

NHTSA notes: The Deputy Administrator, James Owens, signed the following document on December 31, 2020, and we are submitting it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at <http://www.archives.gov/federalregister/index.html>

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 589

Docket No. NHTSA-2020-0122

RIN 2127- AM14

**Exemptions for Domestically Produced Vehicles and Equipment for Research,
Investigations, Demonstrations, or Training**

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

ACTION: Interim final rule, request for comment.

SUMMARY: The National Traffic and Motor Vehicle Safety Act (Safety Act) generally prohibits the sale, manufacture for sale, introduction in interstate commerce, or import of a motor vehicle or item of motor vehicle equipment that does not comply with all applicable Federal motor vehicle safety standards.¹ The Safety Act also provides that the Secretary of Transportation (NHTSA by delegation) may exempt a motor vehicle or item of motor vehicle equipment from such requirements on terms necessary for research, investigations, demonstrations, training, competitive racing events, show, or display (“research or

¹ 49 U.S.C. 30112.

demonstration”).² NHTSA’s regulation implementing this authority has, thus far, only provided procedures to allow importers to receive such exemptions for imported vehicles and equipment.³ NHTSA issues this interim final rule to establish a similar program allowing manufacturers of domestically produced vehicles and equipment to obtain exemptions for research or demonstration purposes.

DATES: This interim final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments are solicited from interested members of the public on this interim final rule. These comments must be submitted on or before the date indicated below. NHTSA will consider these comments in deciding the next steps following this interim final rule. *Comment Due Date:* You should submit your comments early enough to ensure that the docket receives them not later than **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. For additional information, see the Paperwork Reduction Act section under the Regulatory Notices and Analyses section. All comments relating to the information collection requirements should be submitted to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the ADDRESSES section on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

² 49 U.S.C. 30114(a).

³ 49 C.F.R. Part 591.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202-366-9322 before coming.
- Fax: 202-493-2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document.

Comments on the information collection requirements should be submitted to the Office of Management and Budget at www.reginfo.gov/public/do/PRAMain. To find this particular information collection, select “Currently under Review – Open for Public Comment.” It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices and Analyses regarding documents submitted to the Agency's dockets.

Docket: To read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION, CONTACT: Daniel Koblenz, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., West Building, Washington, D.C. 20590. Telephone: 202-366-5329, email Daniel.Koblenz@dot.gov.

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I. Introduction

This interim final rule adopts part 589 to provide entities that produce nonconforming vehicles and equipment domestically with the ability to operate their vehicles or equipment on public roads for research or demonstration purposes. This rule further accommodates the

collaborative efforts of entities such as software developers, research institutes, and transit operators to work with manufacturers producing vehicles and equipment in this country to conduct research or demonstration operations on a limited basis. By providing these entities opportunities to gain practical, real-world experience already available to non-domestically produced vehicles and equipment, this interim final rule helps expedite the development of innovative and potentially life-saving advanced technologies, such as automated driving systems (ADS).⁴

Such an exemption program has existed for decades for imported vehicles.⁵ This interim final rule provides much-needed parity by allowing producers of domestic vehicles and equipment the ability to conduct research or demonstration operations. While this program will not be limited to vehicles equipped with ADS, NHTSA anticipates that many of the benefits of the program will be derived from new manufacturers and technology companies engaging in domestic production for the developing and testing these advanced vehicle technologies.

Great strides have been made in the development of domestically produced ADS technologies in recent years. However, advancements were unexpectedly and direly curtailed by the Coronavirus disease (COVID-19) public health emergency. In issuing this interim final rule, NHTSA seeks to provide an urgently-needed means for innovators and developers of new technologies to capture and continue the momentum they had prior to the COVID-19 health emergency, so that the U.S. can continue pursuing technological breakthroughs critical to future vehicle safety improvements. This interim final rule adopts an inclusive program under which

⁴ Automated driving system (ADS) means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain. SAE International (SAE) J3016, “Taxonomy and Definitions for Terms Related to On-Road Motor Vehicle Automated Driving Systems,” June 2018. ADS refers to SAE driving automation levels 3, 4, and 5 (J3016).

⁵ 49 CFR part 591.

entities domestically producing or seeking to operate nonconforming domestically produced vehicles and equipment for research or demonstration purposes may pursue temporary exemptions enabling such activities.

Currently, NHTSA implements 49 U.S.C. 30114 by regulation permitting the importation of nonconforming vehicles and equipment for, among other reasons, research or demonstration purposes, which has afforded a research and demonstration advantage to foreign developers. Established in 1990,⁶ the program has been used in the last several years by overseas ADS developers to gain practical, on-road experience in the U.S. to validate the experiences learned in laboratory and track testing done overseas, and learn which approaches and combinations of hardware and software offer the greatest levels of safety and reliability. While all manufacturers and developers of domestically produced prototype vehicles and equipment have been able to test the products in laboratory and test-track settings, they have not been afforded the same opportunity for on-road testing.

NHTSA has recognized the value of on-road testing of advanced technologies to their development and advancement and has considered § 30114 as a basis for a testing program. On October 10, 2018, NHTSA published an advance notice of proposed rulemaking (ANPRM) seeking comments on the merits of a national pilot program for the development and testing of advanced vehicle safety technologies (83 FR 50872). Among other matters, NHTSA sought comment on whether and how to create and structure a pilot program, and the types of regulatory relief (e.g., exceptions and exemptions) that might be needed to facilitate efforts to conduct on-road research and testing involving ADS-equipped vehicles. NHTSA was specifically interested in the steps it could take to facilitate, monitor, and learn from on-road research of domestically

⁶ 54 FR 40069, September 29, 1989. The rule became effective on January 31, 1990.

produced vehicles using the authority at 49 U.S.C. 30114(a). The ANPRM stated that the Agency was examining the language of § 30114 to expand the coverage of exemptions under the section to any vehicle, regardless of whether its production is domestic or foreign, and asked what role exemptions under § 30114 could play in a national pilot program for ADS-equipped vehicles.

NHTSA received several comments encouraging NHTSA to extend its import exemption program under § 30114 to domestically produced vehicles. The commenters supporting the expansion requested NHTSA use its § 30114 authority to provide parity between domestic and foreign production. Only one commenter, the Center for Auto Safety (CAS), opposed expanded implementation of § 30114(a) with specific concerns. It stated that § 30114(a) is “very limited in scope, and is intended to provide a vehicle-by-vehicle exemption for very limited research, demonstration, and public display purposes.”⁷ The commenter stated that the provision “only allows the Secretary to exempt one motor vehicle or item of motor vehicle equipment for each application under this exemption.”⁸ CAS opposed expanding implementation of § 30114(a) exemptions to “fleet[s] of test vehicles all at once.”⁹

While it is true that NHTSA generally processes requests for importation on a vehicle-by-vehicle basis, not all requests that NHTSA has approved are for single vehicles and not all vehicles exempted and imported under this provision require written permission from NHTSA. If the vehicle is imported by a manufacturer of certified vehicles, the importer needs only to submit certain specified information to NHTSA and abide by conditions set forth in the

⁷ Comment from the Center for Auto Safety, Docket No. NHTSA-2018-0092-0040, at 15.

⁸ Id. at 15.

⁹ Id.

regulations.¹⁰ In the 2019 calendar year, certifying manufacturers imported 9,935 vehicles or items of nonconforming motor vehicles for research, investigations, demonstrations, training, or competitive racing events. Although a portion of these exemptions was for motor vehicle equipment and vehicles that will not be operated on public roads, the exemption procedures currently in place for imported vehicles do not limit exemptions to single vehicles. Instead, the limitation to the number of vehicles is often due to practical reasons because of the limited “research” purposes for which the vehicles are used. Accordingly, NHTSA does not anticipate the expansion of the import program under § 301.14(a) to domestically produced vehicles will result in large fleets of nonconforming vehicles being operated on public roads for research or demonstration.¹¹ After consideration of the comments to the ANPRM, and based on its ongoing experience with the part 591 exemption program for vehicles and equipment imported for research and demonstration purposes, NHTSA is establishing this program for domestically produced vehicles and equipment. NHTSA considered this information in developing the regulation set forth in this IFR.

Congress has also recognized the value of on-road testing of advanced technologies to their development and advancement. In 2015, Congress amended the Safety Act to permit on-road operation of domestically produced nonconforming vehicles for testing or evaluation purposes, but only for vehicle manufacturers that were established and producing compliant vehicles prior to December 4, 2015—the date the Fixing America’s Surface Transportation

¹⁰ Among other things, the manufacturer must, if use on public roads is an integral part of the purpose for which the vehicle or equipment item is imported, describe the purpose which makes such use necessary. 49 CFR 591.6(f)(3).

¹¹ Given the public health emergency’s economic repercussions on research on ADS and other advanced technologies, NHTSA is implementing this exemption program for domestically produced vehicles and equipment, which will become immediately effective. An interim final rule is more efficient in the short term than a pilot program to address the immediate needs of software developers, research institutes, and other entities to plan for and conduct on-road testing on a limited and managed basis.

(FAST) Act was signed into law.¹² Manufacturers that were not domestically-producing and certifying new vehicles as compliant prior to that date were not included in this provision. Until this final rule, the only avenue for newer entities engaged in domestic production to obtain exemptions for vehicles was under 49 CFR part 555, which implements NHTSA's authority under 49 U.S.C. 30113 to provide exemptions allowing up to full commercial deployment (including sale to members of the public) of up to 2,500 nonconforming vehicles per year.¹³ The requirements to receive such an exemption are, as appropriate, much more stringent than under an exemption program for prototypes, as the part 555 program is predicated on the ability to sell exempted vehicles to the public.

Part 555 requires manufacturers to petition NHTSA under one of four bases, and requires petitioners to submit specific information for each type of petition. Through statute or Agency regulation, a part 555 exemption requires manufacturers to demonstrate to the Agency that the exempted vehicles provide a safety level at least equal to the safety level of a fully compliant, non-prototype, vehicle.¹⁴ After receipt of a part 555 petition, NHTSA must publish a notice of the petition and seek public comment prior to deciding whether a grant or denial is appropriate.

¹² Section 24404, Fixing America's Surface Transportation (FAST) Act (Public Law 114-94), *see* 49 U.S.C. 30112(b)(10). Section 30112(b)(10) states that § 30112 *does not apply* to the introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by such manufacturers.

¹³ Under § 30113, NHTSA must find that an exemption would be consistent with the public interest and the objectives of the Safety Act. In addition, NHTSA must make at least one of the following findings: (i) compliance with the standard [from which exemption is sought] would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

¹⁴ While the statute allows for a lesser threshold for exemptions for low-emission vehicle such that the exemption would not "unreasonably lower the safety level of that vehicle," that provision no longer has much practical effect. Given the ubiquitous nature of complaint electric vehicles, NHTSA generally views *any* lessening in the safety level for such vehicles as unreasonable.

If granting the petition, the Agency must publish a Federal Register notice providing reasons for granting the petition. These rigorous procedures are reasonable and in the public interest for vehicles that may be sold or otherwise deployed in public for the lifetime of the vehicles.

The Safety Act contains no such procedural or substantive standard for the exemptions under section 30114, including those for research or demonstration—instead providing discretion to the Agency to determine substantive and procedural terms.¹⁵ This flexibility is important to allow the Agency to balance appropriately the national interest in research that furthers safety innovation with any potential safety risks that could stem from public operation of nonconforming vehicles or equipment on public roads. To impose the substantive and procedural requirements of part 555 for any on-road research or demonstration would constrain future innovation unnecessarily.

The part 591 exemption program provides developers the flexibility to react to newly acquired data gained from the on-road use of the prototype vehicles and adjust their vehicles in response. The part 555 program does not anticipate—and would likely not allow--vehicle designs that vary from aspects covered by the granted part 555 temporary exemption. With the issuance of this interim final rule, the Agency will be enabling manufacturers and developers of domestically produced vehicles and equipment to obtain the same types of exemptions that developers of non-domestically produced vehicles and equipment obtain to pursue research and demonstrate their technology in the U.S.

This interim final rule is intended to provide immediate relief to manufacturers engaged in domestic production not covered by 49 U.S.C. 30112(b)(10) by providing a procedure that

¹⁵ Specifically, 49 U.S.C. 30114 provides that “[t]he Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title *on terms the Secretary decides are necessary for*” research or demonstration purposes. Emphasis added.

would allow such manufacturers to petition for research or demonstration exemptions. This is also the first step in NHTSA's planned wider look at the 49 U.S.C. 30114 exemption program for research and demonstration. NHTSA has under development a notice of proposed rulemaking (NPRM) that would propose to combine and streamline parts 589 and 591 and provide enhanced transparency into these 49 U.S.C. 30114 exemption programs.

II. Background

Subject to certain exceptions, the Safety Act prohibits the manufacture for sale, sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States any motor vehicle¹⁶ or item of motor vehicle equipment unless it complies with applicable FMVSS.¹⁷ Among other things, this means that noncompliant vehicles and equipment may not be introduced in interstate commerce (which includes entering and driving on public roads) unless the vehicle or equipment (1) complies with applicable FMVSS and the manufacturer certifies its compliance, (2) is not subject to the requirement to meet the FMVSS, or (3) is covered by an exemption from the FMVSS.

The structure and language of the Safety Act reflects recognition that on-road testing is critical to motor vehicle research and development and the achievement of the Safety Act's goals. The Fixing America's Surface Transportation Act (FAST Act) amended the Safety Act by adding a non-application provision to § 30112, specifying that the prohibition does not apply to the "introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by a manufacturer that agrees not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation," provided that the manufacturer meets certain conditions

¹⁶ "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated on a rail line. 49 U.S.C. 30102(a)(7).

¹⁷ 49 U.S.C. 30112(a)(1).

(discussed below).¹⁸ This provision allows those manufacturers to operate, on public roads, nonconforming domestically produced vehicles for testing or evaluation. It further specifies that the non-applicability only extends to a manufacturer that, prior to the date of enactment of the FAST Act (December 4, 2015), has: (a) manufactured and distributed motor vehicles into the U.S. that are certified to comply with all applicable FMVSS; (b) submitted to the Secretary appropriate manufacturer identification information under 49 CFR part 566, “Manufacturer Identification;” and, (c) if applicable, identified an agent for service of process in accordance with 49 CFR part 551, “Procedural Rules.”¹⁹

In addition to the non-applicability provision discussed above, the Safety Act provides the Secretary (NHTSA by delegation) authority to exempt motor vehicles and motor vehicle equipment from § 30112(a) in certain situations. Section 30113 authorizes NHTSA to exempt motor vehicles from an FMVSS under defined circumstances, allowing manufacturers to produce and sell or otherwise deploy nonconforming vehicles for a temporary period of time.²⁰ Separately, section 30114 sets forth “special exemptions” for motor vehicles and motor vehicle equipment. Section 30114(a) authorizes NHTSA to exempt a motor vehicle or item of motor vehicle equipment on terms NHTSA decides are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display. Until today, NHTSA has only implemented § 30114(a) through 49 CFR part 591, “Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.” As the title indicates, part 591 is limited to the importation of vehicles and equipment subject to the FMVSS, bumper and theft prevention standards.

¹⁸ 49 U.S.C. 30112(b)(10).

¹⁹ The amendments of this interim final rule generally would not affect manufacturers that meet the criteria of § 30112(b)(10) (“§ 30112(b)(10) manufacturers”).

²⁰ This provision is implemented in 49 CFR part 555, discussed above.

With the unprecedented development and potential deployment of vehicles with ADS technologies, NHTSA believes that creating a parallel special exemption program for domestically-manufactured vehicles and equipment is warranted. The new domestic program will mirror the import program, and provide parity to manufacturers engaged in domestic production. These types of manufacturers that are too new to be covered under the non-applicability provision established by the FAST Act cannot engage in on-road research or demonstration projects involving nonconforming vehicles, or must resort to exporting and subsequently importing their vehicles under part 591 or receiving an exemption under part 555 to do so. This interim final rule eliminates the unnecessary complexity and costs imposed on manufacturers of domestically produced vehicles and facilitates on-road research and development of ADS.

Part 591

49 CFR part 591 establishes requirements relating to the importation of any motor vehicles and motor vehicle equipment. This part provides a means to ensure that motor vehicles and motor vehicle equipment imported into the U.S. conform with, or are brought into conformity with, all applicable FMVSS and bumper standards, and that nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.²¹ Under part 591, persons may import a noncomplying motor vehicle or item of motor vehicle equipment if, at the time it is offered for importation, its importer files one of several declarations, as appropriate.²²

²¹ 49 CFR 591.2. In limited circumstances, NHTSA permits the permanent importation of motor vehicles that will not be brought into conformity with all applicable FMVSS and bumper standards, such as certain motor vehicles imported under 49 CFR 591.5(j)(1)(iii) for purposes of show or display.

²² 49 CFR 591.5.

The relevant declarations for this rulemaking reads: “The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported solely for the purpose of” research, investigations, show or display, demonstrations or training, or competitive racing events.²³ Vehicles or equipment may be imported under this declaration for on-road or off-road use (the latter involving purposes such as laboratory testing or operation on a test track). A vehicle or item of equipment that has entered the U.S. cannot remain in the U.S. for a period that exceeds three years from its date of entry.²⁴ To qualify, the importer must have received written permission from NHTSA,²⁵ or must be an “original manufacturer” (or a wholly owned subsidiary thereof) of motor vehicles that are certified to comply with all applicable FMVSS.²⁶ Section 591.4 defines “original manufacturer” as “the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards.” Original manufacturers are not required to request permission from NHTSA for the importation of the nonconforming vehicles for research or demonstration.

For persons other than original manufacturers, a declaration must be accompanied by written permission from NHTSA.²⁷ To obtain permission, the importer must submit a written request to NHTSA containing information that includes a description of the use to be made of the

²³ 49 CFR 591.5(j)(1).

²⁴ 49 CFR 591.7(a). The importer may pay duty to the U.S. Customs Service to extend the time to not exceed 5 years from the date of entry, subject to approval from NHTSA. The importer may request further permission from NHTSA for the motor vehicle or equipment item to remain in the United States beyond 5 years from the date of entry. 49 CFR 591.7(b).

²⁵ 49 CFR 591.5(j)(2)(i).

²⁶ 49 CFR 591.5(j)(2)(ii).

²⁷ 49 CFR 591(j)(2)(i)

vehicle or equipment.²⁸ If an importer seeks to operate the vehicle or equipment on public roads, they must request permission to do so, describe why on-road operation is necessary, and estimate how long use on public roads would be necessary.²⁹

Current Administration and Oversight of the Import Exemption Program

As noted above, this rulemaking's establishment of part 589 is based on NHTSA's current exemption program for vehicles and items of equipment imported for research or demonstration (part 591). While some of the regulatory text, by necessity, differs from that of part 591 due to differences in the subset of vehicles and equipment subject to the two provisions, part 589 is intended to provide parallel opportunities and requirements for on-road research or demonstration projects for manufacturers of domestically produced vehicles, which currently apply to importers under part 591.

49 CFR 591.6 describes the certification and documents that must be filed by a manufacturer when importing nonconforming vehicles or equipment for research or demonstration purposes. If the importer is not the original manufacturer, they must submit a written request for permission.³⁰ This request must include detailed information about the vehicle, including a description of why on-road use is necessary, and how long it would be used on public roads.

In its permission letters, NHTSA may require reporting requirements and operational restrictions.

III. Overview of this Interim Final Rule

²⁸ 49 CFR 591.6(f)(1)

²⁹ *Ibid.*

³⁰ 49 CFR 591.6(f)(1).

This interim final rule establishes 49 CFR part 589 to set forth procedures allowing manufacturers and other entities to seek temporary exemptions for domestically produced vehicles and equipment for research or demonstration.³¹ As noted above, NHTSA believes this interim final rule for domestically produced vehicles and equipment will have limited applicability to the established vehicle manufacturers that meet the criteria of 49 U.S.C. 30112(b)(10), as established in the FAST Act. To the extent these manufacturers are undertaking research or demonstration involving domestically produced noncompliant vehicles meeting the terms of § 30112(b)(10), there would be no need for them to obtain exemptions under the new part 589. Accordingly, this interim final rule generally pertains to vehicles and equipment domestically produced by entities that do not meet the definitional criteria of § 30112(b)(10), though those entities may still apply for an exemption if their vehicle and testing program would otherwise not meet the requirements in § 30112(b)(10).

While the program is not limited to vehicles equipped with ADS, NHTSA expects that much of the benefit derived from the program will come from ADS-equipped vehicle research and demonstration projects because many of the entities engaged in domestic manufacturing that are developing ADS formed after passage of the FAST Act and are therefore unable to operate under the exception provided by § 30112(b)(10). For domestic developers of ADS technologies to realize the full promise of ADS, it is vital that they have opportunities to gain practical, on-road experience to validate the development and findings from laboratory and track testing, and learn which approaches and combinations of hardware and software offer the greatest levels of safety and reliability.

³¹ In contrast to part 591, vehicles manufactured for use solely on non-public roads, closed test tracks, laboratory settings and the like, do not need an exemption and are not covered by this regulation, as such places are not “public streets, roads, and highways.”

The program established today provides regulatory relief to entities engaged in domestic production by providing an opportunity to seek research and demonstration exemptions. This provides relief from the requirement either to seek an exemption under Part 555 or finalize the development of a vehicle to the extent that they could formally certify compliance with all applicable FMVSS as a prerequisite to testing the vehicle or performing research on public roads. Conducting the tests or simulation to certify compliance with applicable FMVSS can be an enormously costly undertaking, requiring years of development and research. For this reason, the costs and burdens of meeting the FMVSSs unnecessarily hinders new domestic manufacturing, done by either established manufacturers or new technology companies, from continued development of advanced vehicle technologies. Likewise, the costs of developing a vehicle to such an extent that the manufacturer can demonstrate to NHTSA an equivalent level of safety to a fully compliant vehicle acts as a barrier to realistic validation of prototype vehicles. Since vehicles that would be eligible for an exemption under this program would not be eligible for sale to the public, would only operate on public roads based on conditions imposed by NHTSA (which may limit the amount of time or include other requirements), NHTSA believes this program will provide risk-managed regulatory relief to manufacturers engaged in domestic production that are not subject to the FAST Act exception under § 30112(b)(10).

NHTSA anticipates that this program will not only benefit entities receiving exemptions under the program in the near term, but also ultimately the public. In recent years, great strides have been made by U.S. developers of vehicle technologies. While there may be a small degree of exposure of the public to noncomplying vehicles and equipment being researched, the exposure would be extremely limited and carefully controlled, resulting in a very low safety risk. On balance, NHTSA believes that on-road testing and research carried out under this program

will help expedite development of advanced safety technologies subject to Agency oversight. These advanced safety technologies, in turn, will help improve overall motor vehicle safety.

IV. Exemption Program

Part 589 will provide two paths for receiving an exemption, mirroring the part 591 importation program. The first path applies to entities³² that have domestically manufactured and certified fully compliant motor vehicles. These entities are permitted to operate nonconforming vehicles and equipment on public roads for research or demonstration without first obtaining NHTSA's permission. To obtain an exemption under this path, the entity will need to provide specified information to NHTSA prior to commencing on-road operation. The second path applies to entities that do not qualify under the first path, e.g., entities that have not yet manufactured fully-compliant vehicles. For the second path, the person or entity seeking the exemption must submit a request to NHTSA and receive approval of the exemption.

Obtaining an Exemption Under Part 589

Since 1992, the existing import program (49 CFR part 591), has allowed "original manufacturers" of motor vehicles (or a wholly owned subsidiary thereof) certified to comply with all applicable FMVSS to import non-conforming vehicles for research or demonstration without permission from NHTSA.³³ 49 CFR 591.4 defines "original manufacturer" as "the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards." This interim final rule

³² This does not apply to the introduction in interstate commerce of nonconforming vehicles solely for testing or evaluation by manufacturers meeting the criteria of § 30112(b)(10) of the National Traffic and Motor Vehicle Safety Act—no such exemption is necessary for such manufacturers.

³³ 57 FR 2043, January 17, 1992.

maintains this dichotomy between original manufacturers and other entities in the exemption program for domestically produced vehicles and equipment.³⁴

Part 589 is designed to address the introduction in interstate commerce of nonconforming vehicles by manufacturers that started certifying and distributing vehicles that comply with all applicable FMVSS *after* the enactment of the FAST Act (December 4, 2015) or that have *not yet* certified and distributed vehicles that comply with all applicable FMVSS.³⁵ Part 589 distinguishes between manufacturers that have certified motor vehicles and those that have not.

a. Entities that may obtain an exemption without written approval from NHTSA

The new domestic program mirrors part 591 by allowing “original manufacturers” to obtain exemptions under part 589 without needing to request and receive NHTSA’s approval to introduce in interstate commerce nonconforming domestically produced vehicles and equipment for research or demonstration (49 CFR 589.5). For consistency, “original manufacturer” is defined as it is in § 591.4. *Original manufacturer* means the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards. An original manufacturer must meet the manufacturer identification requirements of 49 CFR part 566. An original manufacturer must already certify vehicles to all applicable Federal motor vehicle safety standards (FMVSS). If these requirements

³⁴ This part 589 program will not apply to manufacturers that meet the requirements in § 30112(b)(10) that introduce domestically produced vehicles in interstate commerce for testing or evaluation purposes in the ways consistent with that provision. Those § 30112(b)(10) manufacturers do not need to seek an exemption under this interim final rule to operate a domestically produced vehicle on public roads for purposes of testing or evaluation.

³⁵ Part 589 does not apply to the introduction in interstate commerce of domestically produced nonconforming vehicles solely for testing or evaluation by manufacturers that qualify under the FAST Act’s non-application provision (§30112(b)(10)).

are met, the manufacturer can obtain research or demonstration exemptions for vehicles or equipment without written permission from NHTSA.

Because these manufacturers are currently manufacturing and certifying vehicles that meet the FMVSS, they have demonstrated they have the technical understanding of Safety Act requirements and responsibilities to produce complying vehicles for the U.S. market. Allowing these established manufacturers temporary exemptions without having to seek NHTSA approval avoids unnecessary administrative burdens in testing advanced technologies and prototypes during product development and evaluation.

b. Entities for which written approval from NHTSA is required obtain an exemption

Like the current import program, this interim final rule permits entities other than original manufacturers to obtain research or demonstration exemptions for domestically produced nonconforming vehicles and equipment.³⁶ However, these entities must seek and receive NHTSA's approval. The written request to NHTSA must contain information that includes, among other requirements, a description of the intended use for the nonconforming vehicle or equipment.³⁷ We note that entities seeking an exemption, especially for an ADS vehicle, may be required to submit additional information about the specific standards with which the vehicle or equipment does not comply, and steps that will be taken to mitigate risks associated with those non-compliances. This information will provide NHTSA with the information necessary to evaluate the exemption request for completeness and potential risks. As with the import exemption program, NHTSA will determine what, if any, information is needed on a case-by-

³⁶ NHTSA reiterates that the requirements in Part 589 do not apply to the introduction in interstate commerce of a motor vehicle solely for testing or evaluation by manufacturers meeting the criteria of § 30112(b)(10) of the National Traffic and Motor Vehicle Safety Act.

³⁷ See, e.g., 49 CFR 591.6(f)(1), which states: "If use on the public roads is an integral part of the purpose for which the vehicle or equipment is imported, the statement shall request permission for use of 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 on the public roads is necessary."

case basis. A discussion of some of the information NHTSA may request may be found in the description, above, of NHTSA's import exemption program.

V. Exemption Periods

This interim final rule limits the exemption period to not more than three (3) years, but allows for renewal, upon application to and approval of NHTSA. However, exemptions that are granted by letter may be, and often will be, shorter. For example, import exemptions for on-road research or demonstration programs generally last between six months and one year.

Exemptions provided to original manufacturers last three years. At the end of the exemption period, the exempted entity must dispose of the vehicle or item of equipment (e.g., permanently kept off public roads, exported, or destroyed), and notify NHTSA of the disposition within 30 days.

The 3-year period is similar to that for provided for imports. Part 591 specifies that a vehicle or item of equipment that imported for research or demonstration, and for which a Temporary Importation Bond has been provided to the Secretary of the Treasury, shall not remain in the U.S. for a period that exceeds three years from its date of entry.³⁸ Import exemptions may be extended upon request for an additional period of time not to exceed 5 years from the date of entry upon approval from NHTSA.

VI. Restrictions on Exemptions

Vehicles exempted under this program must be used on road for only research or demonstration. Similar to part 591, the program restricts transfer of title to the vehicles, and exemptions that require NHTSA's written permission are subject to the terms on which NHTSA grants the exemption. Persons obtaining exemptions by permission letters must agree not to sell,

³⁸ See 49 CFR 591.7(a).

or transfer vehicle or equipment possession or title, and not to license the vehicle for use or operation on public roads except as authorized by the Agency.

In administering part 591, NHTSA has consistently interpreted “research” and “demonstration” to exclude certain types of commercial operations, such the provision of transportation services for fees (e.g., fares, fees that are collected through subscriptions for delivery of goods, or fees that are included in the price of delivered goods).

VII. Revocation of Exemptions

Section 30114 provides that the exemptions provided under that section take place “on terms the Secretary [(through NHTSA)] decides are necessary” Accordingly, manufacturers receiving exemptions under this program would be *conditionally* exempt from § 30112(a)’s prohibition against importing and introducing noncomplying motor vehicles or motor vehicle equipment in interstate commerce. The exemption is conditioned on the applicant complying with all terms and requirements of the program, including all terms imposed by NHTSA. A violation of a term or requirement imposed by part 589 or by NHTSA, could void the authorization and require the immediate nonoperation, destruction, or exportation of the vehicle. Such a violation could also be considered a violation of 49 U.S.C. 30112(a), and be subject to civil penalties.

Similarly, if NHTSA determines that a vehicle or item of equipment subject to an exemption presents an unreasonable risk to safety, the Agency may modify, suspend, or revoke the exemption, as appropriate.

VIII. Overview of Benefits and Costs

The potential safety benefits of this interim final rule have not been quantified. NHTSA believes safety benefits will likely become manifest in the long term through the Agency’s

facilitation of risk-managed on-road testing. This rule is expected to reduce barriers to, and costs associated with, research and development of advanced vehicle technologies. On-road testing is an important part of the overall development of ADS technologies, and NHTSA believes that making it easier for manufacturers and developers of domestically produced vehicles to conduct valuable research could help the industry realize significant gains in motor vehicle safety. However, NHTSA cannot quantify the ultimate effect of the research and demonstration that these procedural rules encourage at this time, as they would be contingent upon a number of unknown factors, including: the exemptions the Agency may grant; the success of technological development that occurs through the vehicles exempted under this program; and eventual consumer demand for technologies developed through the program. Some of the unquantifiable benefits of this rulemaking include reduced research and development costs, reduced barriers to innovation, and the support of the domestic ADS hardware and software developer community in the economic aftermath of the health emergency.³⁹

This interim final rule permits manufacturers and other entities engaged in domestic production to obtain temporary exemptions for nonconforming vehicles and equipment for research or demonstration. While all manufacturers and developers can conduct on-road testing of ADS technologies using vehicles certified as compliant, doing so is costly and generally reflects a stage in vehicle development that occurs well after the benefits from research and demonstration would accrue. Accordingly, the inability for some developers engaged in domestic production to pursue exemptions allowing for research or demonstration of nonconforming vehicles acts as an impediment to the development of vehicle technologies through testing of prototype non-compliant vehicles. This is particularly true for smaller

³⁹ See Letter from Vikrant Aggarwal, President, Local Motors, to NHTSA Deputy Administration James Owens, June 15, 2020, *supra*.

companies, whose ability to invest in new research is often constrained by limited available capital. While operation of nonconforming vehicles comes with some inherent safety risk, such risks will be small and will be mitigated by NHTSA oversight and through the imposition of terms and conditions that apply to exemptions. NHTSA further believes that such risks will be mitigated because the exemptions will be for only a temporary period (currently the permission letters NHTSA issues under the part 591 program are for periods less than a year). As a result, any potential disbenefits from today's interim final rule associated with increased safety risks are expected to be minimized.

There are quantifiable costs to this rulemaking in the form of information and reporting requirements for manufacturers and other entities engaged in domestic production that choose to take advantage of the new regulation for research and demonstration. NHTSA has estimated the cost to comply with these various information and reporting requirements, which are explained in more detail in the discussion of the Paperwork Reduction Act below. To summarize, NHTSA estimates the overall annual paperwork burden for entities that would request exemptions under part 589 to be \$91,746 for the program.⁴⁰ NHTSA has estimated compliance costs associated with a 1-year exemption for a vehicle or item of equipment under different circumstances. These represent the cost for submitting the information required to obtain or request an exemption under part 589, submitting disposition reports, and submitting monthly disengagement reports. Annual costs range from about \$65 (for an original manufacturer) to about \$1,584 (for a manufacturer requesting permission to operate an ADS-equipped vehicle). The highest compliance cost is attributable to disengagement reports and other conditions that NHTSA may

⁴⁰ NHTSA estimated total annual paperwork burden based on the total number of exemptions that are expected to be sought each year. As explained in the memorandum, NHTSA estimates that 47 entities will seek exemptions for 280 vehicles or items of motor vehicle equipment each year.

impose on exemptions for vehicles that will be operated with an ADS. These costs are discussed in detail in the Paperwork Reduction Act Analysis.

Table 3: Summary of Compliance Costs

Exemption Scenario	Submitting Information to Obtain an Exemption	Other possible ADS-related Exemption Conditions	Disposition Report	Total Cost
Manufacturer does not Require Written Approval	\$48.68	N/A	\$16.23	\$64.91
Exemption Request: Equipment	\$48.68	N/A	\$16.23	\$64.91
Exemption Request: Non-ADS-Equipped Vehicle	\$292.08	N/A	\$16.23	\$308.31
Exemption Request: ADS-Equipped Vehicle	\$876.24	\$691.54	\$16.23	\$1,584.01

IX. Effective Date and Good Cause for Issuing an Interim Final Rule

NHTSA is adopting the new regulatory provisions of this interim final rule effective immediately. The Administrative Procedure Act (APA) states that a rule cannot be made effective less than 30 days after publication, unless the rule falls under one of three enumerated exceptions. One of these exceptions is for a rule that “grants or recognizes an exemption or relieves a restriction.”⁴¹ This rule would fall under this exception because it provides a new avenue for persons and entities to obtain exemptions to operate nonconforming vehicles and equipment on public roads for research and demonstration purposes.

The APA also requires notice of a proposed rulemaking and opportunity for public comment unless an exception applies.⁴² One of these exceptions is when the Agency finds good cause not to provide prior notice and public comment because public comment is impracticable, unnecessary, or contrary to the public interest, and the Agency incorporates that finding, and

⁴¹ 5 U.S.C. 553(d)(1).

⁴² 5 U.S.C. 553(b).

briefly states the reasons for that finding, in the rule.⁴³ NHTSA has determined that the Agency has good cause to issue this rule as an interim final rule because complying with the notice and comment process is impracticable and contrary to the public interest.

In this instance, regulatory gaps arising from the confluence of multiple FMVSS exemption and exception frameworks have uniquely disadvantaged new manufacturers that domestically produce vehicles by precluding them from analogous relief available to established domestic manufacturers and all manufacturers engaged in foreign production. Specifically, new manufacturers and technology companies engaged in the domestic development of emerging vehicle technologies have been at a disadvantage compared to established domestic manufacturers and manufacturers of foreign vehicles in their ability to conduct valuable on-road research. As many commenters pointed out in responding to NHTSA's ADS Pilot ANPRM, on-road testing is crucial to the development of ADS technology.⁴⁴ In recognition of the disparity in opportunity for such testing, NHTSA announced its intention to issue an NPRM expanding its existing import exemption program to entities engaged in domestic production.⁴⁵

The COVID-19 public health emergency has increased the urgency of the need to provide regulatory relief and expedited this regulatory effort. The public health emergency has caused widespread devastation to automotive developers, suppliers, and auto manufacturers.⁴⁶ NHTSA expects these impacts to be particularly devastating to newer companies, which are typically smaller and less able to weather the economic effects of the public health emergency than larger,

⁴³ 5 U.S.C. 553(b)(3)(B).

⁴⁴ See Comment from the Alliance of Automobile Manufacturers, Docket No. NHTSA-2018-0092-0044, at 2. "Public road testing is required as part of the engineering process in order to fully develop ADS-equipped vehicle technologies."

⁴⁵ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=2127-AM14>.

⁴⁶ See MEMA statement, "Needs of U.S. Suppliers to Support the Entire Motor Vehicle Industry," June 18, 2020. ("Recently, almost 20 percent of the automotive original equipment suppliers surveyed reported a severe liquidity crisis that could lead to insolvency within eight weeks. These manufacturers are primarily mid-size manufacturers with significant operations in the United States.")

more-established manufacturers. In particular, development projects for such small and medium-sized companies often operate on shorter investment horizons or with smaller capitalizations, rendering both the companies and their individual development projects more vulnerable to market fluctuations. In addition, research and development projects typically form a larger proportion of such manufacturers' portfolios, as the companies do not always possess a diversified lineup of established certified vehicles whose sales supplement long-term research and investment projects. As such, the disadvantage to such small and medium-sized manufacturers engaged in domestic production from the current exemption framework is particularly acute during the COVID-19 public health emergency.

The unavailability of an exemption program specifically designed for research and development is particularly difficult for small and mid-sized entities engaged in domestic production, as they tend to be more likely to seek to test nonconforming domestically produced vehicles on public roads under this new program. NHTSA has already seen reductions in research activities across the industry and expects that smaller companies will struggle to continue making technological breakthroughs and generating the momentum they had prior to the national emergency,⁴⁷ particularly newer manufacturers that are disadvantaged in their ability to perform valuable on-road testing. Moreover, given the research and development focus of the exemption program, much of the vehicle technology at issue involves competitive and dynamic innovation. As such, in the time required for a rule to progress through the ordinary path of an NPRM and final rule, a company, such as a newer domestic manufacturer--without an opportunity to obtain an analogous exemption enjoyed by competitors in the industry, such as

⁴⁷ See Letter from Vikrant Aggarwal, President, Local Motors, to NHTSA, June 15, 2020, *supra*. (“On May 1, 2020, LM Industries and Local Motors had to make the difficult decision to lay off a significant number of our team members while continuing to cease most of our operations (production, testing and deployment of Olli shuttles) around the country and world.”)

manufacturers of foreign vehicles or existing domestic manufacturers, may experience a permanent loss in a competitive technological sphere. The risk for such a loss is particularly critical during the limited economic opportunities posed by the COVID-19 public health emergency.

Therefore, this interim final rule is intended to help companies that domestically produce vehicles continue to improve upon the research learnings from the past several years and incentivize these entities to weather the economic effects of the public health emergency. It provides a level playing field by permitting them to seek an exemption allowing for managed on-road testing of new technologies for research and development. As auto manufacturers and developers recover, they may reevaluate strategies and investment opportunities in the aftermath of the national emergency and reassess the robustness of their supply chains and their long-term investments in advanced technologies. NHTSA is implementing this interim final rule to provide certainty to these entities as they assess strategies and revamp research and development plans. This interim final rule will provide them the opportunity either to commence on-road testing immediately, if they are eligible for that provision, or to seek approval for such testing through exemption frameworks analogous to those currently used in the import context, which NHTSA considers an effective means to facilitate innovation while establishing terms to mitigate safety risk. The Agency hopes that, in addition to providing newer manufacturers of domestic vehicles with the opportunities currently enjoyed by manufacturers that import their vehicles, this final rule will enable entities to make vital and urgent decisions to maintain continued development of advanced technologies and demonstrate progress that may be necessary to sustain funding and investment for that development. The Agency intends that this rule's facilitation of research of domestically produced vehicles equipped with an ADS will make more feasible discovery and

advancements of cutting-edge vehicle safety technologies, help stabilize the industry, and encourage entities, particularly smaller domestic developers, to stay the course.

While NHTSA has determined that there is good cause to issue this interim final rule without advance notice and comment and with an immediate effective date, the Agency is interested in the views of the public and request comment on all aspects of the interim final rule. After reviewing the comments received on this document, NHTSA will publish a subsequent final rule responding to the comments.

X. Regulatory Notices and Analyses

Executive Orders 12866 and 13563 and DOT Rulemaking Procedures

NHTSA has considered the impact of this interim final rule under Executive Orders 12866 and 13563, and the Department of Transportation's administrative rulemaking procedures set forth in 49 CFR part 5, subpart B. This interim final rule is considered significant and was reviewed by the Office of Management and Budget under these Executive Orders

The amendments adopted by this interim final rule implement an exemption program set forth in the Safety Act for vehicles used for research, demonstration and other purposes, but it will involve a relatively small number of motor vehicles and items of motor vehicle equipment for short time periods. The number of vehicles will be limited because entities will not be permitted to engage in road testing for deployment purposes, and must dispose of the vehicle or equipment after the research period concludes. Thus, there will be little financial incentive to use this exemption authority other than for research or demonstration purposes.

Potential benefits include reduced research and development costs, and reduced barriers to innovation, and possibly, expedited development of advanced vehicle technologies. However, while on-road testing is an important part of such development, NHTSA does not anticipate the

program having measurable impacts on safety due to its permitting operation of a small number of noncompliant vehicles and equipment on public roads for limited purposes and time periods. NHTSA expects the program to have no significant effect on the national economy, due to the small number of vehicles and equipment affected by this program.

Executive Order 13771 (Regulatory Reform)

NHTSA has reviewed this final rule for compliance with E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) which requires Federal agencies to offset the number and cost of new regulations through the repeal, revocation, or revision of existing regulations. As provided in OMB Memorandum M-17-21 (“Implementing E.O. 13771”), a “regulatory action” subject to E.O. 13771 is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. As discussed above, this action is a significant rule under Executive Order 12866. However, this rule is not subject to the requirements of E.O. 13771 because this rule is an enabling regulatory action that results in no more than *de minimis* costs.

Executive Order 13924

This rule is consistent with E.O. 13924, “Regulatory Relief to Support Economic Recovery,” and is part of the country’s ongoing COVID-19 recovery effort. The order directs Agencies to address the current economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery or by issuing new proposed rules as necessary. In recent years, great strides have been made by U.S. developers of ADS and other advanced technologies, which have the potential to improve safety. However, the advancements by these innovators and developers, many of which are small or medium businesses, were unexpectedly and direly curtailed by the 2020 public

health emergency. This interim final rule is consistent with E.O. 13924 by providing an urgently needed means for these innovators and developers to engage in on-road testing of their new technologies for research and development. It provides the same opportunities for manufacturers engaged in domestic production, and applies the exact same regulatory requirements on exemption applicants, as is currently required for an importer of a nonconforming motor vehicle or equipment item for purposes of research or demonstration. No negative effect on safety is anticipated due to the small numbers of vehicles and equipment affected by this program, and the oversight provided of the research endeavors.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended. The Agency has determined that implementation of this action will not have an adverse impact on the quality of the human environment.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an Agency is required to publish an NPRM or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (e.g., small businesses, small organizations, and small governmental jurisdictions). However, rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when, among other things, the Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. (Small Business Administration's Office of Advocacy

guide: *How to Comply with the Regulatory Flexibility Act. Ch. I. p.9.*) Accordingly, NHTSA is not required to conduct a regulatory flexibility analysis.

Nonetheless, NHTSA has evaluated the effects of this interim final rule under the Regulatory Flexibility Act to understand the possible impacts of this rulemaking on small entities. This rule may have a significant impact on a substantial number of small entities, but it would be a positive impact. While NHTSA is not required to issue a regulatory flexibility analysis because this interim final rule is exempt from notice and comment procedure, NHTSA has chosen to provide a full discourse of the issues and potential impacts an RFA would discuss. Comments are requested on this analysis.

Section 603(b) of the Act specifies the content of a RFA. Each RFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for the rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the rule will apply; (4) a description of the projected reporting, recording keeping and other compliance requirements of the rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule; and (6) a description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

1. Description of the reason why action by the Agency is being considered

This action is undertaken by the Agency to provide a mechanism by which domestically produced vehicles and equipment may be temporarily exempted from the requirement to meet all

applicable FMVSS, so they may be temporarily used on public roads for research or demonstration purposes. This interim final rule is intended to provide all entities the opportunities to gain practical, real world experience to expedite the full realization of advanced technologies. NHTSA is issuing this interim final rule to provide an urgently needed means for innovators and developers of new technologies to continue the momentum they had prior to the public health emergency and attain stability through new avenues in on-road research. This interim final rule will affect small manufacturers that domestically produce vehicles in a positive way, because it allows them the opportunity to road test vehicles and equipment for research or demonstration. Although NHTSA cannot quantify the economic benefit this rule will provide, NHTSA expects the impact to be significant and immediately help new manufacturers and ADS developers weather the economic effects of the public health emergency.

2. Objectives of, and legal basis for, the rule

Temporary exemptions for domestically produced vehicles and equipment for research or demonstration will encourage innovation by allowing all developers of advanced technologies much needed opportunities to gain practical, on-road experience of their technologies. This rule will also provide certainty and stability to developers of new technologies. The public health emergency caused widespread devastation of the automotive supply chain. As developers, suppliers and auto manufacturers recover, they will reevaluate strategies and investment opportunities in the aftermath of the health emergency and reassess the robustness of their supply chains and their long-term investments in advanced technologies. This interim final rule provides certainty to these entities, as they assess strategies and research plans, that on-road research will be available during this interim period, and potentially beyond. The Agency hopes

that this knowledge will enable entities to make immediate and urgent plans to maintain continued development of advanced technologies.

The legal basis for this rule is 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

3. Description and estimate of the number of small entities to which the final rule will apply

This interim final rule primarily impacts entities that would fall under North American Industry Classification System (NAICS) Nos. 336111, 336112, and 336120 for Automobile Manufacturing, Light Truck and Utility Vehicle Manufacturing, and Heavy Duty Truck Manufacturing. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, entities in these industries are small businesses if they have 1,500 or fewer employees. NHTSA expects that entities affected by this rule will have 1,500 employees or fewer.⁴⁸

Because the FAST Act provided an avenue for established manufacturers to test and evaluate nonconforming motor vehicles on public roads, NHTSA expects that many of the manufacturers impacted by this interim final rule will be small entities. The manufacturers most impacted by this final rule will be manufacturers that first certified motor vehicles after December 4, 2015 and new manufacturers that have not manufactured a certified motor vehicle.

In addition, this final rule also provides a path for ADS developers and other entities interested in operating and testing ADS-equipped nonconforming vehicles on public roads to partner with manufacturers. While the partners may include established large manufacturers, the

⁴⁸ While there are many motor vehicle manufacturers in the U.S., a number of these are vehicle manufacturers meeting the qualifications of § 30112(b)(10) of the Safety Act. Those manufacturers are unlikely to be affected by this rule, as § 30112(b)(10) already permits them to engage in on-road testing of noncomplying vehicles for research or demonstration.

exemption would primarily benefit the other entity. This entity is much more likely to be a small entity as classified by SBA.

Current Small Manufacturers

Currently, there are at least 14 small light vehicle manufacturers in the United States.⁴⁹ Table 4, below, provides information about the 14 small domestic manufacturers in MY 2020. All are small manufacturers, having fewer than 1,500 employees. The Agency notes that, in today's motor vehicle market, small vehicle manufacturers, who are less able than large manufacturers to take advantage of economies of scale to lower production costs, typically produce specialized, expensive vehicles. Many small manufacturers may not have a need to participate in the program as they would be able to test and evaluate nonconforming vehicles on public roads pursuant to the Safety Act's carve out for testing or evaluation, 49 U.S.C. 30112(b)(10). However, NHTSA expects some small motor vehicle manufacturers will participate in the exemption program, either because they are too recently established to qualify for the testing and evaluation carve-out, or because the purpose for operating their vehicle is not covered by the carve-out, but would be covered by an exemption under this program. NHTSA anticipates that the program will continue to grow as new vehicle manufacturers are established. NHTSA expects the benefit participants derive from such participation is expected to vary significantly.

Vehicles used in this program for on-road testing can never be sold or deployed for commercial purposes. At the end of the exemption period, the vehicle must be permanently kept

⁴⁹ This information is set forth in NHTSA's Preliminary Regulatory Impact Analysis (PRIA) developed for an NPRM published on March 30, 2020 (85 FR 17624, Docket No. NHTSA-2020-0014) ("Preliminary Regulatory Impact Analysis, Occupant Protection for Vehicles Equipped with Automated Driving Systems," March 2020). The NPRM proposed amendments to NHTSA's crashworthiness FMVSS that would facilitate the certification of motor vehicles equipped without driver controls. Regulatory Information Number 2127-AM06.

off public roads, exported, or destroyed. Because of these restrictions on deployment of the research vehicles, some small vehicle manufacturers might decide not to use one of their scarce vehicles to engage in on-road testing for research purposes. However, if the manufacturer is engaged in developing advanced vehicle technologies, such as ADS, the likelihood of participating and benefiting significantly from this rulemaking is expected to increase.

Table 4: Small Volume Vehicle Manufacturers (MY 2020)⁵⁰

Manufacturer	Description of Vehicles Produced	Number of Employees (Appx.)	MSRP for Vehicles (Appx.)
Anteros Coachworks	Specialty Sports Cars	2	\$110,000
Callaway Cars	Specialty Sports Cars	50	~\$17,000 above base (GM) vehicle price
Carroll Shelby International	Specialty Sports Cars	170	\$86,085-\$180,995+
Equus Automotive	Specialty Sports Cars	25	\$250,000+
Falcon Motorsports	Specialty Sports Cars	2	\$300,000-\$400,000
Faraday Future	Electric	350	\$225,000
Fisker Inc.	Electric	<200	\$37,499+
Karma Automotive	Electric	750	\$135,000

⁵⁰ Provided to illustrate the current population of small vehicle manufacturers.

Lucid Motors	Electric	1,100	\$60,000+
Panoz	Specialty Sports Cars	<50	\$159,900+
Rivian	Electric	1,300	\$69,000-\$72,500+
Rossion Automotive	Specialty Sports Cars	70	\$80,000
Saleen Automotive	Specialty Sports Cars	170	\$48,000-\$100,000+
SSC North America	Specialty Sports Cars	9	\$2,000,000

Current Small Developers

The Agency has identified 8 small entities to be developing ADS systems and integrating them with light vehicle platforms (see Table 4 below).⁵¹ All are small entities, having fewer than 1,500 employees. It is noted that these small firms, which are less able than large manufacturers to take advantage of economies of scale to lower production costs, produce specialized and expensive vehicles.

Table 4: Small Firms Engaged in ADS Development

Manufacturer	Employees
Apex AI	34
Argo AI	700
Local Motors	200
May Mobility	45
Next Future Transportation	14
Optimus Ride	140
Perrone Robotics	32
Voyage Auto	27

⁵¹ Source: “Preliminary Regulatory Impact Analysis, Occupant Protection for Vehicles Equipped with Automated Driving Systems,” March 2020, *supra*. Note, however, that Zoox was listed in the PRIA but was recently acquired by Amazon. “Amazon acquisition suggests plan for driverless deliveries,” p. A22, The Washington Post, June 27, 2020. Accordingly, this IFR does not include Zoox in the table.

NHTSA intends the interim final rule will have a positive effect on these types of manufacturers and developers of advanced technologies, including ADS, to help them recover from the impacts of the public health emergency. The Agency seeks to provide certainty to these entities so that when they are assessing strategies and reconsidering research and development plans, they will know that on-road research will be available during this interim period, and potentially beyond. The Agency hopes that this knowledge will enable them to make immediate and urgent plans to maintain plans for continued development of advanced technologies. However, ultimately, the decision to stay the course will depend on many factors other than the ability to engage in on-road testing for research. Nonetheless, because of the potential value of on-road testing for ADS development, NHTSA anticipates this rulemaking will have a significant impact on a substantial number of developers and other small entities.

4. A description of the projected reporting, recording keeping and other compliance requirements of a final rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

There are reporting and compliance requirements in the new 49 CFR part 589: a requirement to submit specific information to obtain an exemption; a requirement to report the disposition of the vehicle or equipment, and for entities that are not original manufacturers, NHTSA may apply additional requirements to exemptions granted by permission letter (e.g., an incident reporting requirement).

The first of these requirements is to submit information to obtain an exemption under the program. For some entities, submitting the information is all that is necessary to obtain the exemption. For others, they must receive written permission from NHTSA. The burden associated with this requirement varies depending on whether the exemption is sought for a

motor vehicle or an item of motor vehicle equipment, whether permission from NHTSA is required, and whether the vehicle, or a vehicle on which the exempt equipment is installed, will be operated with an ADS. For certifying manufacturers that do not require permission from NHTSA, and for entities seeking an exemption for items of equipment, the estimated burden for submitting the required information is 30 minutes. Requests for exemptions for items of equipment and non-ADS-equipped vehicles are expected to take 3 hours, and requests involving ADS-equipped vehicles are expected to take 9 hours. NHTSA has estimated the cost associated with these information requirements based on the assumption that the information can be furnished by an engineering manager. Accordingly, NHTSA estimates the cost associated with these information submission requirements to be: (1) \$48.68 for exemptions sought by entities not requiring written approval from NHTSA; (2) \$48.68 for exemption requests for items of equipment; (3) \$292.08 for exemption requests for non-ADS-equipped vehicles; (4) and \$876.24 for exemption requests for ADS-equipped vehicles.

Regarding the requirement to report the disposition of the vehicle or equipment, NHTSA expects that disposition reporting will take, on average, 10 minutes per vehicle or item of equipment.

In addition to the requirements found in part 589, based on part 591 permission letters NHTSA will likely apply terms and conditions when granting exemptions that require permission from NHTSA under part 589. In particular, a routine requirement for ADS-equipped vehicles are monthly disengagement reporting and supplemental labeling requirements.

For entities other than original manufacturers, NHTSA anticipates a permission letter will require them to report incidents. NHTSA expects that incident reporting will be rare and take, on average, 2 hours per incident. NHTSA anticipated having quarterly disengagement reporting

requirements for ADS-equipped vehicles just as it currently does for ADS-equipped vehicles imported pursuant to research and demonstration exemptions under 49 CFR part 591. NHTSA estimates that it takes approximately 5 hours for each monthly disengagement report. Finally, NHTSA anticipates that the agency may require supplemental labeling for ADS-equipped vehicles, particularly those that will be operated with members of the public onboard. NHTSA estimates that it will take 10 minutes to format these labels, and 3 minutes to affix each label.

Table 5 below provides a summary of the compliance costs and burden hours associated with a 1-year exemption for a vehicle or item of equipment under different scenarios:

Table 5: Summary of Compliance Costs and Burden Hours

Exemption Scenario	Submitting Information to Obtain an Exemption	Label Formatting Cost	Label Affixing Cost	Disposition Reporting	Quarterly Disengagement Report	Total Cost	Total Burden Hours
Entities that do not require written approval from NHTSA	\$48.68 30 minutes	N/A	N/A	\$16.23 10 minutes	N/A	\$116.69	40 minutes
Exemption Request: Equipment	\$48.68 30 minutes	N/A	N/A	\$16.23 10 minutes	N/A	\$356.99	40 minutes
Exemption Request: Non-ADS-Equipped Vehicle	\$292.08 3 hours	N/A	N/A	\$16.23 10 minutes	N/A	\$360.09	3 hours and 10 minutes
Exemption Request: ADS-Equipped Vehicle	\$876.24 9 hours	\$8.40 10 minutes	\$1.61 3 minutes	\$16.23 10 minutes	\$486.8 5 hours	\$1,584.01	14 hours and 23 minutes

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the final rule.

NHTSA knows of no Federal rules which duplicate, overlap, or conflict with the final rule.

6. A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.

The interim final rule represents a deregulatory action that would affect small entities domestically producing vehicles and equipment. It adopts an inclusive program under which all entities domestically producing vehicles and equipment for research or demonstration may apply for temporary exemptions of vehicles and equipment for on-road testing. No meaningful alternative is known that could achieve the stated objective of the Safety Act with less of an economic impact.

Executive Orders 13132 (Federalism)

NHTSA has examined today's interim final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, E.O. 12988, "Civil Justice Reform" (61 FR 4729; February 7, 1996), specifically requires that the Agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all

provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above in connection with E.O. 13132. NHTSA has also considered whether this rulemaking would have any retroactive effect. This rule does not have any retroactive effect. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 13609: Promoting International Regulatory Cooperation

Under E.O. 13609 (77 FR 26413, May 4, 2012), Agencies must consider whether the impacts associated with significant variations between domestic and regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Sections 3 and 4 of E.O. 13609 direct an agency to conduct a regulatory analysis and ensure that a rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule.

NHTSA has analyzed this action under the policies and agency responsibilities of E.O. 13609, and has determined that this action would have no effect on international regulatory cooperation. NHTSA requests public comment on whether regulatory approaches taken by foreign governments concerning the subject matter of this rulemaking and the above policy statement have any implications for this rulemaking.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), all Federal Agencies and Departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards to carry out policy objectives or activities determined by the Agencies and Departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. NHTSA has searched for but did not find any voluntary consensus standards that would apply to this final rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal Agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Agency publishes with the final rule an explanation why the Agency did not adopt the alternative.

This interim final rule is not anticipated to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of 100 million, \$154 million when adjusted for inflation, annually.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal Agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The Information Collection Request (ICR) for the new information collection has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

In compliance with the requirements of the PRA and OMB's implementing regulations, NHTSA has prepared the following analysis relating to the interim final rule establishing 49 CFR part 589. NHTSA requests public comments on this collection of information.

Title: 49 CFR Part 589, Exemptions for Research, Investigations, Demonstrations, or Training

Type of Request: New collection.

Type of Review Requested: Emergency

OMB Control Number: 2127-New

Form Number: Form 1576.

Affected Public: Persons or entities seeking exemptions for research and other purposes under 49 CFR Part 589.

Requested Expiration Date of Approval: 180 days from the date of approval.

Summary of the Collection of Information:

This information collection covers document submissions required for obtaining exemptions for domestically produced motor vehicles and items of motor vehicle equipment for purposes of research, investigations, demonstrations, or training. This information collection also includes period reporting by persons or entities receiving an exemption under part 589 and labeling and recordkeeping requirements.

Description of the Need for the Information and Use of the Information:

Under 49 U.S.C. 30112(a), persons and entities are generally prohibited from manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce or importing into the United States motor vehicles or items of motor vehicle equipment unless it complies with the applicable Federal motor vehicle safety standards (FMVSS) in effect when the vehicle or item of motor vehicle equipment was manufactured. Section 30114(a) authorizes NHTSA, by delegation, to exempt a motor or item of motor vehicle equipment from 49 U.S.C. 30112(a) on terms it determines are necessary for research, investigations, demonstrations training, competitive racing events, show, or display. NHTSA implemented this exemption for imported motor vehicles and items of motor vehicle equipment in regulations found at 49 CFR part 591. This interim final rule issues a new regulation, 49 CFR

part 589, to implement the exemption for domestically produced nonconforming motor vehicles and motor vehicle equipment.

Under part 589, there are two paths to obtaining an exemption. The first path is reserved for entities that manufacture vehicles that are certified as meeting the FMVSS that meet certain requirements (“original manufacturers”⁵²). These manufacturers are granted an exemption to introduce or deliver for introduction in interstate commerce a nonconforming domestically produced motor vehicle or item of equipment for the purpose of research, investigations, demonstration, or training (“research or demonstration”), provided the manufacturer submits the documentation required under 49 CFR 589.5 and 589.6. For entities other than original manufacturers to be granted an exemption, they must also submit the documentation required under 49 CFR 589.6, but must also request and receive permission from NHTSA to operate the exempted vehicle on public roads. Both original manufacturers and other entities must comply with the various restrictions and requirements imposed under 49 CFR 589.7 and 589.8

The information exemption applicants must submit under 49 CFR 589.6 is as follows: contact information (manufacturer name, mailing address, point of contact, e-mail address, phone number) for the vehicle manufacturer; a full and complete statement identifying the vehicle or item of equipment and its make, model, model year or date of manufacture, and a VIN or unique identifier for each motor vehicle or item of motor vehicle equipment; a declaration that the motor vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards, or that the item of motor vehicle equipment does not conform with all applicable Federal motor vehicle safety standards, but is being introduced in interstate commerce solely for the purpose of research, investigations, demonstrations or training; a statement describing the

⁵² The requirements in Part 589 do not apply to introduction in interstate commerce solely for testing or evaluation by manufacturers meeting the criteria of § 30112(b)(10) of the National Traffic and Motor Vehicle Safety Act.

specific purpose(s) for which the vehicle will be operated on public roads (research, investigations, demonstration, or training), how the vehicle will be used, and a description of the reasons for why public road use is necessary; a statement of the estimated duration for which use of the vehicle on the public roads is necessary, and that the duration would not exceed a period of three years; statements certifying that the entity will comply with each of the restrictions in 49 CFR 589.7; a description of the intended means of final disposition, and disposition date, of the vehicle or equipment after completion of the purposes for which the exemption is sought. This information must be submitted to NHTSA using NHTSA Form 1576.

After submitting this information, entities other than original manufacturers would also need to request permission from NHTSA to operate on public roads, and would not be permitted to do so until receiving that permission. As part of this permission request process, NHTSA may, on a case-by-case bases, seek additional information that NHTSA believes is necessary to evaluate risks associated with granting the exemption, or that would enable NHTSA to apply appropriate terms and conditions if granting the exemption.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):

Likely respondents to the information collection include persons or entities requesting and/or receiving an exemption under the new part 589. NHTSA expects many of the respondents to be smaller manufacturers or ADS developers who are not permitted to test and evaluate nonconforming vehicles on public roads pursuant to the FAST Act exception provided at 49 U.S.C. 30112(b)(10) for certifying original manufacturers of motor vehicles certified to comply with all applicable FMVSS that were established prior to the enactment of the FAST Act on December 4, 2015.

The primary information collection associated with part 589 is the one-time collections of information that an entity seeking an exemption must submit prior to operation on public roads, which applies to all entities seeking an exemption. In addition, for entities receiving an exemption from NHTSA under part 589 via permission letter, NHTSA may also stipulate additional reporting requirements and conditions it deems necessary to help mitigate risks associated with operating a nonconforming vehicle on public roads, but these will be determined on an ad-hoc basis.

Estimated Total Annual Burden Hours:

As discussed above, the information collection requirements associated with part 589 stems from the information NHTSA requires all entities to submit to receive an exemption, as well as additional requirements NHTSA may impose on entities that require a permission letter.

Because most original manufacturers are eligible to test nonconforming vehicles on public roads under 49 U.S.C. 30112(b)(10), NHTSA estimates that it will only receive exemption information from 2 original manufacturers, submitting exemption information for a total of 10 vehicles each year. NHTSA estimates that each submission for the 10 vehicles will take approximately 30 minutes to prepare and submit. Therefore, NHTSA estimates that the total annual burden for original manufacturer exemption submissions will be 5 hours per year (10 submissions \times 0.5 hours per submission).

NHTSA also estimates that very few entities will submit information for exemptions under part 589 for items of motor vehicle equipment. While there are many more exemptions for items of motor vehicle equipment granted under the existing import exemption program, most of these items of motor vehicle equipment are imported for testing in laboratories or on test tracks, and not on public roads. Because of this, NHTSA anticipates that it will receive no more than 5

submissions for exemptions for domestically produced equipment that will be used on public roads. NHTSA estimates that each of the five equipment submissions will take no more than 30 minutes to prepare and submit. Therefore, NHTSA estimates that the total burden associated with part 589 exemption submissions will be 2.5 hours per year (5 requests \times 0.5 hours per submission).

NHTSA anticipates that there will be more part 589 exemptions granted to entities other than original manufacturers, which must seek NHTSA approval through a permission letter. Although it is difficult to estimate, NHTSA believes that in the first three years of the part 589 program, NHTSA will receive no more than 25 requests for exemption for vehicles that are not equipped with an ADS (“Non-ADS-equipped vehicles”).⁵³ While NHTSA estimates that preparing and submitting the initial exemption information will take approximately 30 minutes, NHTSA will likely require additional information it deems necessary to evaluate risks associated with operating a nonconforming vehicle on public roads. Due to this additional information, NHTSA estimates, based on feedback provided by participants in the import exemption program, that it may take, on average, up to 3 hours to complete a request for exemption for a non-ADS-equipped vehicle. Therefore, NHTSA estimates the total burden associated with non-ADS-equipped vehicle exemption requests to be 75 hours (25 requests \times 3 hours per submission).

⁵³ In the last three years for which NHTSA has data on its existing import exemption program (2017, 2018, and 2019), the Agency received a yearly average of 104 requests to import nonconforming non-ADS-equipped vehicles for research and demonstration purposes on public roads. Many non-ADS-equipped vehicles imported for research or demonstration purposes are production vehicles manufactured by large, established foreign manufacturers. The vehicles are often imported into the U.S. by entities developing technology and equipment in the U.S. for vehicles that will be sold in foreign markets or by foreign manufacturers exploring expansion into the U.S. market. Based on the fact that many of the circumstances that would necessitate an exemption for an imported vehicle would not apply to domestically produced vehicles, NHTSA estimates that the number of exemption requests for domestically produced non-ADS-equipped vehicles will equal approximately 25% of the number of requests for imported non-ADS-equipped vehicles.

NHTSA estimates that 15 entities other than original manufacturers will request permission for an exemption under part 589 for ADS-equipped vehicles. These 15 entities will submit, on average, an estimated 4 requests per year for a total of 60 ADS-equipped vehicle exemption requests per year. These requests may be for exemptions for newly produced vehicles, or for alterations to existing exemption permissions. This estimate is based on the total number of requests for exemptions for public road use of ADS-equipped vehicles in NHTSA's existing import exemption program and the number of entities that have expressed interest in an exemption program for domestically produced nonconforming vehicles.⁵⁴ While NHTSA estimates that preparing and submitting the initial exemption information will take approximately 30 minutes, NHTSA will likely request additional ADS-specific information it deems necessary to evaluate risks associated with operating a nonconforming ADS-equipped vehicle on public roads. Due to this additional information, NHTSA estimates, based on feedback provided by participants in the import exemption program, that it may take, on average, up to 9 hours to complete a request for exemption for an ADS-equipped vehicle. Based on these estimates, the total annual burden hour ADS-equipped vehicle exemption requests to be 540 hours (60 requests per year × 9 hours per request).

NHTSA anticipates that ADS-equipped vehicles granted exemptions via permission letters would likely be required to have supplemental labeling visible to occupants or other road users. NHTSA estimates that ADS-equipped vehicles will each have 3 supplemental labels.

NHTSA estimates that formatting supplemental labels will take approximately 10 minutes each,

⁵⁴ NHTSA estimates that it will receive a similar number of requests for exemptions for domestically produced ADS-equipped vehicles as it receives for ADS-equipped vehicles under the existing import exemption program. In 2019, NHTSA received 55 requests for exemption to import nonconforming ADS-equipped vehicles that will be operating on public roads or interacting with members of the public, 48 of which were for public road use. Based on this and the assumption that the number of requests received annually will increase in the next few years, NHTSA estimates that 60 requests for exemption for ADS-equipped vehicles will be submitted each year.

for a total of 7 hours per year (15 entities \times 3 labels per entity \times 10 minutes per label = 450 minutes or 7.5 hours).

NHTSA estimates that it will take approximately 3 minutes to affix each label. This is much longer than the estimated 18 seconds to label an average vehicle with a Part 567 certification label.⁵⁵ However, because labeling exempt vehicles will not be part of an assembly-line production process, NHTSA assumes labeling will take longer. Assuming 60 ADS-equipped vehicles will need to be labeled, on average, in each year, with 4 labels, NHTSA estimates that 240 labels will need to be affixed per year. Therefore, the total annual burden associated with affixing the labels is estimated be 14 hours (240 labels per year \times 3 minutes = 720 minutes or 12 hours).

NHTSA estimates that each year, these 15 entities seeking exemptions for ADS vehicles will be required to submit quarterly disengagement reports. NHTSA estimates that each quarterly report takes approximately 5 hours to compile and submit and that 60 disengagement reports will be submitted annually for a total of 300 hours per year (60 disengagement reports \times 5 hours = 300 hours).

In addition, NHTSA estimates that it will require incident reporting for all exemptions requiring NHTSA permission, with no more than 6 incident reports will be submitted each year. This estimate is based on the number of incident reports received in NHTSA's existing import exemption program and the number of entities that have expressed interest in an exemption program for domestically produced nonconforming vehicles. NHTSA estimates that compiling and submitting incident reporting will take approximately 2 hours per report. Therefore, NHTSA

⁵⁵ 83 FR 8732, February 28, 2018.

estimates the total annual burden hour for incident reporting to be 12 hours (6 incident reports × 2 hours per report = 12 hours).

NHTSA estimates that on average, 47 entities will submit a total of 100 disposition reports each year. NHTSA estimates that disposition reporting will take, on average, 10 minutes per vehicle or item of equipment to compile and submit for a total of 17 hours per year (100 disposition reports × 10 minutes per report = 16.7 hours).

The labor cost associated with this collection of information is derived by (1) applying the appropriate average hourly labor rate published by the Bureau of Labor Statistics, (2) dividing by 0.702⁵⁶ (70.2%), for private industry workers to obtain the total cost of compensation, and (3) multiplying by the estimated burden hours for each respondent type.

NHTSA estimates the hourly cost associated with submitting the documentation necessary to request or obtain an exemption under part 589 to be \$97.36⁵⁷ per hour using the Bureau of Labor Statistic's mean hourly wage estimate for architectural and engineering managers in the motor vehicle manufacturing industry (Standard Occupational Classification # 11-9041). Therefore, NHTSA estimates the cost associated with original manufacturers submitting exemption documentation to be \$487 per year (\$97.36 per hour × 5 hours per year = \$486.80), the cost for submitting exemption requests for items of equipment to be \$243 per year (\$97.36 per hour × 2.5 hours per year = \$243.40), the cost for submitting non-ADS-equipped vehicle exemption requests to be \$7,302 (\$97.36 per hour × 75 hours per year = \$7,302), and the

⁵⁶ See Table 1. Employer Costs for Employee Compensation by ownership (Mar. 2020), available at <https://www.bls.gov/news.release/ecec.t01.htm> (accessed June 30, 2020).

⁵⁷ The hourly wage is estimated to be \$68.35 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2019, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed June 30, 2020. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$97.36.

cost for submitting ADS-equipped vehicle exemption requests to be \$52,574 ($\$97.36 \text{ per hour} \times 540 \text{ hours} = \$52,574.40$).

NHTSA estimates the hourly cost associated with designing and formatting supplemental labels to be \$50.44⁵⁸ per hour using the Bureau of Labor Statistic's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification # 27-3042).⁵⁹ Therefore, NHTSA estimates the cost to format supplemental labels to be \$378 ($\$50.44 \text{ per hour} \times 7.5 \text{ hours} = \378.30).

NHTSA estimates the hourly labor cost associated with affixing labels to exempt vehicles to be \$32.18⁶⁰ per hour using the Bureau of Labor Statistic's mean hourly wage estimate for motor vehicle assemblers and fabricators in the motor vehicle manufacturing industry (Standard Occupational Classification #51-2000).⁶¹ Therefore, NHTSA estimates the labor cost associated with affixing labels to the exempt vehicles will be approximately \$386 annually ($12 \text{ hours} \times \$32.18 \text{ per hour} = \386.16).

NHTSA estimates the hourly cost associated with submitting disengagement reports, incidents reports, and disposition reports to be \$97.36⁶² per hour using the Bureau of Labor

⁵⁸ The hourly wage is estimated to be \$35.41 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2019, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed June 30, 2020. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$50.44.

⁵⁹ US Office of Management and Budget. *Standard Occupation Classification Manual*, 2018.

⁶⁰ The hourly wage is estimated to be \$22.59 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2019, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed June 30, 2020. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$32.18.

⁶¹ US Office of Management and Budget. *Standard Occupation Classification Manual*, 2018.

⁶² The hourly wage is estimated to be \$68.35 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2019, https://www.bls.gov/oes/current/naics4_336100.htm, last accessed June 30, 2020. The Bureau of Labor Statistics estimates that wages represent 70.2 percent of total compensation to private workers, on average. Therefore, NHTSA estimates the total hourly compensation cost to be \$97.36.

Statistic's mean hourly wage estimate for architectural and engineering managers in the motor vehicle manufacturing industry (Standard Occupational Classification # 11-9041). Therefore, NHTSA estimates the cost associated with submitting disengagement reports to be \$29,208 per year ($\$97.36 \text{ per hour} \times 300 \text{ hours} = \$29,208$), the cost of the cost associated with submitting incident reports to be \$1,168 per year ($\$97.36 \text{ per hour} \times 12 \text{ hours} = \$1,168.32$), and the cost associated with submitting disposition reports to be \$1,626 per year ($\$97.36 \text{ per hour} \times 16.7 \text{ hours} = \$1,625.91$).

Accordingly, NHTSA estimates the total annual burden associated with this information collection requests to be 954 hours and estimates the labor cost associated with this burden to be \$91,746. Table 4 below provides a summary of estimated burden hours and labor costs.

Table 4: Summary of Burden Estimates

Information Collection	Estimated Number of Annual Respondents	Estimated Number of Annual Responses	Burden Per Response (hours)	Labor Hours	Labor Cost Per Hour	Rounded Labor Cost
Part 589.5(2)(ii) Exemption Submission	2	10	0.5	5.0	\$97.36	\$487
Equipment Exemption Requests and Submissions	5	5	0.5	2.5	\$97.36	\$243
Part 589.5(2)(i) Exemption Requests: Non-ADS Vehicles	25	25	3	75.0	\$97.36	\$7,302
Part 589.5(2)(i) Exemption Requests: ADS Vehicles	15	60	9	540.0	\$97.36	\$52,574
Possible Part 589.5(2)(i) Exemption	15	45	10 minutes	7.5	\$50.44	\$378

Condition: Formatting Supplemental Labels						
Possible Part 589.5(2)(i) Exemption Condition: Affixing Labels	60	240	3 minutes	12.0	\$32.18	\$386
Possible Part 589.5(2)(i) Exemption Condition: Disengagement Reports	15	60	5	300.0	\$97.36	\$29,208
Possible Part 589.5(2)(i) Exemption Condition: Incident Reporting	6	6	2	12.0	\$97.36	\$1,168
Possible Part 589.5(2)(i) Exemption Condition: Disposition Reports	47	100	10 minutes	16.7	\$97.36	\$1,626
Totals				954		\$91,746

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the

Collection of Information:

NHTSA also intends to require all entities receiving exemptions under part 589 via permission letter to retain all supporting documentation provided to NHTSA with a part 589 exemption request and a copy of the permission letter. However, because NHTSA anticipates that these will be retained electronically, NHTSA estimates that there will be no increased costs to the respondents.

Public Comments Invited: The public is asked to comment on any aspects of this information collection, including (a) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the ADDRESSES section of this document to NHTSA and OMB.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Plain Language

E.O. 12866 requires each Agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's

complete Privacy Act statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

XI. Public Participation

How long do I have to submit comments?

Please see DATES section at the beginning of this document.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's

guidelines may be accessed at

http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket

Management receives a comment too late for us to consider for this rulemaking, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects

49 CFR Part 589

Motor vehicle safety, Reporting and recordkeeping requirements, Labeling, Motor vehicles, Exemptions

In consideration of the foregoing, NHTSA amends 49 CFR chapter V as follows:

1. Part 589 is added to read as follows:

PART 589--Exemptions for Domestically Produced Vehicles or Equipment for Research, Investigations, Demonstrations, or Training

Sec.

589.1 Scope

589.2 Purpose

589.3 Applicability

589.4 Definitions

589.5 Restrictions on the Introduction of Domestically Produced, Nonconforming Motor Vehicles

589.6 Required information submissions

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Authority: 49 U.S.C. 322, 30112, 30114, 30117 and 30166; delegation of authority at 49 CFR 1.95.

§ 589.1 Scope

This part establishes terms necessary for the introduction in interstate commerce of domestically produced, nonconforming motor vehicles and motor vehicle equipment for purposes of research, investigations, demonstrations, or training, in accordance with 49 U.S.C. 30114, *Special exemptions*. This part does not apply to the introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by a manufacturer meeting the criteria set forth in 49 U.S.C. 30112 (b)(10) (*see*, § 589.3).

§ 589.2 Purpose

The purpose of this part is to establish terms necessary to exempt domestically produced, nonconforming motor vehicles and motor vehicle equipment from conforming with applicable Federal motor vehicle safety standards for research, investigations, demonstration, or training. The purpose of this part is also to ensure that nonconforming vehicles and equipment introduced in interstate commerce under this part are ultimately permanently removed from the public roads at the termination of their exemption.

§ 589.3 Applicability

(a) Except as provided in paragraph (b) of this section, this part applies to any person or entity offering to introduce or deliver for introduction in interstate commerce in the United States, for operation on public roads, a domestically produced motor vehicle or item of motor vehicle equipment for research, investigations, demonstration, or training that does not comply with an applicable Federal motor vehicle safety standard.

(b) This part does not apply to the introduction of a motor vehicle in interstate commerce solely for purposes of testing or evaluation by a manufacturer that agrees not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation and that prior to December 5, 2015:

(1) Had manufactured and distributed motor vehicles into the United States that were certified to comply with all applicable Federal motor vehicle safety standards;

(2) Had submitted to NHTSA appropriate manufacturer identification information under part 566 of title 49, Code of Federal Regulations; and

(3) If applicable, had identified an agent for service of process in accordance with part 551 of title 49 Code of Federal Regulations.

§ 589.4 Definitions

All terms in this part that are defined in 49 U.S.C. 30102 and in 49 CFR 571.3 are used as defined therein.

Domestically produced means a motor vehicle or item of motor vehicle equipment manufactured or assembled in the United States.

Original manufacturer means the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle

safety standards. An original manufacturer meets the manufacturer identification requirements of 49 CFR part 566.

Nonconforming mean compliance with the Federal motor vehicle safety standards and bumper standards applying to the vehicle or item of equipment has not been attained by that vehicle or item of equipment.

United States means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

§ 589.5 Restrictions on the Introduction of Domestically Produced, Nonconforming Motor Vehicles and Motor Vehicle Equipment

No person shall introduce or deliver for introduction in interstate commerce a domestically produced, nonconforming motor vehicle or item of motor vehicle equipment unless, prior to the time the motor vehicle or item of motor vehicle equipment is introduced in interstate commerce, such person has:

(a) Submitted the information specified in §589.6, in mail or electronic format, to: Director, Office of Vehicle Safety Compliance (OVSC), NEF-200, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, or to Part589Exemptions@dot.gov; and

(b)(1) Such person has received written authorization from NHTSA's Director of OVSC; or,

(2) Such person is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof).

§ 589.6 Required information submissions

A person seeking to introduce a domestically produced, nonconforming motor vehicle or item of motor vehicle equipment into interstate commerce under § 589.5 of this part must submit the following information using Form 1576:

(a) Contact information (manufacturer name, mailing address, point of contact, e-mail address, phone number) for the vehicle or equipment manufacturer.

(b) A full and complete statement identifying the vehicle or item of equipment and its make, model, model year or date of manufacture, and a VIN or unique identifier for each motor vehicle or item of motor vehicle equipment,

(c) A declaration that the motor vehicle does not conform with all applicable Federal motor vehicle safety and bumper standards, or that the item of motor vehicle equipment does not conform with all applicable Federal motor vehicle safety standards, but is being introduced in interstate commerce solely for the purpose of:

(1) Research;

(2) investigations; or

(3) demonstrations or training;

(d) A statement identifying the specific purpose(s) for which the motor vehicle or item of motor vehicle equipment will be operated on public roads (research, investigations, demonstration, or training), and a description of how the motor vehicle or item of motor vehicle equipment will be used that includes reasons for why public road use is necessary.

(e) A statement of the estimated duration for which use of the motor vehicle or item of motor vehicle equipment on the public roads is necessary, and that the duration would not exceed a period of three years;

(f) Statements certifying that the person will comply with each of the restrictions in § 589.7 of this part.

(g) A description of the intended means of final disposition, and disposition date, of the motor vehicle or item of motor vehicle equipment after completion of the purposes for which the exemption is sought.

§ 589.7 Restrictions on exemptions

(a) A person introducing a domestically produced, nonconforming motor vehicle or item of motor vehicle equipment into interstate commerce under § 589.5(b)(1) shall not sell, or transfer possession of, or title to, the vehicle or equipment, and shall not license it for use, or operate it on the public roads, except under such terms and conditions as the Administrator may authorize in writing. An entity introducing such a vehicle under § 589.5(b)(2) shall at all times retain title to it.

(b) A motor vehicle or item of motor vehicle equipment that is introduced into interstate commerce pursuant to a permission letter issued under § 589.5(b)(1) must comply with any terms on which the permission is conditioned.

(c) A vehicle or item of equipment that has been introduced in interstate commerce under § 589.5 shall not remain in interstate commerce for a period that exceeds three years from the date of introduction in interstate commerce. This period may be extended upon request.

§ 589.8 End of exemption period and disposition reporting

(a) Requests to extend the period of exemption may be made by submitting a request to: Director, Office of Vehicle Safety Compliance, NEF-200, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, or Part589Exemptions@dot.gov, and must have the information specified in § 589.6 of this part. If the exemption was conditioned on NHTSA's written

permission, the request must also indicate whether the requester is seeking approval to make any changes to previously-approved operations.

(b) A person or entity granted an exemption under this part will provide the Director of OVSC with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle or equipment has been allowed in interstate commerce.

§ 589.9 Enforcement

Any failure to comply with requirements of this part or a term or condition imposed by NHTSA in a letter granting, extending, or modifying an exemption granted under this part shall be considered a violation of 49 U.S.C. 30112(a) for which a civil penalty may be imposed and such violation may void the exemption.

Issued in Washington, D.C., under authority delegated in 49 CFR 1.95.

James C. Owens
Deputy Administrator

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