Dated: January 9, 1992.

Joe D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(91) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6.

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 92-1412 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02 24 1A; Circular No. 2630]

RIN 1004-AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958).

EFFECTIVE DATES: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Hank Symanski.

The following typographical and editorial corrections are made in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958):

1. On page 48968, first column, in the Authority paragraph, the fifth line, the phrase "Act of May 31, 1930" is revised to read "Act of May 21, 1990."

1a. On page 48968, second column, second full paragraph, is revised to read: "The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NTL's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area-wide basis".

2. On page 48968, third column, line 11, is revised to read: "Upon release, could constitute a".

3. On page 48969, second column, under the definition of radius of exposure (item 1), change the exponent in the equation from "(0.625)" to "(0.6258)".

4. On page 48969, second column, under the definition of radius of exposure (item 2), delete the term "(percent)".

5. On page 48969, second column, under the definition of radius of exposure (item 3), insert the word "and" between "complex terrain" and "other dispersion".

6. On page 48969, third column, under III. Requirements, line 4, insert the word "typically" between "as" and "major".

7. On page 48970, first column, first paragraph, line 6, insert the word "the" between "stream," and "H_2S".

8. On page 48970, third column, paragraph c., line 6, is revised to read: "under section III.A.2.a.,".

9. On page 48971, first column, paragraph c., lines 3 and 4, are revised to read: "facilities or roads are principally maintained for public use".

10. On page 48971, third column, under paragraph c., change "(i)" to "i".

11. On page 48972, first column, last line, change "API-RP49" to "API RP-49".

12. On page 48972, third column, under section c. H_2S Detection and Monitoring Equipment, line 5, insert the word "of" between "air concentration" and "H_2S".

13. On page 48973, first column, paragraph iv., lines 5 and 6, are revised to read: "feet from the well site and at a location which allows vehicles to turn around at a safe".

14. On page 48973, second column, under section 4.a.i., line 10 revise to read: "water- or oil-based mud and mud shall".

15. On page 48974, first column, paragraph b.i., lines 7 and 8, are revised to read: "conditions or mud types justify to the authorized officer a lesser pH level is necessary".

16. On page 48974, first column, last paragraph, line 11, change "MR-01-75" to "MR 0175-90".

17. On page 48974, third column, first paragraph c., violation section, line 1, is revised to read: "Major, if the authorized officer determines that a health or safety".

18. On page 48975, second column, paragraph c., line 1, is revised to read: "Fencing and gate(s), as specified in section".

19. On page 48975, second column, paragraph g., in line 2 change "a" to "the" and in line 4 change "MR-01-75" to "MR 0175-90".

Dated: December 18, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-1336 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 11]

RIN 2127-AE13

Federal Motor Vehicle Safety Standards; Theft Protection

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114, *Theft Protection*, to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In March 1991, in response to petitions for reconsideration, the agency published a final rule amending certain of the requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented. This notice responds to petitions for reconsideration of the March 1991 final rule submitted by Toyota and Honda. In response to those petitions, the notice further amends the requirements to provide

manufacturers appropriate flexibility while continuing to meet the need for safety. In addition, the notice denies some portions of Toyota's petition, but provides an extra year's leadtime to comply with the requirement for inaccessibility for the emergency release button on the transmission shift override device.

DATES: *Effective Date:* This final rule is effective September 1, 1992, except for S4.2.2(b)(2) which is effective September 1, 1993.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than February 18, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM–11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin's telephone number is (202) 366–5307.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1990, NHTSA published in the **Federal Register** (55 FR 21868) a final rule amending certain provisions of Standard No. 114, *Theft Protection,* to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. The amendments specified that each automatic transmission vehicle with a "park" position must have a key-locking system that prevents removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

In response to petitions for reconsideration, on March 26, 1991, NHTSA published in the **Federal Register** (56 FR 12464) a final rule amending those requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented.

Among other things, the notice responded to petitioners' arguments that certain exceptions to the May 1990 requirements were necessary in light of electrical designs. First, petitioners stated that certain electrical transmission shift lock systems might have problems complying with the requirement for a transmission shift lock. While these systems include a transmission shift lock, they also include an override device to enable a vehicle to be moved in the case of electrical failure, such as a run-down battery. In the absence of an override device, it would not be possible to shift the transmission of such a vehicle out of park.

The May 1990 final rule permitted only key-based override systems. In response to petitions for reconsideration, NHTSA also decided to permit key-less overrides that are not visible and are "child-proof." The agency rejected requests to permit exposed override devices. NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out of park. Accordingly, the agency decided to permit key-less override devices only if they are covered by a non-transparent surface which, when in place, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other tool.

Petitioners also stated that certain electrical key locking systems might have difficulty complying with the requirements concerning key removal. Some such systems include a solenoid that prevents key removal upon electrical failure, such as that caused by a run-down battery. The petitioners indicated that mechanical emergency key release is needed so that the driver of a disabled vehicle can remove the key and lock the vehicle before leaving it unattended.

In light of this concern, NHTSA decided to permit a device which permits key removal while the transmission is in any position, provided that the following conditions are met. First, steering must be prevented upon key removal to ensure that Standard No. 114's theft protection aspects are not jeopardized. Second, the emergency device permitting key removal while the transmission is in a position other than "park" should not be accessible during normal operation or else rollaway might occur. Third, to limit access to the emergency key release, the device must be covered by a surface that prevents access to it except by use of a tool, such as a screwdriver. The agency determined that limiting access to the emergency key release was necessary to make it likely that such key removal occurs only during unusual situations such as electrical failure. In addition, while NHTSA noted that it is rare to have power failure when the transmission is in a position other than "park," it believed that it would be beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Accordingly, in the final rule of March 26, 1991, an exception to S4.2.1 was created to allow the key release device.

Petitions for Reconsideration of March 1991 Final Rule NHTSA received petitions for reconsideration of the March 1991 final rule from Toyota and Honda. Both companies requested that the agency expand the exception to the requirements concerning key removal by allowing an automatic key release feature upon electrical failure, regardless of transmission position. Toyota also requested that the agency expand the exceptions to the requirements concerning transmission shift lock to permit a visible override device if it requires simultaneous two-handed operation. Toyota also stated that it cannot modify its current design by the September 1, 1992 effective date and stated that an additional year of leadtime would be required.

As discussed below, after considering Toyota's and Honda's petitions, NHTSA has decided to amend the text of Standard No. 114 to make it clear that an automatic key release feature upon electrical failure is permitted, regardless of transmission position. The agency believes that this provides manufacturers appropriate flexibility while continuing to meet the need for safety. NHTSA is denying Toyota's petition with respect to permitting a visible override device to the transmission shift lock, but it providing an extra year's leadtime for the emergency release button inaccessibility requirement.

Key Removal Requirements

Toyota indicated in its petition for reconsideration that its key lock system employs the use of solenoid to prevent removal of the key unless the transmission is locked in "park." Since electrical power is required to activate the solenoid to prevent key removal, if the vehicle's battery should become completely discharged, the solenoid would release, allowing removal of the key regardless of the transmission shift lever position. Similarly, Honda's

system uses an electrical solenoid to activate the key/steering column interlock. The interrelationship between the shift lever and key interlock solenoid is such that if an electrical malfunction occurs or the battery dies, the key can be removed from the ignition regardless of the shift lever position.

Honda stated in its petition that the March 1991 final rule was ambiguous with respect to whether its system was permitted. It requested that the standard be amended to make it clear that key removal is permitted in the unusual circumstance of electrical failure when the vehicle's transmission is not in park. Toyota expressed concern that the March 1991 final rule would result in a system in which the driver would have to leave the key in the ignition of vehicle whose battery had gone dead, or require an additional key lock override to avoid this circumstance. It requested that the standard be amended to indicate that key removal prevention is not required after battery discharge.

NHTSA believes that there is an interpretation issue concerning whether the March 1991 amendments permit key removal after battery discharge. For example, the Honda system ordinarily prevents key removal unless the transmission is locked in park, as required by the amendments. Only under a failure condition, battery failure, is it possible to remove the key when the vehicle's transmission is not in park. It could be argued that a non-failed battery is an assumed test condition for the requirement and that Honda's system therefore, meets the requirement as written.

The agency notes that this is a different situation than that addressed by the March 1991 amendment permitting override devices. That amendment was issued in light of designs that have a solenoid which prevents key removal upon battery failure. As discussed above, the purpose of the override device is to enable the driver to remove the key when a battery failure occurs. However, it is possible for a driver to use the override device in the absence of a failure condition. Therefore, there was no ambiguity concerning whether such a device was permitted, absent the March 1991 amendment. Further, the agency had to consider the safety consequences that might result if the device was used under non-failure conditions, and therefore established requirements to make it likely that key removal occurs only during unusual situations such as electrical failure. See 56 FR 12467.

The agency has decided to resolve the issue raised by Honda and Toyota by making it clear in the text of the standard that key removal is permitted in the circumstance of electrical failure when the vehicle's transmission is not in park. NHTSA is adopting an amendment similar to that suggested by Honda. This decision is consistent with NHTSA's March 1991 final rule which permitted a device which permits key removal while the transmission shift lever is in any position. NHTSA's position in the March 1991 final rule was that while it is rare to have power failure when the transmission is in a position other than "park," it is beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Consistent with NHTSA's March 1991 position, the Honda and Toyota systems facilitate key removal by owners, in the event of electrical failure. Since the exception established by the amendment is specifically limited to the situation of electrical failure, it is unnecessary to adopt additional requirements to ensure that key removal occurs only during such unusual situations. The agency therefore has determined that providing manufacturers this additional design flexibility for their electrical transmission systems is warranted and will not harm Standard No. 114's safety or theft protection concerns.

NHTSA notes that, in a submission dated September 5, 1990, Toyota described an additional feature of its use of a key ignition solenoid. That company stated that since the solenoid would be active were the engine shut off and the transmission shift lever not moved to park, eventually depleting the battery, a timer is employed to release power to the solenoid after 60 minutes under such circumstances. Thus, after 60 minutes, the key would automatically be released regardless of transmission shift lever position. The vehicle would then be in noncompliance with Standard No. 114 because the transmission would not be locked in "PARK". When this condition exists, rollaway of the parked vehicle is possible. A major purpose of this revised rule is to prevent rollaway from occurring.

While automatic key release upon electrical failure would be permitted, the above described timing system utilized by Toyota that allows key removal regardless of transmission shift lever position would not be permitted. The agency does not believe it is necessary to create an additional exception to permit such a timing device. Drivers rarely leave the keys in the ignition when the transmission is not in park, and a buzzer can be used by manufacturers to warn drivers of current draw on the battery. Should a driver leave the keys, then return more than an hour later, after realizing that the keys were missing, the keys could be removed without placing the transmission in "PARK". It would remain this way until the next driver used the vehicle. During that period the vehicle could roll away and as a result small children who may be inside are at risk of being involved in a rollaway accident. Standard No. 114 already requires that a warning to the driver be activated when the key is left in the locking system and the driver's door is opened, and this system could be used to warn the driver about current draw of the key lock solenoid when the engine is turned off.

Transmission Shift Lock Requirements

In its petition for reconsideration of the March 1991 final rule, Toyota asked for the following additional amendment to Standard No. 114.

As indicated above, the March 1991 final rule requires, for automatic transmission vehicles, any manual override of the transmission shift lock to be "covered by a non-transparent surface which, when installed, prevents sight of an activation of the device and which is removable only by use of a screwdriver or other similar tool." Toyota petitioned for an amendment that would, in addition to covered devices, allow noncovered override devices which must be operated while shifting. In its September 5, 1990 submission, Toyota had described its manual override of the transmission shift lever lock as having an override button located on the floor console. In order for the device to be activated, the override button must be released with one hand while the other hand simultaneously depresses the transmission button and moves the lever from the "park" position.

For the following reasons, the agency denies the portion of Toyota's petition that requests allowing the uncovered transmission shift override device that is operated simultaneously with two hands. In the preamble to the March 1991 final rule, the agency reiterated its rationale for not permitting exposed override devices. As indicated above, NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out

of park. In its previous rulemaking notices of May 1990 and March 1991 on Standard No. 114, the agency has discussed the problem of children being injured when they shift the transmission lever out of "park" and the vehicle rolls down an incline.

NHTSA reaffirms its previous position that if a vehicle is equipped with a transmission shift override, it should be designed to ensure that children cannot see or easily gain access to the override, thus limiting the possibility of rollaway. Toyota addressed the rollaway prevention issue by stating that with Toyota's manual override control, two actions would have to be accomplished simultaneously, and with two hands, since the override release must be held down with one hand while releasing the transmission shift lever with the other.

However, Toyota acknowledged that its uncovered override button is on the floor console, immediately next to the transmission shift lever. The agency believes that a cover over the override button is necessary because, without a cover over the button, a child left alone in a vehicle may have time to play with an exposed override button, especially when in such close proximity, and discover that it works in conjunction with the transmission shift lever. The proximity of the override button to the transmission shift lever makes it easier for a child to either unintentionally or intentionally operate them simultaneously, resulting in a shifting of the transmission, and rollaway.

Leadtime

The final rule of May 1990 provided over two years of leadtime to comply with the amendments, until September 1, 1992. In the March 1991 final rule, the agency denied the portion of Nissan's petition for reconsideration that requested an additional year of leadtime before the amendments became effective. NHTSA's rationale for this denial was that the agency believed that manufacturers will not have to undertake extensive revisions to their systems to comply with Standard No. 114, and thus did not anticipate the need for any extensive retoolings or redesigns.

In its petition for reconsideration of the March 1991 final rule, Toyota also requested an additional year of leadtime, until September 1, 1993, before the amendments became effective. This request for additional leadtime by Toyota was in the part of Toyota's petition that requested the agency allow, on automatic transmission vehicles, automatic release of the key upon electrical failure. Toyota stated that the additional time was necessary since Toyota could not modify its lock and solenoid by the amendment's effective date. As was earlier discussed, the agency has decided to allow automatic release of the key upon electrical failure. There should, therefore, be no need for Toyota to modify its lock and solenoid from its existing system. As for the timer connected to the solenoid, Toyota can either remove it or render it inoperative. Neither action should require an additional year before the amendments to Standard No. 114 become effective.

The agency is, however, interested in reasonably accommodating manufacturers' concerns regarding compliance with child-proof emergency override buttons for transmission lock systems voluntarily, to prevent "unintended acceleration" incidents. This is a commendable effort on their part to prevent unexplained incidents of "unintended" acceleration. The agency understands their concern, i.e., that they must again, modify the redesignated transmission lock in such a short time frame, to accommodate rollaway prevention features. After reconsideration of the design changes, needed, NHTS has decided to provide an additional year's lead time. This will lessen the impacts associated with such redesign of the emergency override buttons of these systems on many car lines. A September 1, 1993 effective date will now be required for compliance with the emergency release button inaccessibility requirement.

NHTSA believes this is a reasonable response to Toyota's petition for reconsideration of this override button cover requirement. The agency does not believe it appropriate, in the long run, to permit exposed transmission lock emergency release buttons because children can push exposed buttons located in the vicinity of the transmission shift lever and shift the vehicle's gears. Thus, while the agency believes a "childproof" system is important to reduce "rollaway accidents," it also believes an additional year's leadtime for the transmission lock system override button cover is appropriate.

Consequently, the agency had determined that the effective date of September 1, 1992 continues to be appropriate for this rulemaking, except that a September 1, 1993 effective date is now in effect for the requirement of inaccessibility of the override button pursuant to S4.2.2(b).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and procedures

NHTSA has analyzed this notice responding to the petitions for reconsideration to the amendments to Standard No. 114 and determined that it is not "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. For the May 30, 1990 final rule, the agency prepared a Final Regulatory Evaluation (FRE) which provides the details of the cost and benefit estimates, and a copy of the FRE was placed in the docket. NHTSA does not believe that this final rule which permits, in automatic transmission vehicles, the release of the key in the unlikely event of an electrical failure, would affect the impacts described in the March 1991 final rule amending Standard No. 114. Accordingly, a separate regulatory evaluation has not been prepared for this final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a significant number of small entities. Few, if any, vehicle manufacturers are small businesses. Small nonprofit organizations and small governmental entities will not be significantly affected by this rule. Although such groups purchase vehicles with automatic transmissions, the agency anticipates no price changes as a result of the amendment to Standard No. 114.

Executive Order 12612 (Federalism)

NHTSA has considered the federalism implications of this final rule, as required by Executive order 12612. NHTSA is unaware of any existing State requirements that will be preempted by this rule. After considering this rule in accordance with the principles and criteria contained in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Federal Motor Vehicle Safety Standard No. 114, *Theft Protection* (49 CFR § 571.114), is amended as set forth below:

PART 571—[AMENDED]

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.114 [Amended]

2. The first sentence of S4.2.2(a) is revised to read as follows:

* * * * *

S4.2.2(a) Notwithstanding S4.2.1, provided that steering is prevented upon the key's removal, each vehicle specified therein may permit key removal when electrical failure of this system (including battery discharge) occurs, or may have a device which, when activated, permits key removal. * * *

* * * * *

3. S4.2.2(b) is revised to read as follows:

* * * * *

(b)(1) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from "park" after the removal of the key provided that steering is prevented when the key is removed.

(2) For vehicles manufactured on or after September 1, 1993, the means for activating the device shall either be operable by the key, as defined in S3, or by another means which is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other similar tool.

* * * * *

Issued on: January 14, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1344 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 591

[Docket No. 89-5; Notice 9]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

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

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR part 591 to require that persons (other than original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards) who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, submit, in advance of such importation, information in support of a request for admission, and obtain a letter of permission from NHTSA.

The purpose of the requirement is to ensure that the request to import nonconforming vehicles and equipment for these purposes is, in fact, not a subterfuge. In addition, if the requester intends to use the vehicle on the public roads, (s)he would have to obtain written permission from NHTSA for such use.

DATES: The effective date of the final rule is February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On January 29, 1991, NHTSA published a notice of proposed rulemaking on which this final rule is based (56 FR 3236). As the preamble explained, under 15 U.S.C. 1397(j) NHTSA may allow the importation into the United States of any motor vehicle or item of motor vehicle equipment that does not conform to all applicable Federal motor vehicle safety standards "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events."

On April 25, 1989, in prospective implementation of section 1397(j), NHTSA proposed 49 CFR 591.5(j), which, in essence, proposed the adoption of the previously existing requirement in 19 CFR 12.80(b)(1)(vii), the joint importation regulations of the U.S. Customs Service and NHTSA, that an appropriate information statement accompany declarations of entry for purposes of test, experiment, repairs or alterations, show, or competition (54 FR 17772). However, in developing the final rule, NHTSA realized that it had no authority of its own to seize motor vehicles entered pursuant to false declarations. It therefore sought a means to ensure the bona fide nature of imports under § 591.5(j) before they entered the United States and passed out of the agency's control. This effort was necessary because there is no requirement that these vehicles enter under a conformance bond. NHTSA was particularly concerned because the volume of imports under § 12.80(b)(1)(vii) during 1989 was approaching the number of nonconforming vehicles for which conformance verification is required. Further, with the restrictions placed upon nonconforming vehicles by amendments (Pub. L. 100-562, The Imported Vehicle Safety Compliance Act) to the National Traffic and Motor Vehicle Safety Act intended to reduce the number of "grey market" cars, the agency envisioned that a greater proportion of people would attempt to enter vehicles under claims that importation was for the purpose of tests, experiments, demonstrations and the like. NHTSA recalled that some importers seeking vehicle entry under § 12.80(b)(2)(vii) had submitted statements of purpose whose truthfulness the agency had questioned. In those instances, the agency could only object to the entry under § 12.80(b)(2)(vii), and request Customs to require reentry of the nonconforming vehicle under § 12.80(b)(2)(iii), the declaration that the nonconforming vehicle would be brought into conformance.

At the conclusion of this review, the agency determined that NHTSA's authority to exempt a nonconforming vehicle from the importation prohibitions for reasons of testing, experimentation, etc., would be better exercised before vehicle entry rather than after, and that it could adopt a pre-approval requirement as one of the "terms and conditions" authorized by the 1988 Act. Accordingly, when the final rule was published on September 29, 1989 (54 FR 40069), § 591.5(j) required that the importer's declaration at the time of entry include a statement that the importer had previously received written permission from NHTSA. Section 591.6(f) set forth the requirement that the prospective importer submit in advance of such importation a written request containing the information previously required to accompany the declaration.

Petitions for reconsideration of this requirement were received, commenters claiming that the requirement was unduly burdensome and objecting to the fact that the requirement had been adopted without a specific proposal for it. In response to these petitions, the agency rescinded the requirement for prior approval, and issued its April 1989 proposal which continued the existing practice of simultaneous submission. This action occurred on February 5, 1990 (55 FR 3742).

In developing the proposal published in January of this year, the agency reviewed the substantive arguments that the petitioners had raised, and tried to accommodate their concerns. NHTSA realized that the inclusiveness of the former requirement for prior approval of importation might indeed create an unnecessary burden upon original manufacturers of motor vehicles who sell their products in the United States, and who, in the course of product development and evaluation, are accustomed to importing prototypes, or completed vehicles manufactured by their foreign subsidiaries, joint venturers, or other unrelated vehicle manufacturers. NHTSA had no wish to encumber petitioners such as Volkswagen, Mazda, GM, and others, who are "original manufacturers" as that term is defined in part 591, and whose purpose in importation is directly related to legitimate business concerns of research, studies, and the other categories listed in section 108(j). Given that such manufacturers have been meeting NHTSA's requirements over the years and given the certain continuity and high public visibility of their activities, NHTSA believed it reasonable to expect that importations by them will be in good faith. Therefore, it appeared that there wasn't any need to require prior approval for their vehicle importations.

However, since adoption of § 591.5(j), NHTSA has noted an increasing number of importations, both accomplished and attempted, of personal vehicles by private importers under test declarations. Once a vehicle has been admitted by Customs under § 591.5(j) (Box 7 on importation Form HS–7), there is no DOT bond or other enforcement mechanism available to the agency (other than a possible civil penalty of up to $1,000) to compel the importer either to conform it or to export it.

Accordingly, NHTSA did not propose that the current requirement be changed for original manufacturers of motor vehicles that are certified as conforming to all applicable Federal motor vehicle safety standards, and who wish to import a motor vehicle of the same type that they manufacture (though such vehicle may be of a type the manufacturer does not sell in the United States). However, it did propose that any other person wishing to import a vehicle pursuant to section 591.5(j) obtain prior approval.

NHTSA also proposed reinstatement of the previous restriction upon importation (§ 591.7(c)) that a vehicle imported pursuant to § 591.5(j) may not be used on the public roads without the written approval of the Administrator, and added to it the proposed requirement that the importer retain title to the vehicle at all times that it is in the United States, and, further, that it not lease it during that time.

Comments on the Proposal

Seven comments were received in response to the proposal, five from major motor vehicle manufacturers, one from a motor vehicle trade organization, and one from a law firm. These were, respectively, Mazda Research & Development of North America, Inc., Volkswagen of America, Inc., Ford Motor Company, Chrysler Corporation, General Motors Corporation, Motor Vehicle Manufacturers Association, and Pillsbury, Madison & Sutro. Under the proposal, modifications would be made in §§ 591.5, 591.6, and 591.7. With respect to each of these sections, a discussion follows on the comments received and their resolution.

Proposed Section 591.5(j)(1)

A. Omission of Reference to Theft Prevention Standard

This declaration begins with the statement that "the vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards." Ford called attention to omission of reference to the theft prevention standard in the declaration. This omission of previously existing language was deliberate. Whereas all imported vehicles are required to conform to safety and bumper standards, only those that have been designated by the agency as high theft are required to meet the theft prevention standard. Thus, the standard does not apply *ab initio* to all motor vehicles. It does apply, however, to foreign-manufactured counterparts of vehicles certified by their manufacturers as meeting U.S. safety and bumper standards, and which the agency has designated as a high theft line. For example, the agency has designated the BMW 3 series as a high theft line. This designation also applies to 3 series cars manufactured for markets other than the United States. If a 3 series car is offered for importation under section 108(j), and does not comply with the theft prevention standard at the time it is offered for importation, it cannot be admitted. Under 15 U.S.C. 2027, vehicles and equipment that are subject to the Theft Prevention Standard and that do not conform to it may not be imported under any circumstances. However, NHTSA believes that the type of vehicle most likely to be imported for the purposes of section 108(j) will not be grey market vehicles with U.S. high theft line counterparts, but vehicles of an experimental nature or of types and models which are not substantially similar to U.S.-certified vehicles. Therefore, the omission of a declaration of noncompliance with the Theft Prevention Standard should not create difficulty.

B. No Allowance or Importation for Display

Section 591.5(j) allows importation of nonconforming vehicles and equipment for a temporary period solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. Pillsbury requested that the provision be expanded to allow importation for a further category, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 amendments to the Vehicle Safety Act provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received.

In promulgating part 591, NHTSA explained that, although the previous importation regulation permitted importation for "show", Congress did not include this category in 15 U.S.C. 1397(j), the authority for importations under § 591.5(j). The agency has previously stated (54 FR at 17776 and 55 FR 40876) that § 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for "research" or "demonstrations." But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for "research" or "demonstrations."

NHTSA is aware that there is an interest in the general public in

importing vehicles for static display that may not have reached the 25-year age mark entitling them under 15 U.S.C. 1397(i) to entry without conformance. According, it has begun to examine the statutory language to see if a sufficient set of safeguards can be devised, with a view towards proposing a regulation sufficient to accommodate importation of vehicles for display purposes, by persons other than original vehicle manufacturers.

Proposed Section 591.5(j)(2)(ii)

A. Breadth of Term "Original Manufacturer"

A declarant under subparagraph (j)(2)(ii) is an "original vehicle manufacturer of motor vehicles that are certified to comply with all applicable Federal motor vehicle safety standards." Mazda and Volkswagen were concerned that "original manufacturer" might be construed so narrowly that subsidiaries, distributors, and marketing arms owned or controlled by them would not be included in the term, and hence, would be subject to the more restrictive importation requirements proposed.

NHTSA wishes to reassure the industry that this requirement was not intended to exclude United States subsidiaries of foreign manufacturers who sell their products in the United States. The agency regards entities that are wholly owned by original motor vehicle manufacturers (including subsidiaries that are distributors or marketing arms) as standing in the shoes of their corporate parent. For example, it regards Mazda Research & Development of North America as having the same right as its corporate parent, Mazda Motor Corporation, to import vehicles under § 591.5(j) as an "original vehicle manufacturer." By the same token, it regards Volkswagen of America as an "original manufacturer of motor vehicles", and entitled to import vehicles made by Volkswagen de Mexico or other companies in which Volkswagen A.G. may have an interest, without the necessity of obtaining prior approval from NHTSA. Therefore, the agency is amending this subsection to add "(or wholly owned subsidiary thereof)" after the words "original vehicle manufacturer." However, if a prospective importer is not 100 percent owned by an original vehicle manufacturer, the agency is not prepared, absent a convincing argument regarding the nexus between the person and the vehicle assembler, to interpret the term, "original vehicle manufacturer," to include such person. NHTSA will be willing to consider each such case on the merits.

Volkswagen has requested the name and telephone number of an individual or office to which inquiries on importations under § 591.5(j) may be addressed. For an interpretation of regulatory language, the reader may call Taylor Vinson, Office of Chief Counsel, 202–366–5263. (NB: Requests for interpretation generally should be in writing. Further, with the exception of routine issues, requests for interpretation are answered in writing only.) For questions regarding implementation of import procedures such as submission of documentation, or for advice on the actual importation of a vehicle, the reader should call Ted Bayler, Office of Enforcement, 202–366–5306.

B. Omission of Manufacturer of "Motor Vehicle Equipment"

Subparagraph (j)(2)(ii) extends only to manufacturers of motor vehicles. Volkswagen and Ford note the omission of original equipment manufacturers, and believe that they should be added for consistency and clarity.

The purpose of this subparagraph is to relieve original manufacturers of motor vehicles from a requirement to obtain prior approval from NHTSA for importation and use on the public roads of nonconforming motor vehicles. As such, the subparagraph does not apply either to original manufacturers of motor vehicle equipment, or motor vehicle equipment. Thus, manufacturers of original motor vehicle equipment who wish to import motor vehicles must obtain prior approval. In the absence of any request from an equipment manufacturer for inclusion, the agency has not made the change suggested by Ford and Volkswagen.

C. Ambiguity of Term "Type of Motor Vehicle"

Under the remainder of the declaration in subparagraph (j)(2)(ii), the motor vehicle manufacturer-importer avers that it is "a manufacturer of the (same) type of motor vehicle as the motor vehicle it seeks to import." Chrysler commented that there is a potential for misinterpretation in the term "type of motor vehicle" because it was not defined, and that delays are likely to result at the time of importation because of ambiguities. In addition, both Chrysler and Mazda argued that original manufacturers should not be restricted in the kinds of nonconforming motor vehicles they import.

The purpose of this proposed language was to foreclose the possibility that, say, a manufacturer of heavy trailers might wish to import a 200 mph passenger car without obtaining prior approval by NHTSA. Importation of such a disparate vehicle on its face appears unrelated to the manufacturer's business needs arising from manufacturing truck trailers. However, balancing the desirability that original vehicle manufacturers not be restricted in the types of vehicles they import for § 591.5(j) purposes against the possibility that they will abuse the privilege, NHTSA finds it in the public interest to adopt subparagraph (j)(2)(ii) without the type similarity declaration proposed. If an abuse appears to exist, NHTSA will demand reentry under an appropriate provision as it has heretofore done.

Proposed Section 591.5(j)(3)

A. Documentary Proof of Export or Destruction

Subparagraph (j)(3) would require all importers under § 591.5(j) to provide NHTSA with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

This proposed new requirement that would apply to original vehicle manufacturers as well as other importers was objected to by Mazda, Volkswagen, Motor Vehicle Manufacturers Association (and by endorsement, Ford and GM) insofar as it would be a requirement for original manufacturers. VW suggested that manufacturers could retain appropriate documentation for 3 years. Mazda argued that sufficient safeguards exist under Customs regulations because destruction of nonconforming vehicles admitted pursuant to Temporary Importation Bonds is documented on Customs Form 3499. Conversely, copies of shipping documents evidencing export are provided to Customs when an importer requests release of the Temporary Importation Bond under which the vehicle entered.

The documentation referenced by Mazda is not furnished to NHTSA but to another Federal agency, the Customs Service. Further, this documentation does not address the situation in which the vehicle remains in the United States after liquidation of the Temporary Importation Bond through payment of duty, and for such longer period of time as NHTSA may allow. After payment of duty, Customs ceases to have any jurisdiction over the vehicle, and will have no concern over its eventual disposition. Under all these circumstances, NHTSA must insist upon documentary proof of export or

destruction. Therefore, subparagraph (j)(3) is adopted as proposed.

B. Inoperability as a Substitute for Destruction

Subparagraph (j)(3), in effect, requires that a nonconforming vehicle either be destroyed or exported at the end of the period for which it is admitted. Chrysler asked whether the requirement for destruction would be satisfied by rendering a vehicle permanently inoperable before its donation for educational purposes to a bona fide educational institution.

Earlier in this notice, the agency stated its interest in reviewing the statutory provisions relating to the possible allowance of importation for display purposes. As the operability of a vehicle may bear some relation to a decision to allow importation for display purposes, NHTSA will consider Chrysler's question regarding destructability at that time.

Proposed Section 591.6(g)(1): Acceptability of Post-Test Conformity

Under this proposed section, information to be submitted by an importer includes a statement of "the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported." Chrysler interprets the proposed language as contemplating conformity as an option to export or destruction at the end of the importation period. It asks for clarification of this point, believing that it should be an option for original vehicle manufacturers.

This question cannot be answered in a vacuum. By analogy, the Safety Act provides the Administrator with authority to grant temporary exemptions if they will facilitate the development and field evaluation of new motor vehicle safety features providing a level of safety at least equivalent to the standard from which exemption is sought. It is therefore possible that an original vehicle manufacturer would wish to import one of its vehicles that is technically noncompliant with a standard in order to test an innovative feature relating to that standard, and, after testing, to bring the vehicle into compliance with it. Under this circumstance, NHTSA might be amenable to accepting a statement from an original vehicle manufacturer that the intended means of disposition of the vehicle is post-test conformity. On the other hand, if the noncompliant aspects of the vehicle are unrelated to the purpose for which it is imported, and at the time of entry the importer announces an intent to conform it at the end of the importation period, NHTSA believes that the vehicle ought to be manufactured to conform, or be conformed immediately after its importation by a registered importer, in order that full protection may be provided the public during the time the vehicle is operated on the public roads.

Proposed Section 591.6(g)(2): Clarification of Ambiguity

As proposed, this section would require that original manufacturer declarations be accompanied by a written statement containing the information required in (g)(1). One of the items specified in (g)(1) is a letter from the Administrator authorizing importation, i.e., a letter of prior approval. MVMA (and by endorsement, Ford and Chrysler) asked for a clarification that NHTSA does not intend to require original manufacturers to obtain prior approval. NHTSA regrets this inadvertent ambiguity, and is amending subsection (g)(2) to clarify that the information required of original manufacturers does not include a prior approval statement.

Existing Sections 591.7 (a) and (b): Congruity of Importation Periods

Volkswagen and Ford commented that vehicles imported pursuant to Customs Temporary Importation Bonds (TIBs) may not remain in the U.S. longer than three years, while those for which duty has been paid may remain longer. Ford asked for an amendment of subsection (a) that would extend the three-year period upon written approval from NHTSA. It recommended a similar amendment to subsection (e). Volkswagen recommended that NHTSA ask Customs to amend its TIB provisions to be identical with the NHTSA time frame. Ford would also amend subsection (b) to clarify that the permission in writing is that specified in subsection (e).

It is not legally possible for either NHTSA or the U.S. Customs Service to grant these requests, as NHTSA learned when developing the regulation. Under the Tariff Schedules established by Congress, merchandise (including motor vehicles) may be conditionally admitted under TIBs for a period not to exceed 3 years. Thus, only Congress can extend the time period. Neither NHTSA nor Customs has the regulatory authority to do so.

Upon review of Ford's request to amend subsection (b) to reflect subsection (e), NHTSA has found a certain degree of redundancy, and is therefore amending subsection (b) to incorporate the non-redundant portions of subsection (e).

Proposed Section 591.7(c)

A. Restriction Upon Leasing Imported Vehicles

Under the proposal, a motor vehicle imported pursuant to § 591.5(j) could not be leased. Chrysler, Ford, and MVMA opposed this prohibition, and recommended that it not be adopted, or at least that it exclude original vehicle manufacturers from its coverage.

NHTSA proposed the leasing restriction as an effort to ensure that importers retain both title and possession of motor vehicles. However, in some situations the purposes of experimentation may not be fully realized unless a fleet of test vehicles is fielded over an extended period of time, and in these situations, a lease may be desirable. Accordingly, the requirement adopted will allow original vehicle manufacturers to lease vehicles they have imported under § 591.5(j).

B. Administrator's Prior Approval for On-Road Use

As proposed, vehicles imported pursuant to § 591.5(j) may be used on the public roads only if permission has been obtained in writing from NHTSA. Ford requested a clarification as to whether this applied to original vehicle manufacturers. MVMA (and by endorsement, GM) stated that § 591.6(g)(1) already controls the use on the public roads of grey market vehicles, and that such a requirement would be burdensome on original manufacturers of vehicles.

NHTSA has no intention of placing such a requirement on original vehicle manufacturers. Accordingly, it is clarifying in the final rule that the written permission referenced in subsection (c) for on road use is required for vehicles that have entered under the declaration that the importer has received written permission from NHTSA for the importation (subsection (j)(2)(i)). This declaration does not apply to original vehicle manufacturers who are permitted to enter their vehicles without written permission (subsection (j)(2)(ii)).

Proposed Section 591.7(e)

A. Addition of "Equipment Item"

This section begins "If the importer of a vehicle under section 591.5(j) does not intend to export or destroy the vehicle or equipment item", and Ford suggested adding "equipment item" after the initial reference to "vehicle." The agency has done so.

B. Addition and Deletion of Language

As proposed, subsection (e) requires an importer to request permission in writing to allow retention of a vehicle or equipment item in the U.S. beyond the three-year period "subject to the limitations of" subsection (b). Ford suggested adding language that identifies those limitations, and strikes the reference to subsection (b). As NHTSA has noted previously, proposed subsection (e) has been incorporated into subsection (b).

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this rule and determined that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. The impact upon the Federal government is that it would be required, in certain instances, to issue written approvals to original manufacturers who are importers of nonconforming vehicles and wish to use them on the public roads, and to other importers who are not original manufacturers. There should be little impact upon those who will have to seek prior approval. These importers need not wait until their vehicles arrive, but any apply to NHTSA is advance of the shipping date, and NHTSA will respond in two to five working days. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Since the impact of this rule will be minimal (the writing of a letter and the response to it), I certify that this rule would not have a significant economic impact upon a substantial number of small entities. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles are not imported for resale. Accordingly, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6(f) in the final rule published on September 29, 1989 (OMB Approval Number 2127–0002).

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 is amended as follows:

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8

2. Section 591.5(j) is revised to read:

§ 591.5 Declarations required for importation.

* * * * *

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported for a temporary period solely for the purpose of:

(i) research;

(ii) investigations;

(iii) studies;

(iv) demonstrations or training; or

(v) competitive racing events;

(2)(i) The importer has received written permission from NHTSA; or

(ii) The importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to comply with all applicable Federal motor vehicle safety standards; and

(3) The importer will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

* * * * *

3. Section 591.6(g) is revised to read:

§ 591.6 Documents accompanying declarations.

* * * * *

(g) A declaration made pursuant to § 591.5(j) shall be accompanied by the following documentation:

(1) A declaration made pursuant to § 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that section. (Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to that section shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment item, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary. The request shall also state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.)

(2) A declaration made pursuant to § 591.5(j)(2)(ii) shall be accompanied by the written statement of its importer describing the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose which makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.

4. Section 591.7(b) is revised to read:

* * * * *

§ 591.7 Restrictions on importations.

(b) If the importer of a vehicle or equipment item under § 591.5(j) does not intend to export or destroy the vehicle or equipment item not later than 3 years after the date of entry, and intends to pay duty to the U.S. Customs Service on such vehicle or equipment item, the importer shall request permission in

writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time not to exceed 5 years from the date of entry. Such a request must be received not later than 60 days before the date that is 3 years after the date of entry. Such vehicle or equipment item shall not remain in the United States for a period that exceeds 5 years from the date of entry, unless further written permission has been obtained from the Administrator.

5. Section 591.7(c) and (d) are added to read.

* * * * *

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(i) shall at all times retain title to and possession of it, shall not lease it, and may use it on the public roads only if written permission has been granted by the Administrator, pursuant to § 591.6(g)(1). An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(ii) shall at all times retain title to it.

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j) shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

Issued on: January 3, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-537 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant Spiranthes Diluvialis (Ute Ladies'-Tresses) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Spiranthes diluvialis* (Ute ladies'-tresses) to be a threatened Species under the authority of the Endangered Species Act of 1973 (Act), as amended. *S. diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations); in wetlands near Utah Lake in northern Utah (two populations); and in low elevation riparian areas in the Colorado River drainage in eastern Utah (six populations). This species is threatened primarily by habitat loss and modification, though its small populations and low reproductive rate make it vulnerable to other threats also. This determination that *S. diluvialis* is a threatened species protects it under the authority of the Act.

EFFECTIVE DATE: February 18, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in meadows along Clear Creek in Colorado, and from similar habitat in Utah. After examining these and other specimens from Colorado, Utah, and Nevada (some of which were assigned in the past to other *Spiranthes* species), Sheviak described a new species, *Spiranthes diluvialis* (Sheviak 1984). The type locality is along Clear Creek in Golden, Colorado.

Current and historic populations of *S. diluvialis* in Colorado and Utah were confused with other species of *Spiranthes* with distributions far removed from this region including: *S. cernua* (Arnow et al. 1980, Correll 1950, Holmgren in Cronquist et al. 1977, and Higgins in Welsh et al. 1987), *S. porrifolia* or *S. romanzoffiana* var. *porrifolia* (Rydberg 1906, Correll 1950, Holmgren in Cronquist et al. 1977, Luer 1975, Goodrich and Neese 1986, and Higgins in Welsh et al. 1987), and *S. magnicamporum* (Luer 1975). These species differ significantly, morphologically, and cytologically, from *S. diluvialis*. The confusion of *S. cernua*, *S. magnicamporum*, and *S. porrifolia* with *S. diluvialis* stems from these species differing from the widespread *S. romanzoffiana* (which occurs in Colorado and Utah at high elevations) in their suppression of the pandurate (violin shaped) form of the lip, which is the distinctive feature of *S. romanzoffiana*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20 to 50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. The species is characterized by whitish, stout, ringent (gaping at the mouth) flowers. The sepals and petals, except for the lip, are rather straight, although the lateral sepals are variably oriented, with these often spreading abruptly from the base of the flower. Sepals are sometimes free to the base. The lip lacks a dense cushion of trichomes on the upper surface near the apex. The rachis is sparsely to densely pubescent with the longest trichomes 0.2 mm (0.008 in.) long or longer, usually much longer. The chromosome number is $2n=74$. It typically blooms from late July through August, in some cases through September. Blooms were recorded as early as early July and as late as early October (Sheviak 1984, Coyner 1990, Jennings 1989).

Spiranthes diluvialis is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown, or overgrazed (Coyner 1989, 1990; Jennings 1989, 1990). Populations of *S. diluvialis* occur in relatively low elevation riparian meadows in three general areas of the interior Western United States.

The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Boulder population is one of the largest known populations. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though historic collections were made from either Weld or Morgan County in the Platte River valley in 1856, and at Camp Harding in El Paso County in 1896 (Jennings 1989, 1990).

The central populations of *S. diluvialis* are in wet or mesic riparian