indicate conformance with the FMVSS, necessitating follow-up action.

Based on figures accumulated to date, NHTSA expects to review over 21,000 compliance packages in FY 1997, which will end on September 30, 1997.

B. Authority for Fee

NHTSA is authorized under 49 U.S.C. 30141(a)(3) to establish an annual fee requiring registered importers to pay for the costs of carrying out the registered importer program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that registered importers provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment. As stated in the NPRM, NHTSA believes it is entitled to reimbursement under 49 U.S.C. 30141 for the costs of reviewing conformity packages submitted by registered importers to secure the release of the conformance bonds that cover noncomplying vehicles.

Because NHTSA's approval of the conformity package is a necessary predicate to the release of these bonds, NHTSA has concluded that the expense incurred by the agency in reviewing and processing each package may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A).

Additionally, NHTSA's decision to approve the release of a bond based on its review of a conformity package qualifies as a ''decision'' under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B). Section 30141(e) provides that the amounts collected as fees from registered importers under section 30141(a)(3) ''are only for use by the Secretary of Transportation—(1) in carrying out this section and sections 30146 (a)–(c)(1), (d), and (e) and 30147(b) of this title * * *.'' NHTSA's authority to review conformity packages is principally derived from section 30146(c). That provision authorizes the Secretary of Transportation to require the compliance certification submitted by a registered importer to ''be accompanied by evidence of compliance the Secretary considers appropriate * * *.'' In light of the fact that section 30141(e) clearly authorizes the use of fees collected from registered importers under section 30141(a)(3) to support NHTSA's actions in reviewing conformity packages, NHTSA has concluded that it is authorized under 49 U.S.C. 30141(a)(3)(B) to charge fees for that purpose.

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs for the review and processing of conformity packages. By reviewing the conformity package and authorizing the release of the conformance bond that is posted upon entry of a nonconforming vehicle, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. 9701.

Courts have long recognized that federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. *See,* e.g., *Seafarers International Union of North America* v. *U.S. Coast Guard,* 81 F.3d 179, 183 (D.C. Cir. 1996)(finding the Coast Guard authorized to charge reasonable fees for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association* v. *E.P.A.,* 20 F.3d 1177, 1180 (D.C. Cir. 1994)(finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc.* v. *F.C.C.,* 554 F.2d 1094, 1101 (D.C. Cir. 1976) (finding the F.C.C. authorized to impose fees for issuing certificates of compliance to cable television operators).

In view of the language and judicial construction of 31 U.S.C. 9701, NHTSA is relying on this provision as an independent source of authority for the conformity package review fee. The agency believes that this provision and 49 U.S.C. 30141 each provide sufficient separate authority for this fee and the other fees that the agency has established under 49 CFR Part 594. Section 9701 was not cited as authority for the Part 594 fees previously established by the agency because each of those fees was expressly authorized under the language of 49 U.S.C. 30141 or its predecessor provision. When the prior fees were established, NHTSA did not recognize a need to impose a fee for the review and processing of conformity certificates because those actions accounted for a relatively small share of the work performed by OVSC. In the ensuing years, OVSC has devoted a substantially greater share of its work to those efforts, so that a fee is now necessary to offset the agency's costs for performing this work.

C. Comments

Three comments were submitted in response to the notice of proposed rulemaking. The first of these was from Philip Trupiano of Auto Enterprises, Inc. of Clawson, Michigan, a registered importer. In his comment, Mr. Trupiano contends that NHTSA lacks statutory authority to establish the proposed fee for the review and processing of conformity packages. Specifically, Mr. Trupiano states that the action taken by the agency on these packages cannot be characterized as a ''decision'' under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B). Mr. Trupiano asserts that NHTSA's claim to that effect is refuted by the letters that the agency issues to registered importers following its review of conformity packages, which Mr. Trupiano describes as merely acknowledging receipt of the importer's certification and stating that a determination of a vehicle's compliance with the FMVSS may only be made upon actual compliance testing by NHTSA.

Mr. Trupiano appears to have misconstrued the nature of the decision the agency makes upon its review of a conformity package. That decision is not whether the vehicle in fact conforms to all applicable FMVSS, but instead whether the bond that is issued to ensure such conformity may be released. The agency reaches its decision on whether the bond may be released based on its review of the conformity package submitted by the importer. If the conformity package provides sufficient evidence that the vehicle complies with all applicable FMVSS, NHTSA issues the release letter. As Mr. Trupiano has noted, the letter contains the caveat that it does not constitute an agreement on NHTSA's part that the vehicle in fact complies with all applicable FMVSS since testing must be performed to determine compliance with many of the standards. NHTSA's decision to release the conformance bond based on its review of the conformity package is nonetheless a decision under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. 30141(a)(3)(B).

Mr. Trupiano also asserts that 31 U.S.C. 9701 does not provide alternate authority for establishment of the proposed fee because paragraph (c)(2) of section 9701 states that ''[t]his section does not affect a law of the United States—* * * prescribing bases for determining charges * * *.'' Applying this language, Mr. Trupiano contends that section 9701 provides no authority for the proposed fee because Congress has elsewhere ''prescribed the bases for which fees would be assessed for the registered importer program * * *.''

Mr. Trupiano's contention that 31 U.S.C. 9701 does not provide alternate authority for the proposed fee also appears to be based on a misreading of that statute. The only provision that Mr. Trupiano cites in support of this contention is 49 U.S.C. 9701(c)(2), which states: ''(c) this section does not affect a law of the United States—* * * (2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.'' The legislative history of section 9701 reveals that it was derived from a provision previously codified at 31 U.S.C. 483a (1976), which stated, as one of its provisos, ''[t]hat nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price * * *.'' This provision has no bearing on 49 U.S.C. 30141(a)(3)(B), because that section merely authorizes the establishment of fees to pay for the costs of making decisions under Chapter 301, without prescribing any bases for the calculation of such fees. Contrary to Mr. Trupiano's apparent interpretation of subsection (b)(2) of 31 U.S.C. 9701, that subsection does not preclude an agency from establishing a fee under section 9701 where other statutory authority for the establishment of the fee may exist. The subsection instead merely states that if the other statute prescribes a basis for determining the amount of the fee, that basis shall be given effect.

Mr. Trupiano next challenges the finding by NHTSA in the regulatory analysis portion of the NPRM that the proposed fee would not have a significant economic impact on a substantial number of small businesses, precluding the need for the agency to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act. As Mr. Trupiano notes, this finding was predicated on the agency's belief that importers could pass along the proposed fee, which is quite small in comparison to the value of the vehicles to which it would apply, to the ultimate purchasers of those vehicles. Mr. Trupiano instead contends that vehicles imported from Canada must compete with domestically produced versions of those vehicles and that the value of Canadian imports, which is set by the value of their domestic counterparts, would not be enhanced in any manner by payment of the proposed fee. As such, Mr. Trupiano asserts that the fee would have to be absorbed by the importer and that it could have significant cost consequences if the volume of imports by any one importer is sufficiently high. Additionally, Mr. Trupiano asserts that NHTSA did not provide advance notice to registered importers or their trade association prior to issuance of the NPRM, or seek alternatives that would reduce the cost of processing compliance packages. The alternatives that Mr. Trupiano identifies are: ''(1) Electronic data transfer of the conformance package and bond release; (2) elimination of unnecessary film photographs of the vehicles; (3) reduction in the amount of the conformity bond required; and (4) shorter turnaround time in reviewing the conformity packages.''

With regard to the cost impact of the proposed fee on registered importers, NHTSA notes that Mr. Trupiano did not identify the profit margin on which these businesses typically operate. From NHTSA's understanding of this industry, the agency believes that the fee, which was proposed at $17.00 but is being established in this final rule at $14.00 on the basis of more current data, is quite low in relation to the profit earned by the typical registered importer on each noncomplying vehicle that it imports. Even if this fee amount could not be passed on to the vehicle's ultimate purchaser, as Mr. Trupiano contends, the agency believes that the registered importer could absorb it without suffering undue financial strain. Based on informal contacts with registered importers prior to the issuance of the NPRM, NHTSA understood that they could reasonably accommodate a fee in the neighborhood of twenty to twenty-five dollars. The $14.00 fee that NHTSA is establishing in this final rule, which is based on the agency's analysis of the costs it actually incurs in the review and processing of conformity packages, is considerably short of this range.

With respect to the alternatives to the imposition of the proposed fee that were identified by Mr. Trupiano, NHTSA notes that the only one that would actually reduce the costs that NHTSA incurs in the review and processing of conformity packages is the electronic transfer of the bond release letter. The agency is currently studying the feasibility of implementing such a change. The agency is also examining the issue of allowing registered importers to transmit the contents of the conformity package electronically. It is the agency's understanding that any requirement for the electronic transfer of this data would actually increase costs to many registered importers since they lack the specialized equipment and expertise necessary to make such transmissions. Agency costs are also likely to increase with the electronic transfer of conformity data, as it would take longer for a reviewer to call up photographs on a computer than to examine hard copy photographs in a conformity package.

The principal impediment to the agency's approval of electronic transmissions is the existing requirement for actual photographs to be used to verify the certifications in the conformity package that the vehicle complies with all applicable standards. NHTSA requires actual photographs because they are less subject to manipulation than electronically transmitted images and therefore provide a more reliable means for identifying the vehicle that is the subject of the conformity package and ascertaining its conformity status. Nevertheless, NHTSA is still exploring ways to accommodate the interest in electronic transmission that has been expressed by some registered importers.

NHTSA requires the conformance bond that accompanies the entry of a noncomplying vehicle to be in an amount equal to 150% of the dutiable value of the vehicle. See 49 CFR 591.8. The agency is authorized under 49 U.S.C. 30141(d)(2) to require importers to provide bonds up to that amount. Since the full amount of the bond is released upon NHTSA's approval of a conformity package, any reduction in the amount of the bond should have negligible cost consequences for registered importers. The agency believes that it is necessary for the bond to be in the full amount authorized under section 30141(d)(2) to provide maximum assurance that nonconforming vehicles imported under bond are brought into compliance with all applicable standards.

Under 49 U.S.C. 30146(a), a registered importer may release custody of a vehicle that did not conform to all applicable FMVSS at the time of importation 30 days after it submits to NHTSA a conformity package covering the vehicle, unless the agency notifies the importer to hold the vehicle for inspection or notifies the importer that it has reason to question the validity of the certification. Currently, NHTSA is processing these packages well within the 30-day limit. Processing time is now averaging approximately one and one-half weeks, with an additional week taken, on average, if there is a need to communicate with the registered importer to address any problem that the agency may have with the package. Although the agency continually strives to streamline its administrative processes, given current staff and budgetary constraints, it would be difficult to achieve any significant reduction in the present turnaround

time for the review and processing of conformity packages.

Mr. Trupiano next observes that NHTSA permits individuals to import vehicles from Canada that are not certified as complying with all applicable FMVSS provided that they furnish a letter from the vehicle's manufacturer stating that the vehicle meets those requirements. Mr. Trupiano contends that the agency expends many of the same resources in processing these imports as it does for vehicles imported by registered importers, leading him to question why it is not proposing a fee to cover those processing costs. Through an agreement that it entered with the U.S. Customs Service in April of this year, NHTSA's approval is no longer necessary for the importation of Canadian vehicles for personal use. The importer now furnishes the manufacturer's letter directly to the Customs Service. As a consequence, there is no longer a basis for the agency to impose a fee for processing these imports.

Mr. Trupiano's final contention is that the proposed fee ''would serve to place an additional financial restriction on the entry of motor vehicles from Canada, where no such equivalent fee is paid to the Canadian government for importing a vehicle from the United States.'' As such, he asserts that the fee would constitute a non-tariff barrier to trade prohibited under Article 309 of the North American Free Trade Agreement (NAFTA).

Article 309 of NAFTA provides, with certain exceptions that are beyond the scope of this discussion, that ''no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party * * *.'' NHTSA initially notes that the proposed fee would be assessed for the sole purpose of allowing the agency to recover its actual costs for the review and processing of conformity packages. Assessment of the proposed fee would not prohibit or restrict the entry of Canadian-certified vehicles into the United States, and, as such, it would not violate any provision of Article 309.

NHTSA further notes that Article 904 of NAFTA preserves the right of each Party to the agreement to ''adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human * * * life or health * * * and any measure to ensure its enforcement or implementation.'' Article 904 further provides that ''[s]uch measures include those to prohibit the importation of a good of another Party * * * that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures.'' The term ''standard-related measure'' is defined in Article 915 of NAFTA as including a ''conformity assessment procedure.'' NHTSA's review of conformity packages is therefore governmental action that is specifically sanctioned by NAFTA and there is nothing in that agreement that restricts the right of any Party to impose a fee for taking such action.

The second comment was submitted by Lawrence A. Beyer, an attorney who has represented registered importers in matters before the agency. Mr. Beyer initially contends that the agency based its calculation of the proposed fee on a low estimate of nonconforming vehicle imports. Mr. Beyer characterizes the proposed fee as being based on projected imports of 16,000 in fiscal year 1998. In contrast to this figure, Mr. Beyer states that noncomplying imports thus far in fiscal year 1997 have averaged 1,727 per month, which translates to a total of 20,729 vehicles for the entire fiscal year, and that the existing trend is for the volume of noncomplying vehicle imports to increase each year. Based on these larger projected import figures, Mr. Beyer contends that NHTSA should reduce the amount of the proposed fee.

The agency has decided to accept this recommendation. As noted in the NPRM, the proposed fee was calculated on the basis of resources expended by NHTSA in processing the 16,000 noncomplying vehicles for which conformity packages were submitted in calendar year 1996. Since issuing the NPRM, NHTSA has received more complete data on the volume of noncomplying vehicles imported during the current fiscal year for which conformity packages must be processed by the agency. This indicates that 20,786 such vehicle were imported from October 1, 1996, the first day of fiscal year 1997, through September 16, 1997. Based on this volume, NHTSA anticipates that over 21,000 noncomplying vehicles will be imported by the end of this fiscal year on September 30, 1997. NHTSA has decided to use this figure in calculating the conformity package review fee for fiscal year 1998, as opposed to the 16,000 vehicle figure identified in the NPRM. Although NHTSA has also identified the need to increase one cost element used in calculating the fee in light of more accurate information received since issuing the NPRM, an overall reduction in the fee from the $17.00 originally proposed will be realized by allocating the agency's costs over a larger vehicle base. As noted in the NPRM, NHTSA will review the fee at least every two years to see if further adjustments are needed. The agency is bound to provide this review in order to insure that it recovers no more than its actual costs for the review and processing of conformity packages.

Mr. Beyer further contends that NHTSA failed to properly assess the impact of the proposed fee on small entities under the Regulatory Flexibility Act, and did not solicit the input of affected small entities before issuing the NPRM. He additionally contends that the proposed fee would constitute a non-tariff barrier to trade under NAFTA. Mr. Beyer also observes that the bond release letter issued by NHTSA states that it does not constitute agreement by the agency that the vehicle in question in fact conforms to all applicable standards. The agency has addressed each of these issues in its response to the previous comment. Mr. Beyer finally contends that ''NHTSA has attempted to bypass its decision regarding VSA–1 eligible imports'' by assigning new eligibility numbers. Mr. Beyer asserts that ''[t]here is no substantive difference between the compliance issues for the VSA–1 determination which was paid for in 1989, and the new codes.'' What Mr. Beyer overlooks is that the payment that was made in 1989 covered the import eligibility decision that NHTSA had made regarding Canadian-certified vehicles. As noted in the NPRM, that fee is entirely distinct from the fee the agency has proposed to recover its costs for the review and processing of conformity packages. Given the high volume of conformity packages that NHTSA has had to process in recent years, and the fact that this responsibility now accounts for a large share of the work performed by the Equipment and Imports Division of the agency's Office of Vehicle Safety Compliance, there is clearly a need for NHTSA to now proceed with the implementation of a fee to recover its costs for performing this function.

The third comment was submitted by Brian Osler, Executive Director and Counsel for the North American Automobile Trade Association. Mr. Osler states that his association is in favor of NHTSA recovering reasonable costs for ensuring compliance with FMVSS. However, he asks the agency to consider waiving the requirement for the submission of photographs to substantiate compliance certifications. The agency has addressed this issue in its response to Mr. Trupiano's comment.

D. Fee Computation

NHTSA has computed all other fees that it collects under the authority of 49 U.S.C. 30141 on the basis of all direct

and indirect costs incurred by the agency in performing the function for which the fee is charged. See 54 FR 17792, 17793 (April 25, 1989). The Office of Management and Budget (OMB), in Circular A–25 establishing Federal policy for the assessment of user fees under 31 U.S.C. 9701, stated that such fees must be ''sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as a sovereign.'' See 58 FR 38142, 38144 (July 15, 1993).

Applying an approach consistent with its past practices and the OMB Circular, the agency has calculated its direct and indirect costs in setting the fee for the review and processing of conformity certificates as follows:

The direct costs used to calculate the fee include the estimated cost of contract and professional staff time, computer costs, and costs for record assembly, marking, shipment and storage.

The estimated cost of contract and professional staff time is calculated on the basis of the full cost for time spent at the following currently prevailing rates: Data entry—$44,410 per year; computer programmer—$86,650 per year; compliance analyst—$60,092 per year. Three quarters of the total hours worked by a single data entry specialist on contract to OVSC are devoted to the processing of compliance packages. A second data entry specialist on contract to OVSC is engaged full time in the processing of compliance packages. Multiplying the annual contract cost for the hours worked by these contract support staff members ($44,410 each) by 1.75 (representing the one data entry position devoted fully to compliance package processing and the other in which three quarters of the total hours worked are devoted to that function) yields $77,715.50 in data entry labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Thirty-seven percent of the total hours worked by a single computer programmer on contract to OVSC is devoted to the processing of compliance packages. Multiplying the annual contract cost for the hours worked by this contract support staff member ($86,650) by 37 percent yields $32,060.50 in computer programming labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. In the NPRM, NHTSA identified 18.75 percent of this computer programmer's time as being devoted to the processing of compliance packages, resulting in an annual cost of $16,246.88. At the time that NHTSA was preparing the NPRM, this computer programmer had recently begun her contract with the agency, resulting in a rough estimate of the time which she anticipated would be needed to process compliance packages. In the ensuing weeks, it has become apparent that the time this contractor spends in the processing of compliance packages was considerably underestimated, requiring adjustment to better reflect the hours that she actually devotes to this task. Ninety percent of the total hours worked by a single compliance analyst employed by OVSC is devoted to the review of compliance packages. Multiplying the annual rate of pay for this staff member ($60,092) by 90 percent yields $54,082.80 in compliance analyst labor costs that are incurred by NHTSA on an annual basis in the review of compliance packages.

Adding these amounts yields a total of $163,858.80 in contract and professional staff costs that NHTSA incurs each year for the processing and review of compliance packages. Dividing that amount by 21,000, the number of compliance packages reviewed by OVSC in fiscal year 1997, yields a direct cost of $7.80 for each compliance package reviewed.

Computer costs are calculated on the following basis: NHTSA pays $13,800 per year to maintain a link with the Customs Service computer. Ninety-five percent of the agency's usage of this computer is associated with the review of compliance packages, resulting in a cost of $13,110 that can be allocated to that use. Additionally, the agency pays $30,000 per year for the purpose of running OVSC's computers and performing necessary backups of data entries. Ninety percent of this usage is associated with the review of compliance packages, yielding a cost of $27,000 that can be allocated to that use. The agency also pays $4,000 per year for a maintenance contract on OVSC's computers, ninety percent of which can also be allocated to that office's review of compliance packages, yielding an annual cost of $3,600. Additionally, NHTSA pays a $9,360 annual licensing fee for the data base management system that is used in the processing of compliance packages. Because that system is not used for any other purpose, the full annual fee can be allocated to that use. Adding these costs produces the sum of $53,070 that is spent annually on computer usage associated with the review of compliance packages. Dividing this sum by 21,000, which, as previously indicated, is the number of compliance packages reviewed by OVSC in fiscal year 1997, yields a direct cost of $2.53 for each compliance package reviewed.

The average cost for record assembly, marking, and shipment is calculated at the rate of $16.56 per box. The average cost for record storage is calculated to be $7.92 per box for a storage period of three years. Based on an average of 110 records per box, these costs amount to 22 cents for each compliance package received by the agency. Adding the direct costs for contract and professional staff hours ($7.80), computer usage ($2.53), and record assembly, marking, shipment, and storage ($0.22) produces a total of $10.55 for each compliance package reviewed and processed by NHTSA.

The indirect costs include a pro rata allocation of the average benefits of persons employed in processing and reviewing conformity packages. Benefits provided by NHTSA amount to eighteen percent of the salary earned by its employees. Multiplying the $54,082.80 in professional staff costs that NHTSA incurs each year for the processing and review of compliance packages by eighteen percent yields a figure of $9,734.90.

The indirect costs also include a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items. For fiscal year 1998, these costs are projected to average $21,131 for each employee and contract support staff member working at NHTSA headquarters. This figure was derived by dividing $13,566,000 in projected headquarters costs (reached by subtracting $482,000 in field operating costs from total agency costs of $14,048,000) by 642 (representing 510 full time equivalent positions that are authorized for NHTSA headquarters plus 132 on-site contract personnel). Multiplying that figure by 3.02, which represents the number of combined contract and professional staff-years devoted annually to the review and processing of compliance packages, yields a figure of $63,815.62. Adding this figure to $9,734.90 produces the sum of $73,550.52, representing the total indirect costs incurred by NHTSA in the review and processing of compliance packages. Dividing this amount by 21,000, which, as previously indicated, is the number of compliance packages reviewed by NHTSA in fiscal year 1997, yields $3.50 in indirect costs for each compliance package reviewed. Adding these indirect costs to the $10.55 in direct costs that NHTSA incurs in the review and processing of each compliance package yields a total of $14.05 in direct and indirect costs for

each compliance package reviewed by the agency.

Based on the above factors, NHTSA is establishing $14.00 as the fee to recover its costs for the review and processing of a compliance package. This fee will have to be tendered with each compliance package submitted to the agency for processing.

E. Applicability of Fee to Canadian Vehicles

As noted in the NPRM, in recent years, Canadian imports have accounted for a growing share of NHTSA's oversight program that is directed at the importation of nonconforming vehicles. In NHTSA's Calendar Year 1995 Report to Congress concerning this program, the agency stated that 15,096 of the 15,332 nonconforming vehicles that were permanently imported into the country during that year (or over 98%) were from Canada. The report noted a continuing upward trend in the importation of noncomplying vehicles from Canada since 1993, and attributed that development to the exchange rate favoring the U.S. over the Canadian dollar.

In past years, NHTSA has not collected the per vehicle import eligibility determination fee established under 49 CFR 594.8 from the importers of vehicles that were certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards and that were eligible for importation under vehicle eligibility number VSA–1. As NHTSA explained in a final import eligibility decision covering Canadian-certified motor vehicles, published on May 13, 1997 at 62 FR 26348, the per vehicle import eligibility fee was never imposed on the importers of these vehicles because the first importer of a Canadian-certified motor vehicle paid the full $1560 fee that was established in 1989 to cover the agency's costs for an eligibility decision made on the Administrator's initiative. In the May 13, 1997 final decision, NHTSA rescinded VSA–1 as the eligibility number assigned to all eligible Canadian-certified vehicles, and replaced it with four separate eligibility numbers (VSA–80 through 83), based on vehicle classification and weight.

NHTSA will collect the fee established under this rule from all importers submitting conformity packages to the agency, including the importers of Canadian-certified vehicles eligible for importation under VSA–80 through 83. The agency deems this action to be necessary because the review and processing of conformity packages submitted for Canadian imports have assumed an increasing share of the staff time within OVSC's Equipment and Imports Division and now comprise a major portion of the work performed by that division. The imposition of such a fee is also consistent with OMB's policy for Federal agencies to obtain full cost reimbursement from the recipients of agency services.

Effective Date

Section 30141(e) of Title 49, U.S. Code requires the amount of fees imposed under section 30141(a) to be reviewed, and, if appropriate, adjusted by NHTSA at least every two years. It also requires that the fee for each fiscal year be established before the beginning of that year. The fee established under this final rule will first become effective in fiscal year 1998, which begins on October 1, 1997. NHTSA is meeting the requirements of section 30141(e) by publishing this final rule establishing the fee before that date. However, in keeping with the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, the final rule will not become effective until thirty days after its publication in the **Federal Register**. NHTSA will not collect the fee for any conformity certificates submitted before the final rule's effective date.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule was not reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Although most registered importers would qualify as small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that these companies could not pay the fee established under this rule. This fee will in all likelihood be passed along to the purchaser of the vehicle for which a conformity package is submitted to NHTSA for review. Most nonconforming vehicles that are imported into the United States are of very recent vintage, and many would be considered luxury models. Given the nominal amount of the fee established under this rule, especially when viewed in relation to the purchase price of the vehicles to which it pertains, it will not appreciably increase the purchase price of those vehicles and is unlikely to have any significant impact on their importation and sale. For that reason, registered importers and small businesses, small organizations, and small governmental units that purchase motor vehicles will not be significantly affected by the proposed fee. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule would not significantly affect the human environment.

5. Civil Justice Reform

This rule does not have any retroactive effect. It does not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

In consideration of the foregoing, Part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, in Title 49 of the Code of Federal Regulations is amended as follows:

PART 594—[AMENDED]

1. The authority citation for Part 594 is amended to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.5 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and by adding a new paragraph (g), to read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(g) A fee for the review and processing of a conformity certificate shall be submitted with each certificate of conformity furnished to the Administrator.

3. A new section 594.10 is added to part 594, to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

(a) Each registered importer shall pay a fee based on the agency's direct and indirect costs for the review and processing of each certificate of conformity furnished to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct costs attributable to the review and processing of a certificate of conformity include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of a certificate of conformity include a pro rata allocation of the average benefits of persons employed in reviewing and processing the certificates, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) For certificates of conformity submitted on and after October 29, 1997, the fee is $14.00.

* * * * *

Issued on: September 23, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–25665 Filed 9–26–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1118, 1130 and 1132

[STB Ex Parte No. 570]

Technical Amendments Concerning Employee Boards

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board revises its regulations to remove obsolete delegations of authority; update references to statutory provisions; eliminate several employee boards; delegate to designated offices and individuals certain of the matters formerly delegated to employee boards; and reserve to the Board the initial decision making authority for certain formerly delegated matters.

EFFECTIVE DATE: These rules are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565–1578. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: The Board is revising its delegations of authority to reflect changes implemented by the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA). The ICCTA abolished the Interstate Commerce Commission (ICC) and established the Board. Some of the ICC's functions were transferred to the Board and others were transferred to the Secretary of Transportation (and subsequently delegated to the Federal Highway Administration (FHWA)).

49 CFR 1011.6, the employee board section, establishes 10 employee boards: The Suspension/Special Permission (§ 1011.6(a)), the Insurance Board (§ 1011.6(b)(1)), the Motor Carrier Leasing Board (§ 1011.6(b)(2)), the Railroad Service Board (§ 1011.6(b)(3)), the Revocation Board (§ 1011.6(b)(4)), the Released Rates Board (§ 1011.6(c)), the Accounting Board (§ 1011.6(d)), the Special Docket Board (§ 1011.6(e)), the Regional Motor Carrier Boards (§ 1011.6(f)), and the Motor Carrier Board (§ 1011.6(g)).

Some of the delegations of authority under which these employee boards were established include matters over which the Board does not exercise jurisdiction. In particular, the remaining statutory bases for the Insurance Board, the Motor Carrier Leasing Board, the Revocation Board, and the Regional Motor Carrier Boards have been transferred to the Department of Transportation. Therefore, we are removing from the Code of Federal Regulations the regulations providing for these employee boards.

The other employee boards perform functions that continue under the Board's jurisdiction.[1] Except for the Accounting Board,[2] these employee boards are being eliminated, but their duties will be handled by the Board Members, Offices of the Board, or individuals to whom authority is being delegated.

Employee boards performed essential functions at a time when more comprehensive transportation regulation required the ICC to make a significantly greater number of decisions, and when literally thousands of decisions were made under delegations of authority each year. The elimination of much transportation regulation in recent years and the transfer of certain responsibilities to other agencies have, however, reduced the need for employee boards at the Board. In the current, less regulated environment, we believe that either delegating authority to individual Offices and employees of the Board or reserving matters for the entire Board will be a fully adequate and more efficient way of processing cases.

While the quantity of decisions issued by the agency has been reduced, certain delegations of authority continue to be warranted in areas where the action to be taken is clear under existing Board policies, and where prompt action is needed. By continuing to delegate authority in these areas, we can reduce both the time that Board members would otherwise be required to spend on routine matters, and the time and cost associated with taking the necessary actions. Nevertheless, we believe our current requirements can be more effectively met by delegations of authority to Offices and individual employees, rather than to employee boards. Actions to be taken under delegated authority can be handled more simply by an individual employee than by an employee board. Where more significant policy issues are involved, it is anticipated that staff will certify the cases to the Board for consideration in the first instance. Additionally, all actions taken pursuant to delegated authority can be appealed to the Board by the affected parties.

In some situations, cases that arise are likely to involve significant or difficult

[1] While some of the functions of the Motor Carrier Board have either been eliminated or transferred to the Federal Highway Administration, under new 49 U.S.C. 14303, the Board has jurisdiction over motor passenger carrier finance applications and interim approval requests. These matters will be handled by the entire Board.

[2] The Accounting Board is an employee board that rules on technical issues dealing with accounting, reporting and record retention rules, and prescribes depreciation rates used by railroads. This board consists of three employees within the Office of Economics, Environmental Analysis and Administration who have strong accounting backgrounds, and, in light of the technical nature of the issues that are considered, we believe that the retention of this employee board is desirable. Procedural rules for this board are found in revised 49 CFR part 1118.