$5,000 or one-half of the cost of attendance at the school.

(2) The school will determine the financial resources of a student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 45 CFR 144.13 and other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contribution from parents, spouse, or other family members. Student summer earnings, educational loans, veterans (G.I) benefits and earnings during the school year will not be considered resources for purposes of this subpart.

(3) The school will determine cost of attendance at the school by considering expenses reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's ability to attend the school on a full-time basis. The school must document the criteria used for determining these costs.

(c) A recipient of a National Health Service Corps Scholarship, under section 751 of the Act, or an Indian Health Scholarship, under section 757 of the Act, is ineligible for a scholarship under this subpart.

§ 57.2805 Amount of scholarship award.

A scholarship will consist of:

(a) The tuition of the student for the first year of study;

(b) The cost of all other reasonable educational expenses including fees, books, and laboratory expenses of the student for the school year; and

(c) A stipend of $400 per month (adjusted in accordance with section 751(g)(3) of the Act) for 12 consecutive months beginning with the first month of the school year.

§ 57.2806 How is the amount of grant award determined?

(a) A school which receives a grant under this subpart must award each scholarship successively to the eligible individual as specified in § 57.2803(b)(1) of greatest financial need at that school.

(b) The Secretary will make a randomized list of all eligible applicant schools of medicine, dentistry and osteopathy and a second randomized list of all remaining eligible applicant schools. To the extent of available funds, the Secretary will award grant funds sufficient for one scholarship to each eligible applicant school on the first list, and then proceed to the list of all other eligible applicant schools and award one scholarship to each school in the same manner. These scholarships must go to students who have no financial resources for the first year of study at the school, as determined under § 57.2804. The Secretary will then allocate any remaining funds according to paragraph (c) of this section.

(c)(1) Proceeding in sequence through the list of schools of medicine, dentistry and osteopathy, the Secretary will award each school of medicine, dentistry, and osteopathy sufficient grant funds for a second scholarship which must be given to a student with no financial resources for the first year of study at the school, as determined under § 57.2804. This procedure will be repeated until all the scholarship requests of the applicant schools of medicine, osteopathy, and dentistry for scholarships for students with no financial resources have been satisfied or until all the available grant funds have been allocated. If there are additional grant funds, the Secretary will then proceed to the list of all other eligible applicant schools and will allocate scholarships for students with no financial resources using the same procedure.

(2) If additional grant funds remain after fulfilling all requests for scholarships for students with no financial resources at all eligible applicant schools, using the method described in paragraph (1) of this section the Secretary will allocate funds for scholarships to students who have resources from one to 500 dollars. With any remaining funds after completion of these awards, the Secretary will, in the same manner, award grants for scholarships to students with resources in increments of $500 until all grant funds are awarded or students who have $5,000 in resources or 50 percent of the cost of education at the school have received awards.

§ 57.2807 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) The grantee must discontinue all scholarship payments and remit the unused balance of the scholarship to the Federal Government in the event that a recipient ceases to be a full-time student at the school.

§ 57.2808 What additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50—PHS grant appeals process

45 CFR Part 16—Department grant appeals process

45 CFR Part 74—Administration of grants

45 CFR Part 80—Nondiscrimination under programs receiving Federal Assistance from the Department—Implements Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80

45 CFR Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs

45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally assisted programs

45 CFR Part 86—Nondiscrimination on the basis of sex in Federally assisted education programs

45 CFR Part 91 [1]—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance

§ 57.2809 What other records, audit, and inspection requirements apply to grantees?

(a) Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act concerning recordkeeping, audit, and inspection.

(b) The grantee must also maintain: (1) A record of all applications for scholarships, and the basis for approving or disapproving each application, including a copy of the total need analysis and determination of resources for each applicant and documentation for any changes made to the need analysis report used by the school; (2) A record of the amount of funds awarded to each recipient.

§ 57.2810 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of an award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 76-06; Notice 9]

Federal Motor Vehicle Safety Standards; Speedometers and Odometers

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

ACTION: Final rule (response to petitions for reconsideration and final action on notice of proposed rulemaking).

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard (FMVSS) No. 127, *Speedometers and Odometers*. It responds to petitions for reconsideration of FMVSS 127 and takes final action on a notice of proposed rulemaking.

This notice grants petitions for facilitating compliance with the odometer marking option, clarifying the odometer marking requirements, and providing an additional optional method of compliance with the odometer tampering requirements. It also grants a petition to exempt all police vehicles from the provision limiting the maximum speed which speedometers may indicate. The standard is amended accordingly.

Pursuant to the proposal, this notice amends FMVSS 127 by exempting motorcycles from the odometer tampering requirements, specifying the four tampering methods that odometers complying with the irreversibility option must resist absent breakage, specifying the tools to be used in each of those methods, requiring the differentiation of replacement odometers and wheels, and clarifying and further specifying the requirements for odometers complying with the encapsulation option. These amendments make the standard more effective and objective and thereby facilitate compliance.

DATES: Effective dates: The odometer requirements in sections S4.2 through S5.2 become effective September 1, 1981. This is the effective date previously established in the final rule published March 22, 1979 (44 FR 17500). The amendment of the speedometer provisions of section S4.1.3 becomes effective June 16, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On March 16, 1978, the NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 127, *Speedometers and Odometers* (43 FR 10919). With respect to odometers, the standard is intended to reduce the incidence of odometer tampering in order to prevent consumer fraud and the presence of potentially dangerous vehicles on the nation's highways. As originally written, the final rule required that odometers be immovable in the reverse direction and that they indicate when the distance traveled by a vehicle had exceeded 99,999 miles or kilometers.

On July 27, 1978, the NHTSA published a response to an initial set of petitions for reconsideration of the final rule (43 FR 3421). With regard to odometers, that response amended FMVSS 127 so that manufacturers could comply by choosing either (1) the marking option which required that odometers permanently mark the wheel registering ten thousands of miles or kilometers as it rotated, or (2) the irreversibility option which specified that odometers could be reversed up to a maximum of 10 miles but that any further reversal must render the odometer "permanently and totally inoperable."

Following receipt of a second set of petitions for reconsideration of the final rule, the agency published a response on March 22, 1979 (44 FR 17500). In that response, the irreversibility option was amended. The requirement that odometers be irreversible unless rendered "permanently and totally inoperable" was replaced with a less stringent one. It required that odometers be constructed so that reversal beyond 10 miles or kilometers could not be accomplished without breaking or destroying the odometer in one or more of five specified ways. In the preamble to the response to petitions, the agency designated the methods of tampering with which the five specified types of telltale breakage are associated and described ways in which manufacturers could ensure that these methods would result in the specified types of telltale breakage. The response to petitions also postponed the effective date of the odometer requirements from September 1, 1980, to September 1, 1981.

Following publication of the March 22, 1979, response to petitions for reconsideration, the agency received the third and current set of petitions for reconsideration. Petitions were submitted by General Motors Corporation, Ford Motor Company, Chrysler Corporation and Thomas D. Regan. The petitions address the provisions of FMVSS 127 as modified by the March 22, 1979, response to the second round of petitions for reconsideration. A discussion of the issues raised by these petitions and their resolution is presented in this notice in two parts, one concerning odometer requirements and the other concerning speedometer requirements. All petitions are denied except as otherwise noted.

Simultaneously with the publication of the March 22, 1979, response to petitions for reconsideration, the agency also issued a notice of proposed rulemaking (44 FR 17532, March 22, 1979). This notice did not propose that any changes be made in the marking option, but did propose that the irreversibility option be modified and reorganized into two separate but related options. It was proposed that the list of tampering methods which appeared in the preamble to the March 22, 1979, response to petitions be incorporated into the text of the irreversibility option. As published in the March 22, 1979, response to petitions, the irreversibility option required that odometers be constructed so that reversal beyond 10 miles or kilometers could not be accomplished at all or could not be accomplished without resulting breakage or destruction of the odometer in one or more of five specified ways which included breaking a rigid or semi-rigid shield that totally or partially encapsulated the odometer. The notice proposed that the encapsulation provision be taken out of the irreversibility option and made into a second option. Accordingly, compliance with the irreversibility option would require prevention of tampering by any of the designated methods, or alternatively resulting telltale breakage of the odometer, while the encapsulation option would require prevention of tampering, or alternatively resulting breakage of the encapsulation. The notice also requested comments concerning the possible need for further refinement of the odometer tampering provisions of FMVSS 127.

In addition, the notice of proposed rulemaking proposed that "each replacement wheel for an odometer and each wheel on a replacement odometer * * *" be visibly differentiated from wheels on odometer installed in new vehicles as original equipment. In the case of odometers built in compliance with the marking option, for example, the proposal was intended to prevent tamperers from replacing marked ten thousands wheels with identical new unmarked ones. In the case of odometers built to comply with the irreversiblity option, the proposal was

intended to prevent tamperers from simply removing reversal resistant odometers and replacing them with new identical odometers set to lower mileage readings. The notice also proposed to require that the ten thousand miles/kilometers wheel on each odometer be visibly differentiated from all other wheels on the odometer.

Today's final rule provides manufacturers with a wide range of compliance options which the agency believes will be reasonably effective in reducing the incidence of odometer tampering. However, manufacturers can improve the effectiveness of any option that they choose to adopt by notifying purchasers of the means they are using to deter and prevent tampering. The agency urges manufacturers to provide this information to purchasers of their vehicles and will monitor the efforts made to determine whether the provision of such information should be made mandatory.

Response to Petitions for Reconsideration Concerning Odometer Requirements

In their petitions for reconsideration, General Motors Corporation, Chrysler Corporation and Ford Motor Company all requested modification of the odometer marking option. General Motors requested that the agency either (1) suspend the effective date of the odometer requirements of FMVSS 127 and provide a period of at least three years between the issuance of a new final rule and its effective date, or (2) modify the odometer marking option to allow a system that marks each numeral on the 10,000 miles/kilometers will wheel within 500 miles or kilometers after that numeral disappears from view. The agency has decided that the second alternative should be granted. The information on which this decision rests includes a June 14, 1979, meeting reported in the docket at which General Motors demonstrated its system. Rather than marking each numeral on the 10,000 miles/kilometers wheel as the numeral turns out of the driver's view, the General Motors' system employs a continually moving stylus which faintly scratches the numeral and/or the background after each mile of operation, gradually removing the original color and revealing an underlying contrasting color. With each mile travelled, the contrasting color becomes more visible. By the time the vehicle has travelled 500 miles after the rotation of the 10,000's wheel, the contrasting color is visible enough so that but for the wheel having turned the numeral out of view in order to register increased mileage, the color would be visible to a person occupying the driver's position. In addition, the contrasting color can be easily seen by the driver when the numeral reappears. The agency has concluded that this system will reduce compliance costs without compromising achievement of FMVSS 127's objective of reducing odometer tampering. Language implementing this decision has been incorporated into section 4.2.6.1 of the final rule being published today.

General Motors also proposed in a May 10, 1979, meeting with NHTSA officials that the language of section 4.2.7.1 as it appeared in the March 22, 1979, response to petitions be clarified. Ford made the same request in its petition for reconsideration. Section 4.2.7.1 required that the odometer marking device mark by "permanent means, readily visible to the driver, each numeral on the wheel registering ten thousands of miles or kilometers as the numeral disappears from the driver's view." This provision has been clarified in section 4.2.6.1 of the final rule published today. Section 4.2.6.1(b) of today's final rule relaxes slightly the requirements for the location of the mark.

The agency suggests that manufacturers electing to use the marking option build their systems so that the numbers on the odometer wheels will not be totally obliterated and rendered illegible when marked. The course of action will ensure the readability of odometers on high mileage vehicles. The same suggestion is made for systems used to indicate (in accordance with section S4.2.3 of today's rule) that the number of miles/kilometers registered on the odometer has exceeded either 89,999 or 99,999. This suggestion has not been incorporated as a mandatory requirement in today's final rule due to the lack of notice. Further, NHTSA does not contemplate proposing the requirement since the agency believes that, due to consumer preferences, manufacturers would not be inclined to build odometers that will become unreadable after having recorded 100,000 miles.

General Motors and Chrysler both petitioned for deletion of the requirement that all odometers, including those built to comply with the requirements of the marking option, "* * * be movable in only the forward direction when driven through the odometer gear train * * * except as provided in S4.2.8." (S4.2.4, March 22, 1979, response to petitions). Section 4.2.8 indicated that this requirement would be moderated in the case of odometers built to comply with the irreversibility option to permit reversal up to a maximum distance of 10 miles. The petitioners stated that the section 4.2.4 requirement constituted a substantive change from the July 27, 1978, version of FMVSS 127, that it would not "enhance the security of marking type odometers, and that it would unnecessarily increase the cost of vehicles * * *" to consumers. The petitioners argued that an odometer complying with the marking provision alone would prevent rollbacks of 10,000 miles or more by providing a visible indication of those rollbacks. The marking option would also indirectly prevent rollbacks of lesser magnitude because such rollbacks are not cost effective to persons seeking to sell vehicles whose mileage has been altered.

The agency agrees with the petitioners that the gear train drivability requirement of section 4.2.4 would not appreciably enhance the effectiveness of marking-type odometers. Therefore, the agency is granting General Motors' and Chrysler's petitions by deleting this requirement to the extent that it applies to marking-type odometers. However, this requirement will continue to be applicable to odometers complying with the irreversibility or the encapsulation options included in the final rule published today.

In their petitions for reconsideration, both Ford and General Motors discussed the modifications made to the irreversibility option by the March 22, 1979, response to petitions. Ford petitioned for the deletion of the language which made the irreversibility requirements specifically applicable to all odometers regardless of whether they are installed in or removed from vehicles. Ford stated that by adding this language, the agency had both added additional detail to the requirements and failed to provide manufacturers with prior opportunity for comment, thus negating design work undertaken by the company in order to make its odometers more tamper resistant. General Motors stated that the language should have been subject to public comment, and that it provides further evidence of the need to suspend the effective date of the standard.

In its petition, Ford also questioned the practicability and effectiveness of the modified irreversibility requirements. Ford expressed doubt that any available mechanical odometer could meet the requirements subsequent to its removal from a vehicle. Pointing to the provisions requiring that odometers be irreversible absent the prerequisite performance of one of five specified operations, Ford stated that three of the

operations would not be obvious to a prospective vehicle owner and that the provision as a whole would "merely change the mode of operation . . ." of odometer tamperers. Ford also concluded that, by requiring that original equipment odometers be made more tamper resistant, the agency would simply encourage tamperers to substitute odometers from wrecks and stolen vehicles and would create another market for stolen parts.

The agency has concluded that Ford's petition should be denied. The agency does not agree that Ford and the other manufacturers have been deprived of an opportunity for comment. By specifically modifying the language of the final rule in the March 22, 1979, response to petitions, the agency simply clarified the language of earlier rulemaking actions concerning the applicability of the irreversibility requirements. Each of these rulemaking actions stated that Safety Standard No. 127 is both a vehicle and an equipment standard. It is applicable to specified vehicle types and to speedometers and odometers for use in those vehicle types. It also appears that Ford has been acting upon this same understanding about the broad applicability of the requirement since the company stated at a meeting with NHTSA officials on September 27, 1978, that it was designing an odometer that was difficult to remove from the vehicle. A description of this meeting may be found in the docket. Further, this requirement was included in the March 22, 1979, notice of proposed rulemaking and comments pertaining to any aspect of tamper resistance were requested.

The agency also rejects General Motors' comments regarding notice. The modification of the irreversibility option has the effect of easing the manufacturers' burden of compliance by providing more flexibility and greater opportunity to employ less costly and complicated technology. Further, as noted above, the March 22, 1979, proposal requested comments pertinent to these changes.

With respect to Ford's arguments concerning the practicability, effectiveness and probable consequences of the irreversibility requirements, the agency has reached the following conclusions. The modified requirements are practicable. This has been shown by, for example, the fact that Ford demonstrated at a meeting with NHTSA officials on April 4, 1979, an odometer that apparently meets the requirements of both of the March 22, 1979, rulemaking actions. It is true that if odometer reversal were accomplished after performance of three of the operations specified in the irreversibility option, it would not be obvious to the potential vehicle purchaser. However, the agency has concluded that an irreversibility option that will in all cases ensure that the potential purchaser sitting in the driver's seat is provided with evidence of tampering would be too costly at this time. Further, the irreversibility option as modified will serve the goal of decreasing the incidence of odometer tampering by making tampering more difficult and by providing evidence which investigators can detect.

With respect to Ford's statement that the irreversibility requirements will encourage greater use of odometers from wrecks or stolen vehicles, the agency agrees that this may be true in some cases. Partially in response to this potential problem, the agency proposed Section S4.2.9 of the notice of proposed rulemaking which would require that new replacement odometer components be different from original equipment components. The agency's action on that proposal is discussed at the end of this preamble.

In its petition, General Motors also took issue with the agency's statement in the preamble to the March 22, 1979, response to petitions that the tampering indicator used in the company's odometer design provided an insufficiently visible indication of reversal. General Motors' odometer operated so that upon an attempt to forcibly rotate any of the odometer wheels, a tear strip holding the opinion carrier plate tabs was torn and the carrier plates rotated to reveal shiny metal separations between the wheels rather than the normal black separations. At a meeting on June 14, 1979, General Motors stated that this design had been altered so that the carrier plates would rotate to reveal distinctively colored separations between the wheels and so that the tear strip could not be easily removed during tampering and then replaced afterward. General Motors stated in its petition that this modified design would comply with the requirements of the irreversibility option as published in the March 22, 1979, response to petitions, and therefore the agency should rescind its opinion that the odometer would not comply with FMVSS 127. The agency has concluded that this odometer design would be tamper resistant although it does not completely meet the requirements of any of the compliance options presented in the March 22, 1979, rulemaking actions. Consequently, the agency has granted General Motors' petition as it relates to this issue by incorporating a third tamper resistance option in section 4.2.5.3 of the final rule which will specifically enable this type of odometer to comply with FMVSS 127.

Mr. Thomas D. Regan submitted a petition seeking modification of FMVSS 127 as published on March 22, 1979, and resubmitted comments and petitions previously submitted in response to earlier versions of FMVSS 127. Since these earlier comments and petitions were considered and discussed in prior rulemaking actions, that discussion will not be repeated here. In his most recent petition, Mr. Regan requested that the agency amend FMVSS 127 by: (1) making the odometer requirements specifically applicable to all new and replacement odometers; (2) replacing the word "reversible" where it occurs, with the term "resettable" or "changeable in the forward or reverse direction at a rate not faster than its normal recording rate"; (3) restricting reversal to 10 miles for all types of devices; (4) prohibiting removal of component parts for all types of devices; (5) specifying that compliance with the irreversibility option requires that odometers be constructed so that they are resistant to tampering by any of the listed operations or so that performance of any of these operations will leave telltale damage; (6) specifying that compliance with the irreversibility option requires that odometers be constructed in accord with point 5 above or that they be encapsulated such that any attempt to breach the encapsulation would be obvious to anyone viewing the odometer while it is installed in the vehicle; (7) eliminating the marking option or requiring installation of a marking device that cannot be moved or removed without leaving telltale signs; and (8) revising the test procedures so that all odometers must be tested for compliance by a tester who would attempt to rollback the odometer.

The agency has taken the following action on Mr. Regan's petition. Point 1 of the petition is denied because FMVSS 127 already applies to all odometers intended for use in passenger cars, multipurpose passenger vehicles, trucks, and buses. Point 2 of the petition is denied. The agency agrees that replacing the word "reversible" with the word "resettable" would improve the irreversibility option in the final rule by making it specifically applicable to tampering accomplished both by turning the odometer wheels backward and by turning the wheels forward past zero. However, the agency is not including a specific requirement to this effect in today's final rule due to the lack of notice. Nonetheless, the agency urges

manufacturers who choose the irreversibility option to voluntarily build odometers resistant to tampering accomplished by moving the odometer wheels either forward or backward. The agency will monitor efforts made in this area in determining whether a mandatory requirement should be proposed. Point 3 of the petition is denied with respect to odometers complying with the marking option since, as discussed earlier, addition of the requirement would not enhance the tamper resistance of marking type odometers. Point 3 of the petition is moot with respect to odometers built in compliance with other options in the final rule since allowable reversal of such odometers is already limited to 10 miles. Point 4 of the petition is denied because it would be extremely difficult to measure compliance with a standard which prohibits removal of component parts from odometers. In support of Point 5 of his petition, Mr. Regan stated that the irreversibility option was faulty because it does not result in odometers that are resistant to tampering by the five specified operations and that these operations do not leave telltale evidence. Point 5 of the petition is denied for two reasons. First, the irreversibility option is not intended to prevent completely any reversal accomplished by one of the five specified operations. The option states that an odometer that can be reversed only as a result of one of these operations complies since performance of any one or more of these operations will generally leave telltale damage. Second, although in some cases the resulting telltale evidence will be apparent only to the trained investigator, the agency believes that making the requirements more stringent at this time would unduly increase the difficulty and cost of compliance. For the same reason, Point 6 of the petition is also denied. Point 7 of the petition is aimed at preventing premeditated alteration of vehicle mileage, i.e., the adjusting of a vehicle's odometer prior to sale of the vehicle in order to prevent proper recording of mileage or proper operation of a marking device. The agency does not believe that this type of tampering will be a significant problem. It is especially unlikely that individual vehicle owners, who own most vehicles, will engage in this sort of activity. Therefore, Point 7 of the petition is denied. Finally, Point 8 of the petition is denied because the agency lacks the wherewithal to test all odometers and because the petitioner's proposed test procedures are insufficiently objective and are unworkable since they put no limit on the time or ingenuity of the compliance tester who tries to tamper with an odometer. The agency believes that the testing procedures included in today's final rule and discussed later in this preamble provide a far more workable procedure.

The National Conference on Weights and Measures, a group comprised of Federal and State officials, did not submit a petition for reconsideration but did make suggestions pertinent to the March 22, 1979, response to petitions for reconsideration. The Conference suggested that section S4.2.2 of FMVSS 127 published March 22, 1979, be made consistent with the National Bureau of Standards' Handbook 44, *Code for Odometers*, which requires that odometers be capable of indicating distances in units of one-tenth of either a mile or of a kilometer. The Conference stated that this change would be desirable in order to promote uniformity of all requirements concerning odometers. Since most vehicles already meet the Conference's proposed requirement, the agency did not include it in any notice of proposed rulemaking. Further, the agency does not currently contemplate undertaking any rulemaking to establish it.

Response to Petitions for Reconsideration Concerning Speedometer Provisions

In its petition, General Motors requested that the agency exempt not only passenger cars sold to a law enforcement agency for law enforcement purposes, but all police vehicles from the requirement that speedometers not indicate speeds over 85 mph and 140 km/h (S4.1.4 in the March 22, 1979, response to petitions). The company indicated that law enforcement agencies are buying a significant number of multipurpose passenger vehicles and trucks and that these vehicles may be driven at high speeds. Based on its familiarity with several jurisdictions, the agency agrees. General Motors concluded and this agency agrees further that a speedometer that does not register over 85 mph (140 km/h) could be a safety hazard for the drivers of these vehicles. This agency therefore grants this portion of General Motors' petition for reconsideration and has included language to effect this action in section S4.1.3 of today's final rule.

In its petition, General Motors also requested that test conditions applicable to speedometer accuracy tests (section S5.2, FMVSS 127 as published March 22, 1979) be modified. According to General Motors, the requirement that the test vehicle be equipped with "tires recommended by the manufacturer" should be modified by insertion of the following language following the word "recommended": "and installed as original equipment. . . ." The company stated that it does not control the installation of tires owned by certain truck and bus purchasers and should not be held liable for the effects of these tires on speedometer accuracy.

This aspect of General Motors' petition was previously granted. The speedometer accuracy requirements were deleted from FMVSS 127 by a final rule published at 45 FR 6404, January 28, 1980. The petitions leading to the deletion of the speedometer accuracy requirements submitted by both General Motors and International Harvester stated that the accuracy of both speedometers and odometers is dependent upon the same factors and that these factors made full compliance with the accuracy requirements impossible. In responding to these petitions and deleting the speedometer accuracy requirements, the agency inadvertently omitted language to delete the odometer requirements. Since the rationale for deleting accuracy requirements whether applicable to speedometers or odometers is the same and has already been published in the **Federal Register** this notice deletes the odometer accuracy requirements (section S5 of the March 22, 1979, final rule) without further explanation.

Final Action on the Notice of Proposed Rulemaking

As previously described, the notice of proposed rulemaking published March 22, 1979, proposed requirements intended to deter tamperers from circumventing the marking and irreversibility provisions by using replacement parts and odometer assemblies. Other proposed requirements were intended to refine and improve the provisions of the irreversibility option. Each of the sections of the proposed amendments will be discussed in numerical order with reference made to the new section numbers of the final rule.

In the final rule being published today, section 4.2.4 (section 4.2.5 in the notice of proposed rulemaking) states that all odometers except motorcycle odometers must comply with one of the options set out in sections 4.2.5 or 4.2.6 (i.e., the irreversibility, encapsulation, reversal indicator, or marking options). Motorcycles have been excluded in response to comments which pointed out that motorcycles have a relatively short useful life (approximately 7,400–18,600 miles) and that buyers of used motorcycles rely more heavily on

inspection of the vehicles than on odometer readings in ascertaining the condition of the vehicles.

Section 4.2.6.1(a) of the proposed rule would have required that odometers not be reversible when subjected to any of four specified tampering techniques. One commenter stated that section 4.2.6.1 should apply only to the wheel registering ten thousands of miles or kilometers (the 10,000 miles/kilometers wheel) since this is the only wheel likely to be manipulated. Chrysler stated that only one type of odometer would comply with the requirements of S4.2.6 and that the section should be modified to reflect this. Such an odometer would be movable in the forward direction only when driven through the odometer gear train, it would not be removable from the speedometer/odometer assembly unless the material used to hold the rolls shaft were broken and it would have inseparable rolls.

The agency has decided not to limit the application of section S4.2.6.1 (renumbered as S4.2.5.1 in today's final rule) to the ten thousands wheel alone because this would result in an odometer which could be reset by forcing the pinions on lower distance wheels out of mesh and driving the ten thousands wheel backward through the gear train. The agency declines to incorporate Chrysler's proposed requirements into the standard because they would be too design restrictive and other odometer designs that meet the requirements of section S4.2.5.1 of the final rule have been demonstrated to the agency's engineering staff.

Two commenters generally questioned the effectiveness of section S4.2.6.1 in reducing the incidence of odometer tampering. Ford noted that if, for example, the breakable feature of an odometer were the drive teeth, a driver would not notice for as much as 9,000 miles that the ten thousands wheel was incapable of advancing and that his odometer had been subjected to tampering. The provisions being discussed here are designed to reduce the incidence of odometer tampering at a reasonable cost. Ford's example does not demonstrate that the standard is ineffective in reducing the incidence of odometer tampering. It demonstrates only that the standard, like other standards, may not be totally effective in all instances. In Ford's example, it is true that if a tamperer broke the drive teeth on the 10,000 miles wheel when the 1,000 miles wheel indicated 0 a driver might not notice that the 10,000 miles wheel was incapable of advancing until after having travelled 9,000 miles. However, there is equal probability that the 1,000 miles wheel would indicate some other number from 1 to 9 at the time that the tamperer broke the drive teeth of the 10,000 miles wheel. In such instances, the driver would notice the tampering sooner.

General Motors' comments suggested that the section fails, in several respects, to provide the objectivity and specificity required by the National Traffic and Motor Vehicle Safety Act. First, the company expressed concern that the section would require a manufacturer to foresee all possible methods of odometer tampering which might fall within the outlines of the methods described in proposed section S4.2.6.1. Second, the company argued that the proposed subsection S4.2.6.1(b) would not compensate for this lack of specificity despite its provision that odometers need not be resistant to the tampering methods in proposed section S4.2.6.1(a) if use of those methods would result in specified types of breakage. According to the company, information concerning the details of the tampering method, the dexterity to be used in employing that method and the physical characteristics of the tampering tool is a prerequisite for determining whether certain types of breakage will result from a given tampering technique and for producing replicable compliance test results. Finally, the company added that this section "invites compliance contractors to resort to extreme measures to demonstrate noncompliance which might include specially tailored tampering procedures and combinations of tools and techniques." The result would be, according to General Motors, that "any successful combination, whether it was ever used to defeat an odometer in the field . . . would constitute noncompliance."

Although the agency does not agree with all of General Motors' comments, it does agree that proposes section S4.2.6.1 should be changed. The agency has concluded that the most effective method for improving proposed section S4.2.6.1 (S4.2.5.1 of the final rule) and in resolving the issues raised by the comments is to indicate in section S5 of today's final rule the tools to be used during compliance testing.

The specified tools are similar to those mentioned in the proposal. The proposal suggested that a dental pick, an ice pick, a small screwdriver, or other similar instruments or a person's hands could be used to force odometer wheels out of mesh with the pinion gears. It also noted that the hands or other means (e.g., pliers) could be used to apply rotational pressure to odometer wheels. All of the tools mentioned in the preamble and specified in this notice are readily available and useful for grasping or prying. Since none of the commenters questioned the appropriateness of those tools or suggested the use of others, the agency has relied on these factors and on its knowledge of various odometer designs in specifying the tools to be used alone or in combination for each of the techniques in section S4.2.5.1(a) of the final rule in the event that the technique cannot be performed with the hands alone. The tools listed in section S5.1 of the final rule are of specified dimensions and include two types of pliers; a pick, which will serve as surrogate for any thin pointed instrument such as a dental pick or ice pick; and a probe, which will serve as a surrogate for any screwdriver or other type of flat blade. As to permissible combinations of tools, S4.2.5.1(a) and S5.2 of the final rule indicate the tools to be used for each tampering method.

General Motors also suggested that proposed section S4.2.6.1 should specify the precise details of each tampering technique and the dexterity to be employed in practicing the technique. The agency believes that the odometer is such a simple mechanism that the different ways in which the hands and the specified tools can be used to perform each tampering method are relatively few and do not differ substantially.

One commenter stated that complete enclosure of the odometer counter mechanism appeared to be the best means of adding tamper resistance but that this would be quite costly. According to the commenter, this cost could be reduced if proposed section S4.2.6.1(b) were amended to require that odometers be tamper resistant only when installed in the vehicle or upon removal of the entire instrument panel. In the commenter's view, this would permit use of such simple methods of ensuring tamper resistance or telltale breakage as riveting the speedometer/odometer assembly base plate to the instrument panel or connecting the speedometer/odometer assembly to the instrument panel with a lead seal, which would leave evidence of tampering if disturbed. The agency has not allowed the use of a lead seal because a tamperer could remove the seal, reset the odometer and then replace the seal without leaving any evidence. The agency has not permitted the riveting method because it would neither deter nor provide evidence of tampering accomplished while the speedometer/odometer assembly remained in the vehicle.

Under section 4.2.6.2(a) of the proposed rule, manufacturers could have elected to comply with FMVSS 127 by providing either (1) total encapsulation of each odometer or (2) partial encapsulation accompanied by secure fixing of the odometer shaft in the odometer assembly. Two commenters stated that the section should be modified to permit the protrusion beyond the encapsulation of functional components such as the drive gear or emissions control system maintenance reminder. The latter device, which may be a flag appearing on the odometer or any other type of visible or audible indicator, must be provided on vehicles whose emissions control systems require maintenance more frequently than every 50,000 miles of vehicle travel.

The agency agrees that the language of the section concerning partial encapsulation should be modified to indicate that the functional protrusions such as the drive gear or emissions control system maintenance reminder need not be encapsulated. This is because these devices as currently designed could not operate properly if encapsulated. If, for example, the drive gear on a mechanical partially encapsulated odometer were encapsulated, it would not engage with the other gear that eventually connects it to the speedometer cable input. This change has been added in section 4.2.5.2(a) of the final rule published today.

One commenter stated that total encapsulation is unnecessary since tampering could be discouraged by encapsulating only those odometer wheels registering thousands or ten thousands of miles or kilometers. The commenter added that fixing the odometer shaft as required in section 4.2.6.2(a)(2) of the proposed rule (4.2.5.2(a)(2) of the final rule) is unnecessary since any tampering accomplished by reorienting or rotating the shaft would be obvious to the driver. The agency has concluded that an odometer constructed so that only the 10,000 or 1,000 miles/kilometers wheel were encapsulated would be too vulnerable to tampering. Accordingly, the agency has not modified the final rule to permit this type of partial encapsulation. The agency believes, too, that the requirement for fixing the odometer shaft is necessary to deter tamperers from simply snapping out the partially encapsulated odometer drum, sliding the drum out of the capsule, resetting it, replacing it in the capsule and reinstalling the encapsulated drum in the speedometer/odometer assembly.

Section 4.2.6.2(b) of the proposed rule, would have required that no part of an encapsulated odometer be "contactable by fingers or by any instrument unless it is necessary to deflect, penetrate, or fracture the encapsulation in order to make that contact." One commenter raised four different objections to proposed section 4.2.6.2(b). First, that prevention of contact is unnecessary and unjustifiable if the contact cannot result in a rollback. Second, that compliance with the requirement is impossible because a thin instrument could be slipped through the clearance which must be provided in a partially encapsulated odometer between the end of the capsule and the drive gear so that the gear can turn. Third, that the designation of "any instrument" is too subjective. Fourth, that deflection (i.e., bending) of an odometer capsule would produce no evidence of tampering. The agency agrees with these comments and has rewritten the section (section 4.2.5.2(b) of the final rule). It now specifies, with two exceptions, that odometer wheels indicating tens of miles/kilometers or larger units of distance shall not be contactable by a straight rod .5 mm or more in diameter. The first exception permits contact which occurs when the rod is inserted essentially parallel to the odometer shaft. This exception makes compliance easier and rests on the fact that it would be extremely difficult if not impossible to tamper with an odometer built in compliance with the encapsulation option by using a rod inserted parallel to the odometer shaft. The second exception permits contact if it is necessary to first penetrate or visibly damage the encapsulation or other odometer components in order to make that contact. The size of the rod is specified so that manufacturers will be aware of the smallest size rod that may be used in compliance testing.

In section 4.2.6.2(c) of the proposed rule, the agency stated that the encapsulation requirements must be met without the speedometer face or the speedometer/odometer lens in place. The faces and lenses were excluded because of the agency's concern that the encapsulation requirement could be defeated if an easily removable lens or face were considered a part of the encapsulation. Commenters stated that this proposed requirement is design restrictive because it eliminates potential innovative designs which might, for example, make use of the face or lens as part of the encapsulation by using fastener techniques that make removal of the face difficult or leave visible evidence if removal is attempted. The agency believes that these comments are valid and has modified section 4.2.5.2.(c) of the final rule so that the face or lens will be considered part of the encapsulation so long as it cannot be removed by removal of fasteners such as screws which are easy to remove and do not leave evidence of removal.

In section 4.2.6.2(d) of the proposed rule, the agency proposed that material used for encapsulation have resistance to deflection, penetration and fracture equivalent to the resistance of a 2 mm thickness of Lucite in the configuration of the encapsulation. Commenters stated that a strength requirement should not be specified. They also stated that a strength requirement of 2 mm Lucite would be inappropriate since "Lucite" is a registered trade name, and ineffective since this material is not difficult to cut, drill or melt through and a weaker material would provide evidence of tampering. They also noted that current odometers cannot accommodate such a thick plastic without substantial redesign and retooling. It was stated, however, that a thinner encapsulation material would necessitate less extensive redesign and retooling. One of the commenters also noted that use of a material, weaker or more brittle than Lucite, would suffice since it would break easily and leave evidence. The commenter also suggested that the deflection resistance requirement should be deleted.

Although a brittle encapsulating material could provide evidence of tampering, the agency is concerned that use of an excessively brittle material would allow a tamperer to break the encapsulation, completely remove it and reverse the odometer without leaving any evidence. In cases where the encapsulation is not part of the speedometer face or speedometer/odometer lens, this result is particularly likely since a person looking at the odometer through such a face or lens would be unable to determine whether the odometer encapsulation had been removed. Consequently, the agency seeks to prevent the use of excessively brittle encapsulating material and believes that this can best be accomplished by specifying a strength requirement. The agency does agree, however, that a strength requirement should not be based on the properties of 2 mm Lucite due to the availability of similar thinner materials, which manufacturers could use without undertaking extensive redesign. Since the agency believes that the properties of hardness and impact resistance exhibited by 2 mm Lucite are desirable

but that the specified thickness is troublesome, the strength requirement in the final rule has been modified to specify a thinner plastic with similar hardness and impact resistance as described in terms of standardized measuring units. Section 4.2.5.2(d) of the final rule specifies a plastic with an IZOD number of 1 ft.-lb./inch, a Rockwell number (this is not a trade name) of R–75 and a thickness of 1 mm with an allowance for thinning down to .5 mm provided that the thinned areas do not exceed 10 percent of the total area of the encapsulation. Localized thinning is permitted to allow manufacturers needed flexibility in fashioning the encapsulating material into an appropriate shape. The agency believes that, because of the reduction in required thickness of the encapsulating material, these requirements are slightly less stringent than the proposed requirement of 2 mm Lucite. Accordingly, these requirements have been incorporated into section 4.2.5.2(d) of the final rule. The agency has decided not to delete the requirement that the encapsulation be resistant to deflection because it believes that this requirement is needed to prevent tamperers from resetting certain types of odometers by simply bending the encapsulation.

In the notice of proposed rulemaking, the agency requested comments on whether it should specify strength requirements for the staking, crimping, welding, and adhesives specified in sections 4.2.6.1(b) and 4.2.6.2(a)(2) (sections 4.2.5.1 and 4.2.5.2 of the final rule). The purpose of these sections is primarily to make tampering more difficult and to ensure that when tampering does occur some physical evidence will remain behind. Comments received indicated that "attempts to specify strength would be cumbersome and would probably become inadvertently design restrictive." One commenter also indicated that a strength requirement would create "compliance concerns when in fact erring on the minimum strength would have no effect on safety or prevention of fraud." Another commenter stated that a strength requirement should be specified as part of an objective test procedure but that it could not suggest specific requirements. The commenter also asserted that the proposed requirements for staking, crimping, welding and adhesives are not performance oriented. In light of these comments and the purpose of sections 4.2.5.1 and 4.2.5.2 of the final rule, the agency has decided not to specify strength requirements for the staking, crimping, or welding for two reasons. First, it would be difficult to specify a strength requirement without resorting to a level of detail that would make compliance testing by both the manufacturer and this agency unduly costly and complex. Second, such a requirement might not increase the effectiveness of these sections since breakage of the staking, crimping, or welding during tampering would in most cases leave telltale evidence. However, with respect to adhesives the agency has added interpretive language to clarify the fact that the adhesives used should be appropriate, according to general practice, for the materials being joined. The agency believes that this language makes the sections more objective but does not increase the difficulty of compliance.

The bulk of the comments received in response to the notice of proposed rulemaking concerned section 4.2.9, which would require differentiation of replacement odometers and wheels. This discussion initially focuses on those comments concerning the potential effectiveness and cost of the differentiation requirements and then on comments concerning the actual content of those requirements.

Manufacturers, in general, opposed the requirement in section 4.2.9(a) that each replacement wheel for an odometer and each wheel on a replacement odometer be visibly different from each wheel on an original equipment odometer. They also opposed the requirements in section S4.2.9(b) that the 10,000 miles/kilometer wheel be visibly differentiated on all odometers. The commenters argued that the agency failed to substantiate its contentions that the differentiation requirements would enhance the protection of consumers from fraud, that the requirements are responsive to a safety need or that their economic impact on manufacturers and consumers would be negligible. Some commenters stated that the requirements would be ineffective because tamperers would be able to obtain original equipment odometer wheels and assemblies from junk and scrap dealers for use as replacement parts. Others stated that consumers would be unwilling to purchase vehicles containing replacement odometer wheels or assemblies because they would conclude that the odometers on such vehicles had been reset even if the replacement components were installed for a legitimate purpose. Consequently, a stigma would be attached to vehicles containing replacement odometer components and the resale value of such vehicles would decline.

Commenters, all of them manufacturers, also stated that the differentiation requirements would increase costs for both manufacturers and consumers. Section 113 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1402) requires any manufacturer who opposes safety rulemaking on the ground of increased cost to submit cost information in sufficient detail to permit the agency to properly evaluate the manufacturer's statement. In this instance, the manufacturers stated that the differentiation requirements would increase costs because they would necessitate use of two production lines, lower the production volume of each type of odometer and increase the need for inventory control and additional storage of replacement parts. However, these comments did not provide estimates of just how much these factors would increase costs, or other detailed information helpful to the agency in evaluating their validity. Thus, the agency does not consider the manufacturers' unsupported comments sufficient to justify deletion of the differentiation requirements. In the agency's view, the safety need for these requirements, as described below, outweighs the costs likely to be incurred.

The agency proposed the differentiation requirements as a logical extension of the other provisions of FMVSS 127 which are intended to result in construction of odometers that are difficult to tamper with and will show some telltale sign of tampering. The agency believes that once these provisions go into effect, tamperers are likely to respond by using complete replacement of odometers (i.e., the shaft bearing wheels marked with numerals) or replacement speedometer/odometer assemblies as their prime method of tampering. To combat this, the agency proposed requirements whose purpose is to reduce the supply of new replacement equipment suitable for use in tampering. The differentiation requirements were not aimed directly at reducing the availability of original equipment odometers and parts from junk and scrap dealers for two reasons. The first is the difficulty of devising an effective Federal regulatory scheme to accomplish this goal. The second and more important reason is based on this agency's expectation that tamperers would frequently opt to replace the entire speedometer/odometer assembly rather than the odometer alone, since this more limited replacement might well leave remaining telltale evidence or breakage. This means that a tamperer

would not only have to find a speedometer/odometer assembly with the appropriate mileage but one manufactured specifically for the type of vehicle being subjected to tampering because no other assembly would be likely to fit correctly in the vehicle's dashboard. In this agency's view, the process of combing junk yards and scrap businesses for such a speedometer/odometer assembly would be time consuming, thus expensive and not nearly so cost effective to the tamperer as simply installing a new replacement assembly bearing the appropriate mileage. This conclusion is based in part on the fact that NHTSA investigators have observed a tampering operation in which new replacement speedometer/odometer assemblies were installed in vehicles. In addition, NHTSA investigators have discovered that new replacement speedometer/odometer assemblies, preset to the mileage desired by the purchaser, can be easily obtained for about $25 apiece.

The agency does not agree that some consumers will attach a stigma to vehicles containing replacement odometer parts or assemblies. Ford already distinguishes its replacement odometers by using a red wheel for indicating tenth's of a mile instead of the usual white one included in original equipment odometers and has not experienced a decrease in the resale value of its vehicles. In addition, the presence of replacement odometers or parts in a vehicle is expected to encourage consumers to ask questions about the mileage of such vehicles and to request that they be shown the seller's disclosure of mileage statement which is required by section 408 of the Motor Vehicle Information and Cost Savings Act.

The agency believes that once consumers become familiar with these statements any stigma which may be associated with the presence of a replacement odometer would be dissipated. It is true, of course, that the disclosure form can be falsified but, the machinery for dealing with this problem, which includes both civil penalties and criminal prosecution, is already in place pursuant to the Motor Vehicle Information and Cost Savings Act.

With respect to the specific requirements of proposed section 4.2.9, one commenter suggested that the section be modified to require differentiation of odometer assemblies alone, rather than both assemblies and wheels, since odometer parts such as odometer wheels are not generally supplied to the automotive industry for replacement parts. According to the commenters, malfunctioning odometers are generally replaced with a new odometer or speedometer/odometer assembly. Others stated, in comments also directed to section 4.2.9(b), that there is no incentive to tamper with an odometer by replacing its wheels unless it is built in accordance with the marking option.

The agency does not agree that the requirements for differentiation of replacement wheels should be totally eliminated from the final rule due to information indicating that some replacement odometer wheels are produced and sold to the automotive industry. Accordingly, section 4.2.7 of today's final rule requires that each numeral on the wheels of an original equipment odometer be colored with a color other than red and that all numerals on replacement odometer wheels be colored red. The agency further agrees that use of replacement wheels is likely to become the tampering method of choice only with respect to odometers built in accordance with the marking and irreversibility options. With respect to a marking type odometer, for example, it might well be much easier for a tamperer to simply replace the marked 10,000 miles/kilometers wheel than to obtain a marking type replacement odometer or speedometer/odometer assembly bearing the appropriate mileage reading. Similarly, with respect to an odometer built in compliance with the irreversibility option such that the 10,000 miles/kilometers wheel among other odometer components must be broken in order to reset the odometer, it might well be more cost effective for the tamperer to simply replace the broken or inoperative wheel. Accordingly, section 4.2.7 of today's final rule is intended to reduce the supply of original equipment odometer wheels which could be used during tampering. The section requires that the 10,000 miles/kilometers wheel on each odometer built in compliance with either the marking or irreversibility options be differentiated from all other wheels on that odometer.

Two commenters addressed the question of how the 10,000 miles/kilometers wheel should be differentiated. One suggested that manufacturers be permitted to make the 100,000 miles/kilometers wheel the same color as the 10,000 miles/kilometers wheel. The agency has not adopted this suggestion because it would dilute the effectiveness of section 4.2.9(b) by increasing the number of wheels that could be used by tamperers as replacement parts. The other commenter suggested that manufacturers be permitted to differentiate the 10,000 miles/kilometers wheel from the other odometer wheels by making it mechanically noninterchangeable instead of unique in appearance. The agency believes that this modification of the rule would serve as further disincentive to tamperers seeking to use replacement parts. Accordingly, the agency has incorporated this suggestion in section 4.2.7(a)(2) of the final rule published today.

The notice of proposed rulemaking requested comments on what method should be used to differentiate replacement odometers and wheels from original equipment and stated the agency's initial preference for use of a particular color. Many of the comments suggested that manufacturers should be permitted to decide what method of differentiation to use and some noted that the development of different systems by different manufacturers would make circumvention more difficult. It was also suggested that standardization would lead to minor compliance problems on items like color value. Other commenters favored standardization because it would make it easier for potential vehicle purchasers to determine whether the odometer in a particular vehicle had been replaced.

The agency agrees with this last point and has also concluded that standardization will enhance the ability of investigators to detect instances of odometer tampering. It appears that the development of different systems by different manufacturers would make this task more difficult. Accordingly, today's rule specifies in section S 4.2.7 that all replacement odometers must have numerals that are the color red on all wheels.

To make this requirement as workable as possible, today's rule incorporates by reference the color tolerances established by the U.S. Department of Transportation, Research and Special Programs Administration, at 49 CFR § 172.407(d), for use in determining compliance with its labeling requirements for hazardous materials. This agency believes that use of this system of color tolerances will simplify compliance with today's rule in that it includes a set of color charts which show, for example, all of the various shades and tones of red that may be used. Use of these charts will enable both manufacturers and enforcement officials to check compliance with the standard by simple visual inspection and will preclude the need for sophisticated light measuring equipment.

The notice of proposed rulemaking also stated the agency's expectation that

manufacturers will use their owners' manuals to inform consumers of the significance of the visible differentiation of replacement odometer equipment. In addition, the agency urges those manufacturers who do not provide owners' manuals to provide this information in some other written form that accompanies the vehicle when it is sold.

The agency has considered the economic impact of this final rule and determined that it is not significant within the meaning of Executive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. The agency has determined further that the impact is so minor as not to require preparation of a written evaluation of it. The only new requirement imposed by this rule is the differentiation of original and replacement odometers and wheels. Compliance can be achieved simply and inexpensively by using a different colored ink. The agency believes that the remainder of the final rule published today clarifies and reorganizes the requirements previously included in the March 22, 1979, response to petitions and expands the range of compliance options that are open to manufacturers. Thus, the final rule imposes no new costs upon manufacturers and seeks to lessen the difficulties of compliance to the extent consistent with the goal of reducing the incidence of odometer tampering.

In consideration of the foregoing, 49 CFR 571.127 is amended in the manner set forth below. 49 CFR 571.127 is reprinted below in its entirety in order to set forth all amendments that have been made to the standard since its publication on July 27, 1978 (43 FR 32421). These amendments include deletion of the speedometer accuracy requirements previously included in section S 4.1.3 (45 FR 6404, January 28, 1980) and appropriate renumbering.

The lawyer and program official principally responsible for this rule are Debra Weiner and George L. Parker, respectively.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on June 9, 1980.

Joan Claybrook,

Administrator.

49 CFR 571.127 is revised in the heading and text to read as follows:

§ 571.127 Standard No. 127, Speedometers and odometers. (Effective September 1, 1981.)

S1. *Scope.* This standard establishes requirements for the installation of speedometers and odometers in motor vehicles, limits the speed which can be indicated on a speedometer, and requires that odometers be tamper-resistant.

S2. *Purpose.* The purpose of this standard is to insure that each motor vehicle is equipped with instruments needed for monitoring driving speeds, maintaining proper vehicle maintenance schedules, and providing an indication of the vehicle's probable condition.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, motorcycles, and buses, and to speedometers and odometers for use in vehicles to which this standard applies. Motor driven cycles whose maximum attainable speed in one mile is 30 mph or less are excluded.

S4. *Requirements.*

S4.1 *Speedometer.*

S4.1.1 Each motor vehicle shall have a speedometer that meets the requirements of S4.1.2 through S4.1.4 of this section.

S4.1.2 Each speedometer shall be graduated in miles per hour and kilometers per hour.

S4.1.3 No speedometer shall have graduations or numerical values for speeds greater than 140 km/h and 85 mph and shall not otherwise indicate such speeds. This paragraph does not apply to a speedometer designed for use in or installed in a vehicle sold to a law enforcement agency for law enforcement purposes.

S4.1.4 Each speedometer shall include the numeral "55" in the mph scale. Each speedometer, other than an electronic digital speedometer, shall highlight the number "55" or otherwise highlight the point at which the indicated vehicle speed equals 55 mph.

S4.2 *Odometer.*

S4.2.1 Each motor vehicle with a gross vehicle weight rating (GVWR) of 16,000 pounds or less shall have an odometer that meets the requirements of S4.2.2 through S4.2.6 of this section.

S4.2.2 Each odometer shall be capable of indicating distance traveled either, at the manufacturer's option, (1) from 0 to not less than 99,999 miles in 1-mile units, or (2) from 0 to not less than 99,999 kilometers in 1-kilometer units, or (3) both.

S4.2.3 As installed in the vehicle for which it is designed, each odometer, other than a motorcycle odometer, shall clearly indicate to the vehicle driver by a sixth wheel or digit, registering whole miles or kilometers, or by a permanent means such as inking, when the number of whole miles or whole kilometers, as appropriate, has exceeded either, at the manufacturer's option, 89,999 or 99,999.

S4.2.4 Each odometer, other than a motorcycle odometer, shall comply with, at the manufacturer's option, either S4.2.5 or S4.2.6.

S4.2.5 Each odometer manufactured in accordance with this section shall meet the requirements of S4.2.5.1, S4.2.5.2 or S4.2.5.3. Each odometer manufactured in accordance with S4.2.5.1. or S4.2.5.2 shall not be reversible beyond a maximum distance of 10 miles or kilometers when driven through the odometer gear train or when driven by manipulation of devices such as the drive gear or omissions control system maintenance reminder, which protrude beyond the encapsulation of an odometer manufactured in accordance with S4.2.5.2(a)(2).

S4.2.5.1(a) Except as provided in paragraph (b) of this section and in S4.2.5, each odometer shall not be reversible whether installed in or removed from the vehicle, by any of the following means:

(1) Manually forcing the odometer wheels to override the interference of the pinion gears through use, alone or in combination, of the hands, or the pliers or pick specified in S5.1;

(2) Manually forcing the odometer wheels apart or out of mesh with the pinion gears through use, alone or in combination, of the hands, or the pliers or probe specified in S5.1;

(3) Manually rotating the pinion gear carrier plates through use, alone or in combination, of the hands or the pliers specified in S5.1;

(4) Manually disassembling the odometer, adjusting the distance reading, and reassembling the odometer through use, alone or in combination, of the hands or any of the tools specified in S5.1.

(b) Each odometer may be reversible by one or more means specified in paragraph (a) of this section if one or more of the following operations must be performed in order to reverse the odometer by any of those means:

(1) Breaking one or more rigid or semi-rigid parts of the odometer so that its recording of distance is impaired;

(2) Breaking one or more rigid or semi-rigid parts of the odometer so that, when the odometer is installed in the vehicle, the breakage is visible to a person occupying the driver's seating position;

(3) Breaking or otherwise defeating the staking, crimping, welding or adhesive appropriate for the materials being joined, used to hold the odometer shaft in the speedometer/odometer assembly; or

(4) Breaking or otherwise defeating the staking, crimping, welding or adhesive appropriate for the materials being joined, used to secure the

retainers that prevent the odometer wheels from moving along the shaft.

(c) Local cosmetic damage to the odometer caused by the teeth of the pliers specified in S5.1 and chips, less than 3mm² in area, caused by the probe specified in S5.1 do not constitute breakage for purposes of paragraph (b) of this section.

S4.2.5.2 Each odometer manufactured in accordance with this section shall meet the requirements in paragraph (a)–(d) of this section.

(a)(1) The odometer or speedometer/odometer assembly shall be totally encapsulated; or

(2) The odometer shaft shall be held in the speedometer/odometer assembly by staking, crimping, welding or adhesive, appropriate for the materials being joined, and all of the odometer shall be encapsulated except for functional protrusions, such as the drive gear or the emissions control system maintenance reminder, located at the ends of the odometer shaft.

(b) The odometer wheels indicating tens of miles or kilometers and larger units of distance shall not be contactable by a straight rod .5 mm or more in diameter unless such contact results when the rod is inserted essentially parallel to the odometer shaft or unless it is necessary either to penetrate the encapsulation or to damage the encapsulation or other odometer components to make that contact. This requirement applies both when the speedometer/odometer assembly, including all parts of the encapsulation, is installed in and when it is taken out of a vehicle.

(c) The requirements in paragraphs (a) and (b) of this section shall be met without the speedometer face or the speedometer/odometer lens in place, unless the speedometer face or speedometer/odometer lens forms part of the encapsulation, and cannot be removed by removing screws or other types of fasteners which can be removed and replaced without leaving any evidence of removal visible to a person occupying the driver's seating position.

(d) The material used for encapsulation under paragraph (a) of this section shall have:

(1) a thickness of 1 mm but it may have a minimum thickness of .5 mm in localized areas provided that the total area of the encapsulation having a thickness less than 1 mm does not exceed 10 percent; and

(2) resistance to deflection, penetration and fracture that is not less than the resistance of a piece of plastic having a hardness of Rockwell R–75 when tested in accordance with American Society for Testing and Materials (ASTM) D785–65, Test for Rockwell Hardness of Plastics and Electrical Insulating Materials, and an Izod impact resistance of 1 ft.-lb./inch when tested in accordance with ASTM D256–78, Test for Impact Resistance of Plastics and Electrical Insulating Materials.

S4.2.5.3(a) Upon the forcible reversal of any wheel or wheels for registering ten or hundred thousands of miles or kilometers, each odometer, whether installed in or removed from the vehicle, shall provide an indication of that reversal.

(b) The indication required by subsection (a) of this section shall be visible to a person occupying the driver's seating position.

(c) The shaft of each odometer shall be attached in the speedometer/odometer assembly by staking, crimping, welding or adhesive appropriate for the materials being joined.

(d) When installed in the speedometer/odometer assembly, the mechanism which controls the odometer reversal indicator shall not be contactable by a straight rod .5 mm in diameter inserted parallel to a line perpendicular to the odometer shaft. If such a rod is inserted parallel to the odometer shaft through any openings in the speedometer/odometer assembly, the rod shall be at least 3 mm away from the mechanism which controls the odometer reversal indicator. This requirement applies both when the speedometer/odometer assembly, including all parts of the reversal indicator, is installed in and when it is taken out of a vehicle.

S4.2.6

S4.2.6.1(a) Each mechanical odometer shall score, indelibly ink, or otherwise mark by permanent means each numeral on the wheel registering ten thousands of miles or kilometers within 500 miles or kilometers, as appropriate, after that numeral disappears from the driver's view.

(b) The mark required by paragraph (a) of this section, without further marking, shall be visible to a person occupying the driver's seating position if the ten thousands wheel is rotated so that the marked numeral reappears in the driver's view. The mark shall be located on each numeral or on the center 1/9 of the total area on the wheel for each numeral. The total area for a numeral is determined by orienting the odometer so that its shaft is horizontal and measuring that portion of the wheel that is bounded by horizontal lines midway between that numeral and the numerals immediately preceding and following it. The center 1/9 of that total area is determined by trisecting the area first with horizontal lines and then with vertical lines.

S4.2.6.2 Each electronic digital odometer, whose reading appearing in the position for registering tens of thousands of miles or kilometers has been reduced, shall visibly indicate to a person occupying the driver's seating position that such a reduction has occurred.

S4.2.7(a)(1) Each numeral on a wheel of an original equipment odometer shall be colored with a color other than red.

(2) Each 10,000 miles/kilometers wheel which either is on an original equipment odometer manufactured in accordance with S4.2.5.1 or is on an original equipment odometer manufactured in accordance with S4.2.6.1 shall be visibly different from or mechanically noninterchangeable with all other wheels on the odometer.

(b) Except for numerals on a replacement wheel registering tenths of a mile or kilometer, each numeral on a replacement wheel for an odometer and each numeral on a wheel of a replacement odometer shall be colored red.

(c) For purposes of this section, the color red on an odometer wheel, upon visual examination, must fall within the color tolerances established for that color by Title 49 Code of Federal Regulations Section 172.407(d).

S5 *Test procedures.*

S5.1 The tools used in determining compliance with S4.2.5.1 are:

(a) one slip joint pliers with jaws 25.4 mm or less in length,

(b) one chain nose pliers with a nose length of 45 mm or less,

(c) one hardened steel probe that is 5 mm wide, is tapered uniformly from a thickness of 0.1 mm at its tip to a thickness of 0.5 mm at a distance of 5 mm from its tip and tapered uniformly from the latter point to a thickness of 1 mm at a distance of 25 mm from its tip, and is attached to a rigid handle, and

(d) one round hardened steel pick not less than 80 mm in length with a sharp tip that tapers uniformly from a diameter of 0.1 mm at its tip to a diameter of 4 mm at a distance of 40 mm from its tip and that has a uniform diameter of 4 mm from the latter point to its end, and is attached to a rigid handle.

S5.2 In determining compliance with S4.2.5.1, the pick and pliers specified in S5.1 (a), (b) and (d) are used to turn the odometer wheels and the probe specified in S5.1(c) is used to separate the wheels, in cases where use of the

hands alone is insufficient to achieve these results.

[FR Doc 80-17956 Filed 6-11-80; 8:45 am]
BILLING CODE 4910-59-M

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49 CFR Part 572

[Docket No. 78-9, Notice 5; Docket No. 73-8, Notice 9]

Anthropomorphic Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This notice amends Parts 572, *Anthropomorphic Test Dummies*, to allow the use of an alternative chemical foaming agent for molding the dummy's flesh parts. In response to a Ford petition, the notice also makes a minor technical amendment to modify one specification in the calibration procedures for the neck of the test dummy representing a 50th percentile male. The effect of the latter amendment is to simplify the calibration test.

DATES: The amendment is effective on June 16, 1980.

ADDRESSES: Petitions for reconsideration should refer to the docket numbers and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours: 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: This notice amends Part 572, *Anthropomorphic Test Dummies*, to modify the design specification for molding the test dummy's flesh parts to allow the use of an alternative chemical foaming agent, "OBSH/TBPP", to the currently specified "Nitrosan." In response to a petition from the Ford Motor Company, the agency is also making a minor technical amendment to simplify the calibration test for the neck used in the 50th percentile male test dummy. The amendment deletes the current specification and substitutes the specification used in the calibration testing of the recently issued three-year-old child test dummy (44 FR 76527, December 27, 1979).

The agency published the proposed changes to the flesh molding and neck calibration specifications in the Federal Register of December 18, 1978 (43 FR 58843). Only one party, Ford Motor Co., commented on the proposed changes and Ford supported the adoption of both proposed changes.

Molding Specifications

The agency proposed the changes in the molding specification because the sole manufacturer of "Nitrosan," the currently specified chemical foaming agent, has discontinued its production due to the hazardous propensities of the compound during its manufacturing process. Based on an extensive research program to develop and test new chemical foaming agents (which was fully described in the notice of proposed rulemaking), the agency found that test dummy flesh parts made from "OBSH/TBPP" have comparable material properties to those produced with "Nitrosan" and are superior in some respects. Based on an evaluation of the research results, the agency concludes that flesh parts produced from "OBSH/TBPP" can be used for all purposes for which test dummies are required by the applicable safety standards and the dummy performance will be equivalent to the performance of dummies produced with "Nitrosan". Therefore, the agency is amending the regulation to allow the use of "OBSH/TBPP".

Drawings and specifications outlining the formulations for molding dummy flesh parts with the "OBSH/TBPP" compound are available for examination in NHTSA Docket 73-8 and Docket 78-9, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. Copies of these drawings may also be obtained from the Keuffel and Esser Company, 1513 North Danville Street, Arlington, Virginia 22201.

Neck Calibration Requirements

In response to a request from Ford, the agency proposed an amendment to the pendulum impact test specification established in section 572.7(b) for the calibration of the 50th percentile male test dummy. The amendment would have replaced the current specification with the specification for calibration testing established for the three-year-old child test dummy.

The pendulum neck test found in Subpart B of the standard for the 50th percentile male dummy is intended to measure the bending properties of the dummy's neck. The current test specifies that, during the neck bending procedure, the pendulum shall not reverse direction until "T=123ms". This means that from the time the pendulum contacts the arresting material which it must strike, the pendulum cannot reverse direction for 123 milliseconds. The original intent of this requirement was to negate the effects of arresting materials having rebound characteristics that could force the pendulum to reverse its motion before the bending properties of the neck could be measured. Ford requested a change in this specification because in certain instances the use of a special apparatus may be required to hold the pendulum arm for at least 123 milliseconds after the pendulum has impacted the arresting material.

Research by NHTSA and the industry has shown that when appropriate crushable materials are used in pendulum impact tests, the pendulum does not reverse its motion until the neck has straightened out and the head's center of gravity has returned to its original zero-time position relative to the pendulum. At that time, all measurements of the neck bending characteristics are completed and the pendulum's motion thereafter is inconsequential. In light of this research, the recent addition of Subpart C to Part 572, specifying requirements for the three-year-old child dummy, modified the language concerning reversal of the pendulum arm during the neck impact test. Section 572.17 of that subpart specifies that "the pendulum shall not reverse direction until the head's center of gravity returns to the original zero time position relative to the pendulum arm". Under this requirement, a dummy user could only use an arresting material for the impact test whose rebound characteristics would not overcome the pendulum's inertia before the head and neck returned to the zero time position.

Since the specification in Subpart C of Part 572 represents a simplification of the pendulum impact test specified in the current Subpart B, without any degradation of performance characteristics, the agency is amending section 572.7(b) of Subpart B to read as section 572.17(b) of Subpart C.

Costs

The agency has considered the economic and other impacts of this final rule and determined that this rule is not significant within the meaning of Executive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. Based on that assessment, the agency has concluded also that the economic and other consequences of this proposal are so minimal that a regulatory evaluation is not necessary. The impact is minimal since there is no estimated increase in the cost of the test dummies due to the change in the foaming agent and neck calibration specification. In addition, the amendments would have no adverse environmental effects.

The engineer and lawyer primarily responsible for this notice are Vladislav Radovich and Stephen Oesch, respectively.

In consideration of the foregoing, Part 572, *Anthropomorphic Test Dummies*, of Title 49 of the Code of Federal Regulations is amended as follows:

§ 572.15 [Amended]

1. Technical drawing ATD–6070 incorporated by reference in Section 572.15 of Subpart C—3-Year-Old-Child is amended to add the formulation for "OBSH/TBPP" foaming compound.

§ 572.5 [Amended]

2. Technical drawing ATD–7151 incorporated by reference in Section 572.5 of Subpart B—50th Percentile Male is amended to add the formulation for "OBSH/TBPP" foaming compound.

§ 572.7 [Amended]

3. The last sentence of Section 572.7(b) of Subpart B—50th Percentile Male is amended to read:

The pendulum shall not reverse direction until the head's center of gravity returns to the original zero time position relative to the pendulum arm.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50.)

Issued on June 9, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80–17885 Filed 6–13–80; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Appeal of St. Louis-San Francisco Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Appeal to vacate portion of Service Order No. 1473.

SUMMARY: Service Order No. 1473 authorized various railroads, including Missouri-Kansas-Texas Railroad Company (MKT) to operate over described tracks of the Rock Island. St. Louis-San Francisco Railway Company sought to have the portion of the Order authorizing MKT to operate the Fort Worth-Dallas, TX line vacated, and sought authority to operate that same line. The appeal was denied.

EFFECTIVE DATE: June 5, 1980.

FOR FURTHER INFORMATION CONTACT: Bill Drew, 202–275–7947.

SUPPLEMENTARY INFORMATION:

Decided: June 4, 1980.

In Service Order No. 1473, served May 30, 1980, (45 FR 38382, June 9, 1980) the Commission's Railroad Service Board authorized various railroads, including Missouri-Kansas-Texas Railroad Company (MKT), to operate over described tracks of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island or RI). That decision was issued pursuant to section 122 of Pub. L. 96–254 (May 30, 1980), the Rock Island Transition and Employee Assistance Act (RITA).

By appeal filed May 31, 1980, the St. Louis-San Francisco Railway Company (Frisco) seeks to have the Commission vacate the portion of Service Order No. 1473 which authorizes the MKT to operate the Fort Worth-Dallas, TX, line of the Rock Island, from milepost 611.9 and extending to milepost 646. The Frisco, further, seeks authority from the Commission to operate over that line and to serve stations between and including Dallas and Fort Worth.

Replies to the appeal have been filed by MKT and by the Oklahoma Kansas Texas Railroad Users Association (Users).

Section 122 of RITA provides that the Commission may authorize any rail carrier willing to do so voluntarily to use the tracks and facilities of the Rock Island. On May 29, 1980, MKT sent two telegrams to the Commission requesting authority to conduct temporary operations over various Rock Island lines in Kansas, Oklahoma, and Texas. This request included the RI lines between Herington, KS, and Fort Worth and between Fort Worth and Dallas.

MKT is organizing a subsidiary railroad company, the Oklahoma Kansas Texas Railroad Company (OKT). It seeks to acquire most of the RI lines included in its temporary authority request and to have OKT operate them. Users has made financing commitments totalling $3 million to apply toward OKT start-up costs for operations over these lines. MKT, however, is not interested in operating the Herington-Fort Worth line and the other involved RI lines if it does not also receive authority to operate over the Dallas-Fort Worth line.

Frisco, pursuant to a contract with Rock Island, has trackage rights over RI's Dallas-Fort Worth line. However, the contract does not authorize Frisco to provide local service to shippers on the line. Further, Frisco has provided interim service to shippers along that line under Service Order No. 1451. Frisco contends that MKT operations over the Dallas-Forth Worth line would interfere with its service and any use of the line authorized by the Commission must be subordinate to Frisco's contractual rights.

We believe that the Railroad Service Board acted correctly in approving MKT's request to provide service over the Rock Island's Dallas-Forth Worth line. Contrary to Frisco's assertion, neither section 122 nor its legislative history suggests any limitations upon the Commission's exercise of its discretionary powers thereunder. In authorizing temporary operations over rail lines to meet emergency service needs, the Commission has adhered to a policy of giving preference to the railroad that will operate over the greatest portion of track and provide service to the greatest number of shippers and receivers. MKT's proposed operation will serve many shippers in Kansas, Oklahoma, and Texas between Herington and Dallas. Frisco has expressed a much more limited interest in providing service over RI lines. In these circumstances, approval of MKT's request fully comports with the legislative intent in the enactment of RITA to preserve interim rail service.

Issuance of authority for MKT to operate Rock Island's Dallas-Fort Worth line does not interfere with Frisco's contractual rights. In conducting temporary operations, MKT stands in place of Rock Island. Frisco may continue to exercise its rights under its trackage agreement with Rock Island to the same extent as if RI were still operating the line.

Frisco's appeal, therefore, will be denied.

We find:

1. This decision will not significantly affect either the quality of the human environment or conservation of energy resources. *See* 49 CFR Parts 1106, 1108, (1978).

It is ordered:

1. The appeal of St. Louis-San Francisco Railway Company is denied.

2. This decision shall be effective on June 5, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioners Alexis and Gilliam absent and not participating.

James H. Bayne,

Acting Secretary.

[FR Doc 80–17982 Filed 6–13–80; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Part 1033

[Rev. Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor, William M. Gibbons, Trustee

AGENCY: Interstate Commerce Commission.

ACTION: Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers, previously providing unsubsidized service under Directed Service Order No. 1462, which expired 11:59 p.m., May 31, 1980, and for which statutory authority expired on the same date, to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., June 5, 1980, and continuing in effect until 11:59 p.m., August 31, 1980.

EXPIRATION DATE: 11:59 p.m., August 31, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275–7840.

Decided: June 5, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers, previously providing unsubsidized service under Directed Service Order No. 1462, which expired 11:59 p.m., May 31, 1980, and for which statutory authority expired on the same date, to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Revised Service Order No. 1473, changes Appendix A by adding the following changes.

1. Item 16—Oklahoma, Kansas and Texas Railroad Company (OKT) was added to make clear the Commission's intent that the Missouri-Kansas-Texas Railroad Company and/or its subsidiary were authorized to perform the service from Herington, Kansas, to Dallas, Texas.

2. Items 17, 18, 19, and 20, were added to make consistent the application of Section 122 of the Rock Island Transition and Employee Assistance Act, with respect to interim services being provided over the Rock Island.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations, also identified in the attachment, using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Revised Service Order No. 1473.

(a) Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96–254.

(d) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(e) During the period of these operations over the RI lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(f) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(g) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(h) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(i) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(j) In transporting traffic over these lines, all interim operators involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(k) *Employees*—In providing service under this order, interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Service Order.

(l) *Effective date.* This order shall become effective at 11:59 p.m., June 5, 1980.

(m) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1980, unless otherwise modified, amended, or vacated by order of this Commision.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C.,

and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

James H. Bayne,

Acting Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (L&A):*
   - A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz Yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of the Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.
   - B. from Hodge to Winnfield, Louisiana
   - C. Alexandria Yard, Alexandria, Louisiana
2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois
3. *Union Pacific Railroad Company (UP):*
   - A. Beatrice, Nebraska
   - B. from Colby to Caruso, Kansas
   - C. approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska
4. *Toledo, Peoria and Western Railroad Company (TP&W):*
   - A. Keokuk, Iowa
   - B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois
5. *Burlington Northern, Inc. (BN):*
   - A. Burlington, Iowa (milepost 0 to milepost 2.06)
   - B. Fairfield, Iowa
   - C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).
   - D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9)
6. *Fort Worth and Denver Railway Company (FW&D):*
   - A. Terminal trackage at Amarillo and Bushland, Texas (milepost 752 to milepost 776) including approximately 3 miles northerly along the old Liberal Line
   - B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4)
7. *Chicago and North Western Transportation Company (C&NW):*
   - A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri
   - B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)
   - C. from Inver Grove (milepost 344.7) to Northwood, Minnesota (milepost 236.4)
   - D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6)
   - E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)
   - F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)
   - G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)
   - H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 502.2)
   - I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)
   - J. from Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)
   - K. from Rake (milepost 50.7) to Ocheyedan, Iowa (milepost 502)
   - L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)
   - M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)
   - N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids
   - O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)
   - P. Sibley, Iowa
   - Q. Worthington, Minnesota
   - R. Altoona to Pella, Iowa
   - S. Carlisle, Indianola, Iowa
8. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*
   - A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland
   - B. from Seymour, to and including industry and team tracks at Centerville, IOWA
   - C. Washington, Iowa
   - D. from Newport, to a point near the east bank of the Mississisppi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.
9. *Davenport, Rock Island and North Western Railway Company (DRI):*
   - A. Davenport, Iowa
   - B. Moline, Illinois
   - C. Rock Island, Illinois, including 26th Street yard
   - D. from Rock Island through Milan, Illinois, to a point west of milan sufficient to include service to the Rock Island Industrial complex
   - E. from East Moline to Silvis, Illinois
   - F. from Davenport to Wilton, Iowa
   - G. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal
10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana
11. *Waterloo Railroad Company (Waterloo):* Waterloo, Iowa
12. *St. Louis Southwestern Railway Company (SSW):* operating the Tucumcari Line from Santa Rosa, NM, to St. Louis, Mo (via Kansas City, KS/MO), a total distance of 965.2 miles. The line also includes the RI branch line from Bucklin to Dodge City, KS, a distance of 26.5 miles, and North Topeka, KS. Also between Brinkley and Briark, Arkansas, and at Stuttgart, Arkansas.
13. *The Southwestern Oklahoma Railroad Company:* from Hobart, Oklahoma (milepost 70) to Mangum, Oklahoma (milepost 97.7).
14. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).
15. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.
16. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*
   - A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth
   - B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas
   - C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma
   - D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina, (including yard tracks) Kansas
   - E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only
   - F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas
   - G. Rock Island right to interchange with and use the properties of the Great Southwest Railroad Company located in Grand Prairie, Texas
   - H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles
   - I. The Ponca City Line at approximately milepost 26.1 at Billings, Oklahoma, to North Enid, Oklahoma, at milepost 339.5 on the Southern Division main line, a distance of 26.1 miles
   - J. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles
   - K. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

17. *El Dorado and Wesson Railroad Company:* from El Dorado to Catesville, Arkansas, distance of 8 miles, in order to serve the Velsical Plant.
18. *The Denver and Rio Grande Western Railroad Company:*
A. from Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line, (milepost 3.9) all in the vicinity of Denver, Colorado
B. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.
19. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.
20. *St. Louis-San Francisco Railway Co.:*
A. At Okeene, Oklahoma.
B. At Lawton, Oklahoma.

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BILLING CODE 7035-01-M

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49 CFR Part 1033

Various Railroads Authorized To Use Tracks of Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

Decided: June 4, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Third Revised Service Order No. 1435.

SUMMARY: Throughout the Chicago, Rock Island and Pacific Railroad Company (RI) rail network there are numerous locations where the RI and other railroads conduct joint operations by the use of RI owned tracks and/or facilities. The use of these tracks and/or facilities is essential to the continued operations of the other railroads.

Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI) as listed in Appendix A to this order.

EFFECTIVE DATE: 11:59 p.m., June 5, 1980. Expiration date: 11:59 p.m., August 31, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

Throughout the RI rail network there are numerous locations where the RI and other railroads conduct joint operations by the use of RI owned tracks and/or facilities. The use of these tracks and/or facilities is essential to the continued operations of the other railroads.

Third Revised Service Order No. 1435 changes Appendix A to that order by adding the Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas, and Texas Railroad Company (MKT/OKT) to Item No. 33, and making MKT/OKT responsible for supervision and maintenance of tracks, signals, and dispatching at El Reno, Oklahoma, which controls CTC. This change is made necessary by virtue of Service Order No. 1473 which authorizes the MKT/OKT to operate over Rock Island lines between Herington, Kansas, and Dallas, Texas, and substitutes MKT/OKT for the Rock Island for purposes of the St. Louis-San Francisco Railway Company's right to use the lines under a trackage rights agreement. The revision to this order is necessary to fully implement and effect the authority granted in Service Order No. 1473.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct the operations, also identified in the attachment, using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days notice.

It is ordered,

§ 1033.1435 Third revised service order No. 1435.

(a) *Various Railroads Authorized to use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee).* Various Railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI) as listed in Appendix A to this order.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service essential to their continued operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 11123(b)(2) of the Interstate Commerce Act.

(d) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers, as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(e) It is recognized that there may be other carrier(s) and/or location(s), in addition to those listed in the Appendix, where the use of RI tracks and/or facilities is necessary. If such be the case, the affected railroad(s) should apply to the Railroad Service Board and furnish information setting out the applicant carrier's corporate name, trackage and/or facility involved, location, and all pertinent data relating to the necessity of the use of such track or facility. The Railroad Service Board will consider such applications for addition to Appendix A.

(f) *Employees.* On March 4, 1980, a number of rail carriers and labor unions reached an agreement regarding the proper level of employee protection entitled *"Labor Protection Agreement between Railroad Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations operating through the Railway Labor Executives' Association"* (sometimes referred to as the Miami Accords and/or the 13 Principles). We have reviewed the negotiated labor protection agreement and find that it adequately safeguards the interests of affected employees.

Accordingly, if the carrier(s) chooses to exercise the authority granted by this decision, it/they shall afford affected employees the protection contemplated by the negotiated labor protection agreement and any subsequent amendments to it.

(g) *Effective date.* This order shall become effective at 11:59 p.m., June 5, 1980.

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the