

Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 7, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

**Terminal Railroad Association of St. Louis**

*Waiver Petition Docket Number PB-87-8*

Terminal Railroad Association of St. Louis (TRRA) seeks a permanent waiver of compliance with the provisions of the Railroad Power Brakes Regulation, 49 CFR 232.13(a)(1), "Transfer train and yard train movements not exceeding 20 miles."

The waiver sought by the TRRA would permit train movements between the north end of Madison Yard and the Hook Yard at Granite City, Illinois, without the benefit of a train air brake test.

The movements in question are normally made during daylight hours, consisting of industry cars being taken to the Hook Yard for classification purposes to spot at industries in the Granite City area.

The petitioner states that the safety of the crew and public is not in any way impinged by the move with or without air brakes. The maximum speed is 10 mph. The only public crossing is protected by gates and flashes, and degree of grade is not a factor as the area is relatively flat.

The petitioner also states that the efficiency of the industrial assignment is decreased by the necessity of working up the air brake system and testing it when leaving for a trip distance of 5,630 feet.

Issued in Washington, DC, on August 17, 1987.

J. W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-19168 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-06-M

**National Highway Traffic Safety Administration**

[Docket No. IP-87-02; Notice 2]

**Grant of Petition for Determination of Inconsequential Noncompliance; The Uniroyal Tire Co.**

This notice grants the petition by the Uniroyal Goodrich Tire Company of Akron, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 8, 1987 and an opportunity afforded for comment (52 FR 11391).

Paragraph S6.5(d) of Standard No. 119 requires that the tires be marked on both sidewalls with the maximum load rating and corresponding inflation pressure of the tire. Uniroyal Goodrich Tire Company manufactured and shipped 3,922 31 X 10.50R15 All-Terrain Radial tires that have the incorrect load range stamped on the serial number side of the tire.

From August 31, 1986 to December 12, 1986, Uniroyal Goodrich stamped the following load range on tires:

Load Range G—Max. Load 2,250 Lbs. at 50 PSI Cold.

The correct load range is Load Range C—Max. Load 2,250 Lbs. at 50 PSI Cold.

Uniroyal Goodrich believes this noncompliance is inconsequential to motor vehicle safety because all identification located above the bead on both sides of the tire correctly states the maximum load in terms of pounds and pressure and the highest load range available in the family of flotation tire sizes is load range "C". Also the correct load range identification appears on the opposite serial number sidewall and is imprinted on each paper label adhered to the tread of the tire.

No comments were received on the petition.

The petitioner has indicated that the following safeguards are present to inform consumers of the correct load range: proper information on one of the two sidewalls and paper tread labels, load pounds and pressure indicated above the bead on both sides of the tire. The agency concurs with the petitioner that this compensates for the mistake in indicating Load Range G when Load Range C was meant.

Accordingly, in consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1479 (15 U.S.C. 1417); delegation of authority at 49 CFR 501.8)

Issued on August 17, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-19164 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 79-17; Notice 34]

**New Car Assessment Program; Optional Testing by Manufacturers**

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

**ACTION:** Establishment of criteria for optional New Car Assessment Program (NCAP) testing by manufacturers.

**SUMMARY:** This notice establishes criteria for an optional NCAP test program for motor vehicle manufacturers. This program will provide the manufacturers with an opportunity to retest any of their vehicles that have been tested in the NCAP program and subsequently modified with production changes to improve occupant protection. This optional testing will be conducted at the manufacturers' expense, but under the criteria established in this notice. These criteria require that the testing be conducted at the same testing facilities and according to the same controls and procedures used for the agency's NCAP testing. The test results obtained under this optional program will be published by the agency in its NCAP press releases.

**EFFECTIVE DATE:** These criteria become effective August 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Gauthier, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4805).

**SUPPLEMENTARY INFORMATION:** Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941 *et seq.*) requires the development and dissemination of comparative information on the crashworthiness, damage susceptibility, and ease of diagnosis and repair of motor vehicles. The foundation of Title II is the belief that, if consumers have valid comparative information on important motor vehicle characteristics, they will

use that information in their vehicle purchase decisions, thereby encouraging motor vehicle manufacturers to improve the safety and reliability of their products.

The experimental New Car Assessment Program (NCAP) addresses the crashworthiness ratings aspect of Title II by providing comparative safety performance information, in the form of dummy injury measurements, on selected vehicles that are crashed head-on into a fixed barrier at 35 mph. Consumers are informed of this crashworthiness information through news releases, the NHTSA Hotline, and media coverage of NCAP test results.

For the experimental NCAP program, the agency generally selects 30 vehicle models at the start of each model year. These vehicles are tested at several independent testing facilities, and the results of these tests are disseminated by the agency through its own facilities and the media.

On several occasions in the past, manufacturers whose vehicles had not done as well as the manufacturers expected in the NCAP testing have made small but significant production line changes to those vehicles. After these changes were incorporated into the vehicles, subsequent NCAP retests showed noticeable improvements in the dummy injury measurements.

The agency concluded that it would be helpful both to consumers and the vehicle manufacturers if the information about improved NCAP test results for the modified vehicles were made public as soon as possible. However, this is frequently not possible, because the agency's limited resources preclude an immediate retest of every redesigned vehicle. Since retesting is not generally conducted, the public is provided with outdated NCAP test results for these vehicles.

To remedy these shortcomings, the agency published a notice on November 19, 1986 (51 FR 41888) seeking comments on eight specific criteria that would form the basis for an optional NCAP retest program. Under this optional retest program, manufacturers that had made production line changes to NCAP tested vehicles would be allowed to arrange for a retest of the "improved" vehicle at their own expense. The eight criteria proposed by the agency were intended to ensure that any vehicle retests were conducted as identically as possible to the original NCAP test. Thus, random purchase of test vehicles, independent laboratory testing, and publication of all retest results must be assured. All retests that satisfied the proposed criteria would be disseminated by the agency, along with its own NCAP test

results. NHTSA stated in the notice its belief that the benefits of this optional retesting program would include up-to-date crashworthiness information for consumers, fairness to manufacturers that have made vehicle safety improvements, and minimum expense to taxpayers.

The agency received comments from 15 groups in response to this notice. All of these comments were considered in developing these final criteria and the most significant are discussed below.

#### The NCAP Program in General

A number of commenters objected to the notice's statement that NCAP test results provide comparative safety performance information on the selected vehicles. These commenters argued that a 35 mph frontal barrier crash is not representative of most accidents, that the NCAP results do not represent real world accident performance of the selected vehicles, that the test results show an unacceptably high level of variability, and that the public misunderstands and misuses NCAP test results. Comments to this effect were submitted by Ford, Chrysler, Volkswagen, AMC, Volvo, the Automobile Importers of America, Inc. (AIA), General Motors (GM), Renault, Mazda, BMW, Austin Rover, the Motor Vehicle Manufacturers Association (MVMA), and Mercedes Benz.

These commenters have repeatedly made these points in connection with the NCAP program. The notice requesting comments on an optional retesting program was not seeking comments on any changes to the basic NCAP program, so these comments are not responsive to the issues raised in the notice. To briefly reiterate the agency's position, NHTSA has always characterized NCAP as an experimental program. The agency has been evaluating and will continue to evaluate the NCAP program for possible improvements. NHTSA agrees that a frontal barrier crash does not represent all types of accidents. However, it does provide information on an accident type and severity that accounts for a significant number of occupant fatalities and serious injuries. The agency believes that the inability to correlate NCAP results with real world accident injuries is due to insufficient data, and not any unrepresentativeness of the NCAP tests. The agency believes that more data for restrained occupants in 35 mph frontal crashes will become available in the near future, as a result of mandatory belt use laws and the phase-in of automatic restraints. When these data are available, NHTSA will undertake a rigorous correlation of

NCAP results with accident injury data. The variability issue is addressed at length in the Standard No. 208 final rule (49 FR 28962, at 29004-29006; July 17, 1984), and will not be repeated here. Finally, agency research has indicated that there is strong consumer interest in NCAP data. The agency has continually made improvements to the formats and methods of dissemination to minimize the likelihood that the information will be misunderstood or misused by consumers.

#### The Retesting Program in General

The Center for Auto Safety (CFAS) commented that it supported the optional retesting program, if the program were modified in one significant respect. CFAS admitted that the agency's budget will not allow it to significantly expand its own NCAP testing and that fact means that the NCAP program does not always provide consumers with up-to-date information. However, CFAS was concerned with the agency's proposal to have the manufacturers themselves bear the expenses of retesting, stating that this procedure would call into question the integrity of the program and its results.

The agency disagrees with this statement, NHTSA will not take any actions to undermine public confidence in the continuing integrity of the NCAP program, and has not proposed to do so. This optional NCAP testing program has been structured so that it will adhere strictly to the NCAP procedures in all respects. Whether the testing is funded by the agency or a manufacturer, the vehicle to be tested will be randomly purchased by the testing facility, all testing will be done by an independent facility, and all results that follow the testing protocol will be made public. Manufacturers will not be allowed any greater access to the vehicles to be tested under this program than they are to the vehicles to be tested under the initial NCAP series. The agency concludes that this optional program has been structured carefully so that there will be no legitimate basis for questioning the impartiality of its test results.

#### Vehicles Eligible to be Included in this Optional Retesting Program

VW, Renault, Nissan, Mazda, BMW, Austin Rover, and Subaru commented that retesting should be permitted without any changes to the vehicles. Such testing would, in the words of VW, "legitimately expose and amend one of the weaknesses of the current program." These commenters believe that the test variability is so high that an unchanged

vehicle might show significantly different dummy injury results if retested according to the NCAP procedures. Volvo suggested that manufacturers be allowed to retest unchanged vehicles twice, and the average of the original NCAP tests and the two retests should be published for the vehicle. As explained above, the agency disagrees with the assertions of overly high variability. More to the point, however, any manufacturer that wishes to undertake testing to conclusively demonstrate this alleged variability in test results is free to do so, and the agency would carefully examine the data. The agency will *not*, however, disseminate such variability test data in a piecemeal fashion to consumers as a part of the NCAP data.

In its comments, Ford asked that the agency allow, in two specific instances, optional testing of vehicles not tested in the NCAP program. The first situation described by Ford was when a model with certain optional equipment was tested as a part of the initial NCAP tests and the manufacturer had reason to believe that the same or other models of that car line, with different options, would produce lower NCAP results. Nissan raised a similar point in its comments, when it asserted that changes in the "quality of seat cloth, floor carpeting, or surface material of the instrument panel" might influence NCAP test results.

As stated above, the agency is not going to disseminate information about essentially repetitive testing of unchanged models. Thus, to the extent that these commenters are seeking to have the optional testing program extended to include models with different non-safety options, whether engine, transmissions, seat cloth, or carpeting, NHTSA sees no reason to disseminate such information as a part of its NCAP testing.

However, to the extent that the manufacturers were urging the agency to extend the optional testing program to include vehicles equipped with features that could be shown to significantly improve the crashworthiness of the vehicles, the agency believes there is merit to the comments. The purpose of the NCAP program is to encourage manufacturers to improve the crashworthiness of their vehicles. If the optional testing program were extended to allow manufacturers to conduct testing on vehicles that were not tested under the NCAP, but that incorporate safety options and innovative restraint system designs that significantly improve frontal crashworthiness, the optional testing program could serve to

promote the installation of these designs in other vehicles, either as an optional feature or as standard equipment. Thus, such an extension would further the purposes of the NCAP program. The agency has therefore amended these final criteria to allow optional testing of models not tested in the initial NCAP testing if the model to be tested incorporates optional safety equipment or innovative restraint system designs (e.g., air bags, webbing clamps, a different type of energy-absorbing webbing, and so forth). Such models would still have to satisfy all of the other criteria for this optional testing program, including the requirement that the manufacturer provide reasons why the optional or innovative safety equipment is likely to significantly improve NCAP test results.

Ford's other suggestion in this area concerned a situation where a manufacturer had added or deleted options to a vehicle line that was tested in the initial NCAP series, so that the line no longer includes the identical model and equipment tested in the initial series. In such a case, Ford urged that the manufacturer should be allowed to sponsor a retest of a vehicle chosen at random by the manufacturer from the models currently in production for that vehicle line. As the agency understands this comment, Ford was not suggesting that a vehicle be retested simply because of the addition of an option to or deletion of one from the tested model. Instead, Ford is suggesting the retesting of the model because it satisfies the criterion that changes have been made that are likely to significantly improve the NCAP test results. However, it would be impossible to retest the exact model that was previously tested. NHTSA agrees that some modification of the proposed optional testing is necessary to address such a situation. If a manufacturer had made production changes likely to significantly improve the frontal crashworthiness of a model and if the identical model were no longer in production, the agency would allow a different model in that line to be retested. However, the *agency*, not the manufacturer, would select the particular model that would be retested under this program.

#### **Manufacturers Must Explain Why NCAP Results are Likely to Significantly Improve for All Vehicles Selected for This Program**

With respect to vehicles that are eligible for this optional testing program, the manufacturer must provide the agency with technical data describing the production design changes made to the vehicle or the optional safety

equipment or innovative restraint system used in the vehicle, the reasons why the manufacturer believes these changes, optional equipment or innovative restraint system are likely to *significantly* improve NCAP results, and the manufacturer's estimate of the expected NCAP results for the vehicle. This criterion is very similar to the proposed criterion 1. It is intended to ensure that the results of this optional testing, which will be published with the agency's imprimatur, will be useful and timely for consumers, not simply repetitious of previous testing.

The previous notice sought comments on establishing some minimum level of improvement in a retest, if the results were to be published under this program. GM, Ford, Mazda, and Austin Rover commented that there was no need to establish any minimum level of improvement for this program. Ford commented that manufacturers would be reluctant to pay for a retest unless an improvement of greater than ten percent was expected. Ford asserted that, because of the inherent variability of the test procedure, any lesser improvement would expose the manufacturer to a "substantial possibility" that the retest would be worse than the initial test. GM made the same point. CFAS, on the other hand, commented that retest results should be published only if the retest data showed improvements of 35 percent for the HIC, 20 percent for the chest acceleration, and 40 percent for the femur loads. CFAS explained this comment by stating that its adoption would ensure that only those vehicles showing meaningful improvement in their test scores would be given new NCAP listings.

After considering this issue further, the agency has concluded that no minimum level of improvement should be specified for publication under this program. A manufacturer must explain and demonstrate why it believes that changes made to a vehicle will *significantly* improve NCAP results, or the test results will *not* be published by the agency. Hence, only vehicles that have been demonstrated as likely to significantly improve will be covered in this program. Once a manufacturer has satisfied that burden, the notice proposed that the test results "will be made publicly available regardless of their magnitude." NHTSA sees no reason to make the results publicly available regardless of magnitude, yet publish those results only if they were of a certain magnitude.

The approach suggested by CFAS would be overly rigid. Under it, HIC improvements of 30 percent would not

be published, for instance. The agency believes that many consumers would find such information significant. Moreover, CFAS did not explain how it arrived at the conclusion that HIC improvements of less than 35 percent were not significant, nor did it explain what benefit it believes would result from withholding such information from the public. Accordingly, no such provision is included in these final criteria.

CFAS further commented that the agency ought to provide the public with notice and opportunity to comment on any manufacturer's request for optional retesting of a vehicle. CFAS suggested that it was appropriate to allow public comment on whether a vehicle should be retested, just as the agency seeks comments on petitions for defect investigations and petition for inconsequentiality.

The agency agrees that it is sound policy to seek public input whenever possible, and has often done so even when public comment is not required by law. However, the agency is not persuaded that it would be wise policy to seek public comment before this retesting program. First, a public comment period before permitting retesting would introduce delay into any retesting efforts. This delay would hinder the chances of providing the public with more timely crashworthiness information for the vehicle model in question, thereby undercutting a reason for allowing retests. Additionally, once a model has been determined to be eligible for inclusion in this optional testing program, the only real issue will be whether the manufacturer has demonstrated that the NCAP results for the model are likely to be significantly improved. The agency anticipates that most, if not all, of the technical information submitted to substantiate the manufacturer's belief that the NCAP test results are likely to be significantly improved would not be available to the public, because it would be accorded confidential treatment. Thus, the public would have little opportunity to offer meaningful comments.

In evaluating petitions submitted under 49 CFR Part 543, which relates to exemption from the marking requirements of the motor vehicle theft prevention standard if a line is equipped with an antitheft device, the agency also confronted a situation where most of the technical details of the petition would be confidential and where delay in responding to the petition would be contrary to the public interest. The agency decided *not* to provide a comment period in connection with such

petitions, and has reached the same conclusion in connection with this program. The agency will make available to the public in the docket section notice of *all* manufacturer requests for optional testing under this program, together with all publicly available portions of such requests.

**Optional Testing Must Be Conducted at an Independent Testing Facility That has Proven its Capability to Conduct Tests in Accordance With the NCAP Procedures**

The second proposed criterion was that the test be conducted at an independent test facility that has the capability of conducting crash tests in conformance with NCAP test procedures. The agency sought comments on establishing objective standards for assessing the NCAP capability of a test facility. GM supported this proposed criterion, stating that "if manufacturers are permitted to select laboratories other than those used by NHTSA for NCAP testing, the program may be criticized as being controlled by the manufacturers." To stave off any such criticism, GM recommended that only the laboratories used by NHTSA for its NCAP testing should be allowed to conduct any retesting. Ford commented that the agency should ask the National Bureau of Standards, which has experience in certifying test laboratories, to develop some objective criteria.

NHTSA has concluded that these criteria should not include a process for objectively evaluating the capabilities of independent testing facilities. Even assuming that such criteria could be developed, this process would necessarily force the agency to assess the capabilities of any new or different independent test facility suggested by the manufacturers before permitting the retesting. Such a process would necessarily force the agency to devote significant amounts of staff time to a task that would not enhance vehicle safety or consumer awareness thereof. In addition, such a process would delay the start of optional NCAP testing, whenever a manufacturer suggested a test facility that had not been previously approved. This delay would deny the public the benefits of more timely crashworthiness information for the vehicles in question. Accordingly, NHTSA has concluded that it would be inappropriate to require the agency to make such assessments on a continual basis.

The NCAP test procedures were updated in 1985. Since that time, the agency has entered into contracts for NCAP testing with three different

independent testing facilities. Each of those facilities has already been determined by the agency to be capable of conducting testing in conformance with the NCAP procedures. To expedite the process under this optional program, the final criteria limit the facilities that can be used for testing to those facilities that have conducted NCAP testing for the agency since 1985. This limitation will ensure that any optional testing is conducted by facilities that have been adjudged capable of conducting NCAP testing, without introducing any time delays.

Mazda alleged that any requirements that testing be conducted at testing facilities in the United States would raise the issue of unfair trade practices. This commenter alleged that, if the manufacturer is required to pay for any retesting, the manufacturer should be allowed to benefit from the efficient and maximum use of its engineering resources and the lower costs if such retesting is conducted near its headquarters. The implicit argument here is that if the U.S. manufacturers enjoy this efficiency, foreign manufacturers should be permitted the same benefits.

NHTSA disagrees with Mazda's assertion that requiring testing under this program to be done in the United States represents an unfair trade practice. Section 402 of the Trade Agreements Act of 1979 (19 U.S.C. 2532) specifies that each Federal agency shall ensure that, in applying standards-related activity to any imported product, such product is treated no less favorable than are like domestic or imported products in a number of areas, including the siting of test facilities. Even if NCAP were to be regarded as a "standards-related activity," section 401 of that Act (19 U.S.C. 2531) makes clear that no standard-related activity shall be deemed to constitute an unnecessary obstacle to imported products if the demonstrable purpose of the standard-related activity is to achieve the protection of legitimate safety or consumer interests. The legislative history of these sections includes the following language:

With respect to product testing and related administrative procedures, Parties are to accept foreign products for testing under nondiscriminatory conditions. Moreover, they are to ensure that central governmental bodies accept, whenever possible, foreign test results or certificates or marks of conformity, *but only if they are satisfied with the technical competence and methods employed by foreign entities.* [Emphasis added; S. Rep. No. 249, 96th Cong., 1st Sess., at 150 (1979)].

In the case of this optional retesting program, NHTSA could not be assured that the test results obtained by domestic facilities other than those that have been selected for NCAP testing would be impartial or accurate. This difficulty would be compounded in the case of foreign facilities. If a vehicle to be tested were transported from a dealership in the U.S. to the country of manufacturer and then to the test facility, NHTSA would have to practical way of ensuring that the vehicle had not been specially selected or modified prior to the test. Further, the agency has no obvious means of assessing the extent to which the foreign test facilities are independent of the manufacturers or assessing the capability of foreign testing facilities to conduct NCAP testing. Hence, the reason for permitting optional testing only at facilities that have conducted NCAP testing for NHTSA since 1985 is to ensure the continuing integrity of the NCAP program and to ensure that optional tests are conducted as identically as possible to the original NCAP tests sponsored by NHTSA. Since these purposes are fully consistent with and permitted by the Trade Agreements Act of 1979, NHTSA rejects Mazda's assertion that this constitutes an unfair trade practice.

CFAS commented that the agency should set guidelines for examining the financial connections of potential test facilities as part of its assessment of the facility's qualifications for handling NCAP testing. NHTSA agrees with this commenter's point that the test facilities used by the agency must not be under the control of a member of the auto industry. If the agency learned of such a relationship, it could not allow the facility to conduct further testing for the agency. However, NHTSA has for many years use independent testing facilities not just for NCAP testing, but for compliance testing as well. In all that time, no one has even alleged that one of these facilities is somehow under the control of the auto industry. In fact, the fact that they are not controlled by an interested group is central to the business of these facilities. Therefore, the agency does not believe there is any need to revise the NCAP procedure along the lines suggested in this comment.

#### **Current NCAP Test Procedures Must be Strictly Adhered to in any Optional Testing**

The notice proposed that the current NCAP test procedures as specified in Docket No. 79-17 must be used in any optional testing. The only commenter that addressed this issue was GM and it

agreed that those procedures should be followed. Accordingly, to ensure that any test results obtained under this program are comparable to other NCAP results, such a criterion is included in this notice.

#### **NHTSA Must be Notified of the Day and Time of the Test and any Test Preparation Activities and Have a Representative Present for the Test and any Vehicle/Dummy Preparation**

This criterion was proposed to further ensure that any optional testing results would be fully comparable to the initial series of NCAP tests. The presence of the agency representative will serve as a double check that the NCAP procedures are strictly followed.

GM stated that it concurred with the purpose of this proposed criterion. However, GM suggested that the proposed criterion be modified to allow testing to proceed without a NHTSA representative present under the following conditions:

1. A test date has already been scheduled and approved by NHTSA; and
2. A NHTSA representative is unable to witness the test because of circumstances beyond the control of the manufacturer and the testing facility.

GM commented that a delay in testing in these circumstances would cause additional expenses for the manufacturer conducting the test. GM asserted that since only experienced NCAP test facilities would be conducting any retests, the absence of a double check in the unusual situation described above should not call into question the integrity of the test results.

NHTSA understands the concern expressed in this comment and agrees that it would increase the manufacturer's costs for optional NCAP testing through no fault of the manufacturer or the testing facility. However, this optional testing program has been carefully structured to ensure that there is no legitimate basis for questioning the impartiality or objectivity of the test results obtained thereunder. In order to maintain public confidence in the testing conducted under this optional program, the agency believes it is necessary that all optional testing be conducted with an agency representative present. Further, since the test results will be published under the agency's aegis, it is important that the agency itself be assured that the testing complied with all of the criteria set forth in this notice. Therefore, GM's suggested revision has not been incorporated in these final criteria.

CFAS commented that the criterion should be modified to provide for a

minimum of two, and preferably three, NHTSA representatives present at each optional test "to guarantee the integrity of the NCAP." The agency agrees with the commenter's point that the impartiality and accuracy of the published NCAP results must be beyond question in order to maintain public confidence in the program. However, the agency has successfully monitored NCAP testing with a single representative for the past eight years. CFAS did not explain why, nor does the agency know of any reason why, more than one representative would be needed to monitor testing by the same test facilities following the same procedures. Hence, this optional program will continue the agency's practice of having a single representative present at every NCAP test.

#### **The Test Vehicle Must Be Purchased at Random by the Testing Facility**

The notice requesting comments noted that promoting public confidence in the NCAP program and the published test results requires that there be no possibility that a manufacturer could preselect the individual vehicle to be tested. Accordingly, the test vehicle would be purchased at random by the testing facility from a dealer. Since the only changes for which optional testing would be permitted must be production changes, the test vehicle would have to be available at any dealership.

GM commented that it supported this proposed criterion. Ford commented that a vehicle that was truly purchased "at random" might not contain the production changes that were the basis for the retest. Ford explained this comment further, by stating that some of its dealers stock large numbers of each model, and those dealers might still have vehicles of the earlier design in stock for several months after the change has gone into production. If the test facility purchased a vehicle manufactured before the production change, it would be a needless waste of time and money. To address this situation, Ford suggested that the manufacturer whose vehicle is being retested be required to inform NHTSA and the test facility of the month during which the production change was made. The test facility could then be sure that the vehicle it purchased actually incorporated the production change. The agency concludes that Ford has raised a valid point. The final criteria specify that the manufacturer must inform both this agency and the test facility of the month and year in which the subject production change was made.

**Electronic Test Data, Test Films, and Test Report Must Be Completed in Accordance with Current NCAP Procedures and Copies Must Be Provided Directly to NHTSA for Analysis and Validation**

This criterion was proposed to allow the agency a final opportunity to ascertain that the testing was conducted in conformance with the NCAP procedures before publicizing the results. GM commented that it supported this proposal, but recommended that it be expanded so as to provide the manufacturer that is paying for the retesting with the test information at the same time as the agency. Since the manufacturer is paying for the testing in question, the agency believes it should give the manufacturer the same opportunity to examine the date to ensure that the test was conducted in accordance with the NCAP procedures. Accordingly, the final criteria provide that the test data will be provided to both NHTSA and the sponsoring manufacturer.

**After Validation, the Test Results Will Be Published as Part of NCAP Results**

The notice proposed that, after validation by the agency, the test results would be published as part of the NCAP results, along with a summary of the production changes made to the retested vehicle. CFAS supported the proposal to include a summary of production changes, and suggested the agency use abbreviations to identify changes in general categories. For instance, SB would indicate a change to the shoulder belt, SC would indicate a change to the steering column, and so forth.

Other commenters opposed the proposal to publish a summary of the production changes made to the vehicle. GM commented that it opposed this proposal for two reasons. First, the production changes were likely to be proprietary information. Thus, the agency could not disclose the particular production changes in most cases, anyway. Second, GM argued that the information "is of no value to prospective purchasers". Ford and Nissan elaborated on this second point in their comments. Ford stated that the information would not be meaningful to consumers, because NCAP test results "are affected by many kinds of vehicle changes, and test score improvements typically result from a complex interaction of several changes." Nissan stated that publication of a summary of production changes would mislead consumers into believing that there exists proof of some casual relationship between certain changes and NCAP test

results. In fact, according to Nissan, it is very difficult to isolate the effects of design changes that may influence NCAP test results from the numerous minor design changes that are routinely implemented in response to consumer demand. Nissan listed as examples of changes that might influence NCAP test results changes in the quality of seat cloth, carpeting or instrument panel surface.

After considering these comments, NHTSA has decided not to publish a summary of production changes along with the retest results. First, the agency believes that GM was correct when it observed that the production change information was very likely to be proprietary information. NHTSA is prohibited by Title II of the Cost Savings Act from disclosing proprietary information to the public; 15 U.S.C. 1944(f). Thus, the information would almost never be available for publication, regardless of the criteria for this optional retesting program.

Even assuming that the information was not eligible for confidential treatment, it would give rise to the potential for misrepresenting a cause and effect relationship between the identified changes and NCAP results. The complex interrelationships among the various systems in the vehicle mean that design changes that improve NCAP test results for one model would not necessarily have any effect on the NCAP test results of any other models on which the change might be implemented. However, if consumers were to see that some simple design change, such as an improved steering column, had yielded better NCAP test results for one model, those consumers could mistakenly conclude that this same design change would improve NCAP test results for all comparable models. The purpose of this optional testing program is to provide consumers with more accurate and timely NCAP information, not to potentially mislead them. Accordingly, the proposal to provide a summary of production changes for vehicles tested under this optional program is not included in these final criteria.

CFAS commented that the published information for vehicles tested under this optional program should include the date after which the production change was made to the vehicles. Since these final criteria specify that the manufacturer inform the agency and the test facility of the date when the subject production changes were made to ensure that a "changed" vehicle is purchased for testing, it is appropriate to ensure that consumers can also be certain of purchasing a "changed"

vehicle. Accordingly, these criteria include this change suggested by CFAS.

The notice also proposed to annotate the NCAP press releases in some manner to indicate which test data were obtained from optional testing sponsored by the vehicle manufacturers, and sought public comment on how to best identify optional test data in the press releases. Ford commented that the agency itself has conducted retesting on its own in the past, yet has not routinely provided any special annotation of that fact in the press releases. An implicit point of this comment is that since tests under this optional program will strictly adhere to the same NCAP procedures as agency-sponsored retesting, there is no reason to treat them any differently than the agency-sponsored retesting. The agency believes this point is persuasive.

However, the primary purpose for proposing this special annotation was to ensure that consumers would know to which vehicles the retest results applied. Ford acknowledged this purpose in its comments, but stated that the retest results could achieve this purpose by identifying the retest results by model year, month of production, restraint system, etc. GM commented that, "The model year itself would provide sufficient distinction for customer use." NHTSA believes that the underlying premise of the Ford and GM references to the model year allowing consumers to distinguish vehicles to which NCAP results apply is that it is highly unlikely that all of the following events would be completed within the timeframe of a single model year:

1. A vehicle would be selected for testing by NHTSA in the NCAP program.
2. Testing would be completed by the facility and validated by NHTSA.
3. NCAP test results would be published.
4. The manufacturer would analyze the NCAP results and make certain design changes to improve the NCAP test results of the vehicle.
5. The design changes would be incorporated into production.
6. The manufacturer would request retesting of the changed vehicle and NHTSA would approve the request.
7. The retesting would be conducted, and the results validated by this agency.
8. The retest results would be published.

NHTSA agrees that it is highly improbable that all 8 of these steps could be completed in the space of a single model year. In almost all cases, the vehicle model for which the initial NCAP results were published would have an earlier model year designation

than the model for which the retest results were published. Accordingly, the consumer would be able to readily distinguish the vehicles to which the initial NCAP results apply from the vehicles to which the retest results apply simply by the model year of the vehicles, so there would be no need for any additional annotation. Therefore, the agency sees no reason to provide any special annotation with retest results.

**All Retest Results Must be Made Publicly Available, Regardless of Their Magnitude, Unless There is a Violation of Test Protocol or an Equipment Failure**

The proposed criteria specified that all retest results would be made publicly available, regardless of the magnitude of the difference in dummy injury results, unless there was a violation of test protocol or an equipment failure during the retest. This is the policy to which the agency has adhered since the inception of the NCAP program. It is essential that this optional testing program follow all of the procedures of the NCAP program, since the results obtained under it will be disseminated by the agency as NCAP testing.

GM was the only commenter that directly addressed this proposed criterion. GM supported the proposal, stating, "Without this requirement, the program could be criticized as being under the control of the manufacturer." Such a provision is included in these final criteria.

**Criteria for Optional NCAP Testing**

NHTSA will publish test results that are obtained in accordance with the following criteria as part of an NCAP press release.

1. The following vehicles are eligible for testing under this program:
  - a. Any model that has previously been tested under the NCAP program, and, at some time after the NCAP test results were released, the manufacturer has made production design changes to the model that are likely to significantly improve its NCAP test results.
  - b. A model selected by NHTSA that is in the same line as a model that was previously tested under the NCAP program, but the tested model is no longer in production, and, at some time after the NCAP test results were released, the manufacturer has made production design changes to the line of vehicles that are likely to significantly improve the NCAP test results.
  - c. Any model, whether or not previously tested under NCAP, that incorporates optional safety equipment or an innovative restraint system design (e.g., air bags, webbing clamps, a

different type of energy-absorbing webbing, etc.).

2. The manufacturer must provide technical data to the agency describing the production design changes or the optional safety equipment or innovative restraint system, the reasons why the manufacturer believes that such design changes, safety equipment, or restraint system are likely to significantly improve the NCAP results for the vehicle, and the estimated or actual test results anticipated by the manufacturer if the vehicle were tested. The agency will analyze the submitted data and justification to decide if it indicates the vehicle is likely to show significantly improved NCAP results, and inform the manufacturer whether the vehicle is approved for testing under this program.

3. All approved testing must be conducted at an independent test facility that has conducted NCAP testing for NHTSA at any time in 1985 or later.

4. The NCAP procedures, as specified in Docket No. 79-17 and current as of the date of testing, must be followed.

5. NHTSA shall be notified of the day and time of the test and any prior test preparation activities, and shall have a representative present for the actual crash test and any vehicle/dummy preparation.

6. To ensure that the sponsoring manufacturer cannot preselect the vehicle to be tested, the test vehicle must be purchased at random by the test facility from a retail dealer. To ensure that the vehicle purchased for testing incorporates the changes or options that are the basis for the testing, the manufacturer shall notify the test facility and the NHTSA of the production date on and after which the change or options were incorporated into the vehicle. The test vehicle should be available through any dealership.

7. The electronic test data, test films, and test report must be completed according to the current NCAP test procedures. Copies of the electronic test data, test films, and test report are provided to the sponsoring manufacturer, and directly to NHTSA for analysis and validation in accordance with current agency procedures.

8. After validation, the test results would be published as part of NCAP results. If the tested model bears the same model year designation as a model tested under the initial series of NCAP testing, or if the changes that were the basis for retesting are not incorporated in all vehicles of that model type for the model year, the published NCAP results will indicate the production date on and after which the test results apply.

9. Absent violations in the test protocol or an equipment failure, all test results obtained under this program will be made public, regardless of their magnitude.

The agency will implement these criteria for optional testing on the day this notice is published in the **Federal Register**. Thus, any manufacturer that wishes to have one or more of its models tested under these criteria may submit its justification under criteria 2 at any time after the date this notice is published.

Issued on August 18, 1987.

Diane K. Steed,

*Administrator.*

[FR Doc. 87-19165 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-59-M

**Saint Lawrence Seaway Development Corporation**

**Advisory Board; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., September 17, 1987, at the Corporation's Operations Headquarters, Massena, NY. The agenda for this meeting will be a brief business meeting and a tour of the facilities.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 14, 1987, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366-0118.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 14, 1987.

Joan C. Hall

*Advisory Board Liaison.*

[FR Doc. 87-19160 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-61-M

**DEPARTMENT OF THE TREASURY**

**Public Information Collection Requirements Submitted to OMB for Review**

Date: August 13, 1987.

The Department of the Treasury has