§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(12) MedNet, Inc.

Model year	Average fuel economy standard (miles per gallon)
1996	17.0
1997	17.0
1998	17.0

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

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49 CFR Part 583

[Docket No. 92–64; Notice 07]

RIN 2127–AG03

Motor Vehicle Content Labeling

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

ACTION: Final rule; further response to petitions for reconsideration.

SUMMARY: The American Automobile Labeling Act requires passenger cars and other light vehicles to be labeled with information about their domestic and foreign content. This document responds to several petitions for reconsideration of the agency's July 1994 final rule implementing that statute. NHTSA is making several changes to the final rule in response to the petitions, which will reduce the burdens associated with making content calculations and also result in more accurate information. The agency has also decided not to make a number of the changes requested by the petitions.

DATES: *Effective date*. The amendments made by this rule are effective October 16, 1995.

Petitions for reconsideration. Petitions for reconsideration must be received not later than October 16, 1995.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Safety Administration, Room 5313, 400 Seventh Street SW, Washington, DC 20590 (202–366–0846).

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I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act (Labeling Act) as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102–388. The Labeling Act amended Title II of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 210.

Subsequently, on July 5, 1994, the President signed a bill (P.L. 103–272) which revised and codified ''without substantive change'' the Cost Savings Act and two other NHTSA statutes. The content labeling provisions, which formerly existed as section 210 of the Cost Savings Act, are now codified at 49 U.S.C. § 32304, Passenger motor vehicle country of origin labeling. NHTSA will use the new statutory citations in this notice.

Section 32304 requires passenger motor vehicles [1] manufactured on or after October 1, 1994 to be labeled with information about their domestic and foreign content. The purpose of the section is to enable consumers to take country of origin information into account in deciding which vehicle to purchase.

Section 32304(b) requires each new passenger motor vehicle to be labeled with the following five items of information:

(1) The percentage U.S./Canadian equipment (parts) content;

(2) The names of any countries [2] other than the U.S. and Canada which individually contribute 15 percent or more of the equipment content, and the percentage content for each such country;

(3) The final assembly place by city, state (where appropriate), and country;

(4) The country of origin of the engine; and

(5) The country of origin of the transmission.

Section 32304(b) specifies that the first two items of information, the equipment content percentages for the U.S./Canada and foreign countries, are calculated on a ''carline'' basis rather than for each individual vehicle. The term ''carline'' refers to a name of a group of vehicles which has a degree of commonality in construction such as body and chassis.

Manufacturers of passenger motor vehicles are required to establish the required information annually for each model year, and are responsible for the affixing of the required label to the vehicle. Dealers are responsible for maintaining the labels.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, i.e., the percentage of the value of the motor vehicle

[1] The term ''passenger motor vehicle,'' defined in 49 U.S.C. 32101 as a motor vehicle with motive power designed to carry not more than 12 individuals, is amended for purposes of section 32304 to include any ''multipurpose vehicle'' and ''light duty truck'' that is rated at not more than 8,500 pounds gross vehicle weight. Thus, the motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

[2] If there are more than two such countries, only the names of the two countries providing the greatest amount of content need be listed.

equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item on the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 32304(a)(9)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. This statutory provision is sometimes referred to as the ''roll-up, roll-down'' provision. For equipment received from allied suppliers, section 32304(a)(9)(B) provides that the actual amount of U.S./Canadian content is used.

The statute requires the Department of Transportation to promulgate regulations implementing the content labeling requirements. Section 32304(d) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 32304(e) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section also directs that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and U.S/Canadian origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 32304(e) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

B. July 1994 Final Rule

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a final rule establishing a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the Labeling Act. The regulation established requirements for (1) manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of the requirements is set forth below.

1. Manufacturers of Passenger Motor Vehicles

Vehicle manufacturers are required to affix to all new passenger motor vehicles a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, of the U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine Parts*;

(5) *Country of Origin for the Transmission Parts*.

The label is also required to include a statement below this information reading as follows:

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

Manufacturers are permitted, but not required, to provide at the end of the note the following additional statement for carlines assembled in the U.S. and/or Canada, and another country:

This carline is assembled in the U.S. and/or Canada, and in [insert name of each other country]. The U.S./Canadian parts content for the portion of the carline assembled in [insert name of country, treating the U.S. and Canada together, i.e., U.S./Canada] is [ ]%.

The information for items (1) and (2) of the label is calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) is determined for each individual vehicle. However, the country of origin for groups of engines and transmissions is determined once a model year.

Vehicle manufacturers are to calculate the information for the label, relying on information provided to them by suppliers. Under the final rule, manufacturers and allied suppliers are required to request their suppliers to provide the relevant content information specified in Part 583, and the suppliers are required to provide the specified information in response to such requests. The vehicle manufacturers are required to maintain records of the information used to determine the information provided on the labels.

2. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer, a supplier wholly owned by the vehicle manufacturer (an allied supplier) or, in the case of a joint venture vehicle assembly arrangement, a supplier that is wholly owned by one member of the joint venture arrangement, the outside supplier is required to provide, at the request of that manufacturer or allied supplier, the following information:

(1) the price of the equipment to the manufacturer or allied supplier;

(2) whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) for any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier is required to provide, at the request of the manufacturer, the following information:

(1) the price of the equipment to the manufacturer;

(2) the percentage U.S./Canadian content of the equipment;

(3) the country of origin of the equipment (treating the U.S. and Canada together);

(4) for equipment that may be used in an engine or transmission, the country of origin of the equipment (separating the U.S. and Canada).

A supplier of engines and transmissions is, in addition to the above requirements, required to provide, at the request of the vehicle manufacturer, the country of origin for each engine or transmission it supplies to the manufacturer, determined as follows: the country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers are required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers are required to provide the specified information and certification directly to the allied suppliers. Suppliers are also required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The requirements apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements are imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

3. Dealers of Passenger Motor Vehicles

Dealers are required to maintain the label on each vehicle until the vehicle is sold to a consumer.

II. Petitions for Reconsideration

NHTSA received petitions for reconsideration from the American Automobile Manufacturers Association (AAMA), General Motors (GM), the Association of International Automobile Manufacturers (AIAM), Volkswagen (VW), the American International Automobile Dealers Association (AIADA), and the Kentucky Cabinet for Economic Development (Kentucky Cabinet). A summary of these petitions follows.

AAMA argued that certain requirements specified in section 583.6, *Procedure for determining U.S./Canadian parts content*, result in U.S./Canadian content being understated and impose costly and unnecessary burdens on manufacturers and suppliers. That organization identified three major issues.

First, AAMA was concerned that section 583.6 provides that materials used by a supplier located in the U.S./Canada are considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. AAMA stated that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization urged that the regulation allow first-tier suppliers to use methods other than tracing to accurately calculate a material's U.S./Canadian value added.

Second, AAMA was concerned that the U.S./Canadian content of components must be defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. That organization argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of a component by other means when a supplier fails to respond.

Third, AAMA was concerned that section 583.6 specifies that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S./Canada for that material or equipment is considered zero, even if part of the material originated in the U.S. or Canada. AAMA argued that this provision is inconsistent with the Labeling Act's definition of ''foreign.'' It also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content. AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

AAMA recommended specific changes to Part 583 in light of the three major issues it identified. That organization also recommended a number of other changes to provide clarification.

GM joined in the AAMA petition and also submitted a separate petition urging the agency to permit manufacturers to use alternative procedures to determine U.S./Canadian parts content. That company expressed concern that Part 583 requires it to collect content data on millions of unique part numbers when tracing beyond the first tier of suppliers is required. According to GM, this represents the most burdensome and costly procedure possible, even more burdensome than any other trade-related content data requirements administered by any other U.S. government entity.

With respect to AAMA's and GM's petitions, NHTSA notes that the FY 1995 Conference Report on DOT Appropriations included the following language:

> The conferees are aware that several petitions for reconsideration have been submitted to NHTSA since the publication of the final rule. Among the issues raised in the petitions are whether it is consistent with the Act that the final rule requires that a first-tier supplier of equipment produced or assembled in the U.S. or Canada must consider material used in that equipment to have zero U.S./Canadian content unless the material's U.S./Canadian value has been verified by full tracing to its origin, and that a manufacturer or supplier that does not receive information from its suppliers concerning the U.S./Canadian content of equipment must consider the U.S./Canadian value of the equipment to be zero.
>
> These provisions of the final rule will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and thus contradict the expressed intent of Congress in passing the AALA. Therefore, the conferees direct NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment, and manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.
>
> Furthermore, to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedures produce reliable results.

NHTSA notes that the inclusion of this language in an Appropriations Report does not have the effect of changing the existing statute or the agency's duty to follow that statute. The agency will respectfully treat this language as expressing the sentiment of Congress as to how the issues raised by the petitions for reconsideration should be resolved.

AIAM raised four issues in its petition for reconsideration. First, that organization stated that NHTSA did not respond to its comment on the NPRM urging that the regulation provide that any state action which challenges the information provided on the label is Federally preempted. Second, AIAM argued that the regulation contains an overly broad interpretation of the term ''final assembly.'' That organization stated that the definition includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead on parts and components of that motor vehicle. Third, AIAM argued that the provision in the regulation concerning tracing back to raw materials is inconsistent with the language of the Labeling Act and also outside the scope of notice of the NPRM. Finally, AIAM argued that a provision in the regulation which specifies that major foreign source percentages are ''rounded down'' to bring the combined total of U.S./Canadian and major foreign source content to no higher than 100 percent is

outside NHTSA's authority under the Labeling Act.

VW, a member of AIAM, submitted a separate petition requesting that NHTSA reconsider its determination that it is statutorily prohibited from permitting manufacturers selling motor vehicles with minimal U.S./Canadian parts content to state that fact rather than providing specific content numbers. That manufacturer cited the case of *Alabama Power Company* v. *Costle*, 636 F.2d 323 (1979), in support of its request.

AIADA requested that the agency ''reconsider and vacate its final rule on Motor Vehicle Content Labeling.'' That organization stated that the rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the Constitution and the Administrative Procedure Act. It also cited its comments to the agency on the NPRM and on an earlier request for comments but did not provide any other arguments or analysis in support of its petition.

The Kentucky Cabinet argued that the tracing provisions included in the final rule impose unnecessary administrative burdens on the Kentucky automotive industry. It expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials. It also stated that in some cases a second tier supplier may not want to divulge proprietary information. The Kentucky Cabinet also expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet specifically expressed concern about the exclusion of final assembly in the calculation of domestic content. It stated that an automotive manufacturer which does substantial ''in-house'' final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

III. Initial Response to Petitions

In a notice published March 16, 1995 (60 FR 14228), the agency partially responded to the petitions for reconsideration by extending a temporary alternative approach for data collection and calculations. This approach permits manufacturers and suppliers to use procedures that are expected to yield similar results. This alternative was originally available, under the July 1994 final rule, for model year 1995 and model year 1996 carlines which were first offered for sale to ultimate purchasers before June 1, 1995. The notice extended the alternative to all model year 1996 carlines and model year 1997 carlines which are first offered for sale to ultimate purchasers before June 1, 1996.

IV. Overview of Further Response to Petitions

In response to the petitions for reconsideration, NHTSA is making several changes in Part 583. These changes include:

(1) Providing that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the U.S. or Canada for that equipment, such value added in the U.S. or Canada is counted;

(2) Amending the clarifying procedures concerning the determination of U.S./Canadian content to (a) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers are to make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (b) provide suppliers greater flexibility in the information they can use in making these estimates, and (c) reduce the number of stages for which suppliers must consider where value was added (although not to the degree recommended by AAMA);

(3) Providing that manufacturers can petition to use alternative calculation procedures based on representative or statistical sampling to determine U.S./Canadian parts content and major sources of foreign parts content; and

(4) Several minor clarifying changes.

NHTSA is granting the petitions to the extent that they are accommodated by these changes; the agency is otherwise denying the petitions.

V. Response to Petitions

In this section, NHTSA presents its analysis of the issues raised by the petitioners and its response. The major issues are organized according to the sections of the final rule to which they relate.

A. Definition of Final Assembly (Section 583.4)

Section 32304(a)(15) provides that ''costs incurred or profits made at the final assembly place and beyond (including advertising, assembly, labor, interest payments, and profits)'' are excluded from the calculation of parts content. In earlier notices, NHTSA recognized that manufacturers may conduct some pre-assembly operations, e.g., production of parts, at the same location as final assembly. The agency included a definition of ''final assembly'' in the final rule to distinguish between production of parts, for which labor and other costs are included in parts content calculations, and final assembly, for which labor and other costs are not included.

Two of the petitions for reconsideration addressed the exclusion of final assembly costs from the calculation of U.S./Canadian parts content and/or the final rule's definition of final assembly. As indicated above, the Kentucky Cabinet expressed concern that the calculations for domestic content do not include the value of labor performed by Kentuckians. It stated that consumers will be forced to make purchasing decisions based on information that does not reflect the actual amount of domestic content. The Kentucky Cabinet expressed specific concern about the exclusion of final assembly costs in the calculation of domestic content. It stated that an automotive manufacturer which does substantial ''in-house'' final assembly will not be able to include the full value of domestic parts and therefore be at a competitive disadvantage.

AIAM argued that the final rule contains an overly broad interpretation of the term ''final assembly'' that will mislead the motor vehicle purchaser to believe that the value of many auto parts made in-house by a U.S. motor vehicle manufacturer are not part of the U.S./Canadian parts content of the vehicle. It argued that the rule creates an unfair and anomalous situation, since a manufacturer that assembles a large number of components to produce a complex piece of equipment (other than an engine or transmission) must exclude the assembled value of that item from the reported U.S./Canadian parts content of the motor vehicle, while a less integrated manufacturer that obtained the same piece of equipment from an outside supplier in the United States or Canada would include its entire value in the U.S./Canada parts content of the vehicle if the ''70 percent'' test was met. AIAM also argued that the definition of ''final

assembly'' is so broad that it includes within its scope (and thereby excludes from U.S./Canada parts content) assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. AIAM alleged that there is no statutory basis, or even a rational one, to exclude substantial U.S. value added to in-house produced components other than engines and transmissions.

With respect to the Kentucky Cabinet's concerns about excluding final assembly costs, including the exclusion of the value of labor performed by Kentuckians, in the calculation of U.S./Canadian parts content, NHTSA notes that Congress decided to require manufacturers to provide prospective passenger motor purchasers with calculations of parts content rather than overall vehicle content. As indicated above, the statute specifically provides that final assembly costs, including labor costs, are excluded from these calculations. NHTSA does not have the authority to depart from the statute. The agency observes, however, that the value of final assembly labor is reflected on the label since the final assembly point is specified by city, state and country. Thus, prospective purchasers will know whether the vehicle they are considering purchasing was assembled in Kentucky.

With respect to AIAM's concerns about the final rule's definition of ''final assembly,'' NHTSA notes that numerous commenters on the NPRM addressed this subject, and the agency discussed it at length in the preamble to the final rule. In its petition, AIAM did not address the agency's extensive analysis of this issue. The agency will repeat a portion of that discussion in this notice (the statutory references in the quoted language have been superseded, but the substance has not changed):

> The starting place for resolving the question of what operations should be considered to be part of ''final assembly'' and therefore excluded from parts content calculations is the language of the Labeling Act. The Act includes several relevant sections. First, section 210(b)(1)(A) provides that the label must indicate ''the percentage (by value) of passenger motor vehicle equipment installed in such vehicle within a carline which originated in the United States and Canada . . . .'' Second, section 210(f)(10) provides that ''(c)osts incurred or profits made *at the final vehicle assembly point* and beyond (i.e., advertising, assembly, labor, interest payments, profits, etc.) shall not be included in [the calculation of value added in the United States and Canada].'' Third, section 210(f)(14) defines ''final assembly point'' as ''the plant, factory, or other *place* at which a new passenger motor vehicle is produced or assembled by a manufacturer and *from* which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle . . . .'' (Emphasis added.).
>
> While final assembly point can be considered as either a physical place or a phase in the assembly process, it is significant that section 210 defines it as a place, i.e., the plant, factory, or other place at which a new vehicle is produced or assembled. Thus, looking at the plain language of section 210, assembly and labor costs ''at'' the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations.
>
> It is also significant that the language in section 210(f)(14) about the vehicle being in such a condition that ''all component parts necessary to the mechanical operation of such automobile are included with such vehicle'' refers to the vehicle when it leaves the final assembly point for delivery to a dealer or importer. In citing this language for the proposition that ''final assembly'' is defined in terms of completeness, AIAM and Toyota confuse the completion of final assembly with the final assembly process. Section 210(f)(14) defines ''final assembly point'' as the plant, factory, or other place at which a vehicle is ''produced or assembled'' by a manufacturer. All of the operations that make up the production or assembly process are part of final assembly. There is no basis to interpret section 210(f)(10)'s requirement that assembly and labor costs incurred ''at the plant, factory or other place'' at which a new vehicle is assembled only applies to the costs associated with the last step in completing the vehicle.
>
> Since section 210 expressly provides that assembly and labor costs at the plant, factory or other place at which a new vehicle is assembled are excluded from parts content calculations, NHTSA believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded. However, the agency believes that the costs associated with parts production that may occur at a final assembly plant should not be excluded from parts content calculations. . . .
>
> . . . A failure to consider parts produced at the final assembly plant as ''passenger motor vehicle equipment'' would result in significant differences among manufacturers. Further, if a plant were very highly integrated, it could result in a situation where the parts content percentages do not reflect the greater number of a vehicle's parts.
>
> At the same time, however, NHTSA must give full effect to the Congressional intent to exclude the costs of final assembly from parts content calculations. The agency believes that the best way to accomplish this is the method suggested by AAMA: define ''final assembly'' to include all operations involved in the assembly of the vehicle performed at the final assembly point (the final assembly plant), including but not limited to assembly of body panels, painting, final chassis assembly, and trim installation, except engine and transmission fabrication and assembly and the fabrication of motor vehicle equipment components produced at the same final assembly point using stamping, machining or molding processes.
>
> Under this approach, all costs incurred at the final assembly plant are excluded except for those that are incurred in producing either engines/transmissions or in producing parts using forming processes such as stamping, machining or molding. In addition to ensuring that final assembly costs are excluded as required by section 210, the agency also believes that a definition along these lines is much clearer than the proposed definition. For example, this type of definition will not raise issues concerning whether a part is assembled on the main assembly line or off of it.
>
> NHTSA cannot accept the recommendation of foreign vehicle manufacturers to define final assembly as starting at the time when the engine and body are fastened together. Under such a definition, manufacturers could add the engine to the body as the last step in assembling the vehicle, thereby reducing final assembly costs to a nullity. Such an approach would be inconsistent with the statutory requirement to exclude assembly and labor costs at the final assembly plant from parts content calculations.

The arguments raised in AIAM's petition for reconsideration do not lead the agency to change the definition of ''final assembly.'' That organization argued that the definition includes within its scope assembly operations that are not performed on the motor vehicle but instead are performed on parts and components of that motor vehicle. However, this is an incorrect distinction. AIAM views final assembly as performing operations on a vehicle when, in fact, the final assembly process consists of assembling parts to produce a vehicle.

NHTSA recognizes that there are many levels of ''parts.'' For example, any individual item that is used in the assembly of a chassis is a ''part,'' yet the chassis as a whole can also be called a ''part.'' It appears that AIAM would like almost all assembly that takes place at the final assembly plant to be outside the definition of final assembly and instead be considered parts production, so that the costs of such assembly are included within the parts content calculations.

However, NHTSA must give effect to section 32304(a)(15)'s requirement that costs incurred at the final assembly place, including assembly and labor, are excluded from the calculation of parts content. As discussed in the above-quoted section of the final rule preamble, the agency believes that all assembly and labor costs that are ordinarily associated with final assembly must be excluded.

NHTSA believes that the definition of final assembly included in the final rule strikes an appropriate balance in distinguishing between parts production

at a final assembly plant and final assembly. First, all costs associated with producing engines and transmissions are excluded from the definition of final assembly, and hence counted as parts content. These are very expensive parts, and it is common both for manufacturers to assemble them at vehicle final assembly plants and to assemble them at separate plants. Therefore, including these costs in parts content, notwithstanding the fact that these items may have been produced at a final assembly plant, helps maintain comparability of the information provided on the labels of different vehicles.

Second, all costs incurred in producing parts using forming processes such as stamping, machining or molding are excluded from the definition of final assembly. The production of parts using forming processes is not assembly, and these operations are thus readily distinguishable from final assembly.

All other costs incurred at the final assembly plant are included within the definition of final assembly, and are thus not included in parts content. These costs basically reflect all assembly costs at the final assembly plant other than those associated with producing engines and transmissions. NHTSA believes that the bulk of these costs, e.g., assembling body panels, building up the chassis, etc., come within the generally understood meaning of final assembly and must therefore be excluded from parts content calculations under the statute.

NHTSA notes that AIAM did not provide specific details or examples about differences between more integrated and less integrated manufacturers. Since manufacturing processes differ among manufacturers, it is inevitable that some differences will be reflected on the label. However, the final's rule inclusion of all costs associated with engine/transmission production and production of parts using forming processes within parts content will reduce such differences.

B. Procedure for Determining U.S./Canadian Parts Content (Section 583.6)

Section 583.6 of the final rule specifies a procedure for determining U.S./Canadian parts content. A number of the major issues raised by the petitioners for reconsideration relate to this section.

1. Calculation by Suppliers of the Portion of their Equipment's Value that Represents Value Added in the U.S./Canada

One of the major issues addressed in the final rule was how suppliers are to calculate the portion of their equipment's value that represents value added in the U.S./Canada. It is necessary for suppliers to make such calculations [3] since the Labeling Act provides that determinations of U.S./Canadian parts content are based on the value added in the U.S./Canada of the equipment used to assemble vehicles within a carline.

As part of avoiding unnecessary costs and keeping the regulatory scheme as simple as possible, NHTSA decided to limit tracking and reporting requirements to ''first-tier'' suppliers (including both suppliers which deliver equipment to the vehicle manufacturer itself and ones which deliver equipment to an allied supplier). The agency noted in the NPRM, however, that suppliers which are subject to the information requirements may need in some cases to arrange to obtain information from their suppliers.

Commenters on the NPRM raised a number of issues about how suppliers are to make the required determinations about U.S./Canadian content. NHTSA therefore included in the final rule clarifying procedures concerning the determination of value added in the U.S./Canada.

NHTSA recognized that the basic way suppliers add value in the U.S./Canada is by producing or assembling passenger motor vehicle equipment within the territorial borders of the United States or Canada. The final rule (§ 583.6(c)(4)(ii)) therefore specified that, in determining the value added in the United States or Canada of passenger motor vehicle equipment produced or assembled within the territorial boundaries of the United States or Canada, the cost of all foreign materials is subtracted from the total value (e.g., the price paid at the final assembly plant) of the equipment. The procedures specified that material is considered foreign to whatever extent part or all of the cost of the material is not determined to represent value added in the United States or Canada, traced back to raw materials. As explained in the final rule preamble, under this approach, neither suppliers nor anyone else is required to trace the value added in the United States or Canada back to raw materials; however, any portion of the cost of a material which is not traced to value added in the United States or Canada is considered foreign.

The clarifying procedures (§ 583.6(c)(4)(ii) and (iv)) also provided that for any material or equipment which is imported into the United States or Canada from a third country, the value added in the United States or Canada is zero, even if part of the material originated in the United States or Canada. NHTSA stated that, for purposes of simplicity and consistency, it believed it appropriate to deem any materials which are imported in the United States or Canada from a third country as foreign. The agency did not believe that any attempt to separate out the possible portion of such materials that may have originated in the United States or Canada would provide significantly more useful information to the consumer.

The petitioners for reconsideration raised concerns about both the tracing provision and the provision deeming any equipment or materials which are imported into the United States or Canada from a third country as foreign. The agency will discuss the latter concern first.

a. *Issues concerning equipment or materials imported into the U.S. or Canada.* AAMA argued that the final rule's provisions stipulating that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is zero, even if part of the material originated in the U.S. or Canada, are inconsistent with the Labeling Act's definition of ''foreign.'' That organization noted that section 210(f)(16) defined foreign or foreign content as ''passenger motor vehicle equipment not determined to be U.S./Canadian origin.'' (This reference has been superseded by 49 U.S.C. 32304(a)(6).) AAMA believed that the provisions at issue are inconsistent with that section since a portion of the value of the material or equipment could be determined to be of U.S./Canadian origin. AAMA also noted that if a manufacturer installed identical parts both in a vehicle assembled in the U.S or Canada and in one assembled in a third country, the two parts would have different U.S./Canadian content.

In additional information provided to the agency in support of its petition, AAMA cited a specific example of the consequences of these provisions. In the example, it was assumed that $800 of U.S. engine parts were shipped abroad to the foreign engine assembly plant of an allied supplier. If the engine were shipped back to the U.S., it would be

[3] As noted in the final rule preamble, however, only allied suppliers typically need to calculate actual value added in the U.S./Canada of their equipment. 59 FR 37309. As a result of the roll-up, roll-down provision, outside suppliers only need to determine whether the value added in the U.S./Canada is at least 70 percent or not. In order to make this determination, of course, outside suppliers need to understand how value added in the U.S./Canada is calculated. Moreover, if the value added in the U.S./Canada of their equipment is close to 70 percent, outside suppliers will need to calculate actual value added.

considered to have $0 U.S./Canadian content. This would occur as a result of the provision which specifies that any motor vehicle equipment imported into the U.S. or Canada from a third country is considered to have zero U.S./Canadian content. However, if the engine were shipped to a foreign vehicle assembly plant, it would be considered to have $800 U.S./Canadian content. This would occur because the provision about motor vehicle equipment being imported into the U.S. or Canada from a third country would not apply.

AAMA urged that if a manufacturer is able to identify the U.S./Canadian content, it should be permitted to include the actual U.S./Canadian content of the imported component in the calculations.

After considering AAMA's arguments, NHTSA has decided to make a change along the lines recommended by the petitioner. The revised final rule provides that whenever material or motor vehicle equipment is imported into the U.S. or Canada from a third country, the value added in the U.S. or Canada is presumed zero, but that if documentation is available to the supplier which identifies value added in the United States or Canada for that equipment, such value added in the United States or Canada is counted.

The agency fully agrees with AAMA that $800 of U.S. engine parts should not be converted to foreign content simply because the engine is assembled in another country. NHTSA included the provision deeming any materials which are imported into the United States or Canada from a third country as foreign for reasons of simplicity and because it did not believe that separating out the portion that may have originated in the United States or Canada would significantly affect the information provided on the label. Since AAMA has clearly demonstrated that the provision can have a significant effect on the label, the agency believes that the change recommended by that organization is appropriate.

b. *Issues concerning tracing provision.* Three of the petitioners for reconsideration, AAMA, AIAM, and the Kentucky Cabinet, raised concerns about the tracing provision. The agency will first discuss two issues raised by AIAM concerning whether NHTSA has the authority to specify such a provision.

AIAM argued in its petition that the requirement to trace back to raw materials is contrary to the language of the Labeling Act. AIAM also argued that the tracing provision was not included in the NPRM and was therefore imposed without notice and opportunity for comment.

In arguing that the requirement to trace back to raw materials is contrary to the language of the Labeling Act, AIAM stated that the Act expressly provides that for purposes of determining U.S./Canada value added for an equipment item, only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content. AIAM's explanation for this position is as follows. First, the term ''value added in the United States and Canada'' is defined in the Labeling Act to mean a percentage derived as follows: value added equals the total purchase price, minus total purchase price of *foreign content,* divided by the total purchase price. Second, ''foreign content'' is defined to mean *passenger motor vehicle equipment* not determined to be of U.S./Canadian origin. Third, ''passenger motor vehicle equipment'' is defined to mean any system, subcomponent or assembly and does not include materials or raw materials. Thus, according to AIAM, the term ''foreign content'' can only refer to passenger motor vehicle equipment and not raw materials.

NHTSA notes that since AIAM's argument cites the specific language of section 210, the agency will respond in the context of that language (while recognizing that language has since been superseded in form but not substance). While AIAM may appear at first glance to simply be applying the statutory definitions, the agency believes that there are several problems with AIAM's argument.

First, a more complete quotation of the definition of ''passenger motor vehicle equipment'' cited by AIAM reads as follows: The term ''passenger motor vehicle equipment'' means any system, subassembly, or component *received at the final assembly point* for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Since this definition is limited to items received at the final assembly point, neither it, nor a definition of ''foreign content'' incorporating it, can be directly applied to items being received by a supplier for purposes of producing equipment.

Second, the Labeling Act's primary section concerning the determination of the U.S./Canadian origin of equipment, section 210(f)(5), indicates that, in at least some instances, the foreign content of passenger motor vehicle equipment is determined by subtracting the value of the *foreign material* in that equipment. That section read as follows:

> The terms ''originated in the United States and Canada,'' and ''of U.S./Canadian origin,'' in referring to automobile equipment, means—
>
> (A) for outside suppliers, the purchase price of automotive equipment which contains at least 70 percent value added in the United States and Canada; and
>
> (B) for allied suppliers, the manufacturer shall determine the foreign content of any passenger motor vehicle equipment supplied by the allied supplier by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment and subtracting such purchase price from the total purchase price of such equipment. Determination of foreign or U.S./Canadian origin from outside suppliers will be consistent with subparagraph (A).

This section's reference to determining the foreign content of passenger motor vehicle equipment by subtracting the value of the foreign material in that equipment applies to equipment supplied by allied suppliers rather than equipment supplied by outside suppliers, the focus of AIAM's comment. It is significant, however, that the section uses the term ''foreign content'' differently from AIAM's reading of section 210's definition of ''foreign content.''

Third, AIAM's argument begs the ultimate question of how suppliers are to determine the U.S./Canada value added for their equipment. That organization asserts that ''only incorporated foreign passenger motor vehicle equipment, not foreign raw material, is to be treated as foreign content.'' However, first-tier suppliers rarely use raw materials in producing passenger motor vehicle equipment. AIAM's argument leaves unanswered the question of how a supplier determines whether, and the extent to which, the so-called ''passenger motor vehicle equipment'' which it uses to produce passenger motor vehicle equipment is foreign.

For the reasons discussed above, NHTSA does not accept AIAM's argument that tracing back to raw materials is contrary to the Labeling Act. The agency notes that Act's definition of ''value added in the United States and Canada'' makes it clear that, in making that calculation, the purchase price of ''foreign content'' is to be subtracted. As indicated above, the Labeling Act defines ''foreign content'' as meaning passenger motor vehicle equipment not determined to be U.S./Canadian origin. In applying this provision in the context of suppliers determining whether an item they receive to produce passenger

motor vehicle equipment is foreign, the agency believes that the best reading of the provision is that the cost of the item is considered foreign to whatever extent part or all of the cost is not determined to represent value added in the United States or Canada. Since value is added to items at many stages, it is appropriate, in determining the extent to which an item represents value added in the United States or Canada, to take into account the location where value is added in the various stages.

NHTSA also does not accept AIAM's argument that the tracing provision was outside the scope of notice of the NPRM. The NPRM clearly put at issue the subject of how suppliers are to make determinations of U.S./Canadian content. While the NPRM did not mention tracing as such, the inclusion of the provision in the final rule is a logical outgrowth of the proposal.

NHTSA now turns to the other issues raised by the petitioners concerning the tracing provision. These issues relate to the accuracy of the information that will result from that provision and the difficulties associated with tracing.

AAMA expressed concern that suppliers may avoid the costly process of tracing simply by defaulting U.S./Canadian content to zero, with the result that U.S./Canadian content will be understated. That organization added that even if a supplier chooses to trace, it will be difficult and costly for sub-suppliers to certify the actual U.S./Canadian value added. AAMA stated that sub-suppliers may not maintain the required financial inventory records, and that if actual data are not available, the rule would require these suppliers to default their material content to foreign.

AAMA also noted that the Labeling Act requires that a foreign country providing at least 15 percent of a vehicle's content must be identified. That organization stated that the final rule does not address how ''default-to-foreign content'' would be allocated to a foreign country or how that foreign country would be identified.

Based on the above arguments, AAMA expressed concern that, under the final rule, Labeling Act data may be subject to significant variability depending on the response and efforts of the manufacturer's suppliers. It recommended that first-tier suppliers be allowed to base the determination of value added in the U.S./Canada on the country-of-origin markings on the materials it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that the tracing provision, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit first-tier suppliers to use other methods, such as country-of-origin marking, substantial transformation, or other customs data in their records, to determine the U.S./Canadian content of equipment.

In addition to the arguments AIAM made with respect to agency authority to specify a tracing provision, that organization also argued that the tracing provision is inconsistent with the Congressionally stated purpose to provide the best and most understandable information possible without imposing costly and unnecessary burdens on the manufacturers. The Kentucky Cabinet expressed concern that companies will be required to undergo expensive and time-consuming efforts to trace a part back to raw materials and that, in some cases, a second tier supplier may not want to divulge proprietary information.

NHTSA has carefully considered the arguments of all of the petitioners, as well as the Congressional report. The agency shares the concern about the possibility that suppliers may choose to avoid the costly process of tracing simply by defaulting the U.S./Canadian content of materials to zero, with the result that U.S./Canadian content will be understated. The agency also shares the concern that actual tracing may be overly burdensome in some instances.

As discussed below, in light of these concerns, NHTSA has decided to amend the clarifying procedures to (1) make it clear that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment), (2) provide suppliers greater flexibility in the information they can use in making these estimates, and (3) reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA.

As indicated above, AAMA urged that first-tier suppliers be allowed to base the determination of value added in the U.S./Canada on the country-of-origin markings on the materials it purchases, the first-tier supplier's knowledge of the second-tier supplier's processes and the rule of substantial transformation, or if the material is identified as U.S. or Canadian using any other methodology that is used for customs purposes (U.S. or foreign), so long as a consistent methodology is employed for all items of equipment. NHTSA believes that a methodology this broad for determining value added in the U.S./Canada would be inconsistent with the Labeling Act's requirement that determinations of U.S./Canadian origin be based on the value added in the U.S./Canada.

NHTSA notes that country of origin determinations for customs purposes do not connote value content. The substantial transformation test is a traditional means of making country of origin determinations for customs purposes. Under this test, an imported good becomes a product of the country where it emerges from a process with a new name, character and use different from that possessed by the good prior to processing. However, application of the test does not indicate any particular level of value content from that country of origin. Therefore, even though the product's country-of-origin might be the United States or Canada, it might have little U.S./Canadian content.

In enacting the Labeling Act, Congress decided, for purposes of making determinations about the U.S./Canada origin of motor vehicle equipment, to specify a value added test rather than substantial transformation. More specifically, Congress decided to require items supplied to vehicle manufacturers or their allied suppliers by outside suppliers to have at least 70 percent value added in the U.S./Canada in order to be considered U.S/Canadian.

NHTSA believes that permitting outside suppliers to use the substantial transformation test for purposes of determining the origin of the materials it uses to produce equipment could allow substantial amounts of foreign content to be converted into the U.S./Canadian content and counted toward the 70 percent threshold. This can be illustrated by a hypothetical situation where a first-tier outside supplier purchases casings from a second-tier supplier to use in producing transmissions. The second-tier supplier, located in the U.S., produces the casings by casting them from imported aluminum. Under AAMA's suggested approach, the entire value of the casings would be considered to be U.S./

Canadian (since the second-tier supplier had performed a substantial transformation) and counted toward the 70 percent threshold, even though the casings were made of imported aluminum. NHTSA observes that just as it agrees with AAMA that $800 of U.S. engine parts should not be converted into foreign content as a result of a regulatory provision intended to provide simplicity, it is equally concerned about the possibility of such a regulatory provision permitting the conversion of a large amount of foreign content into U.S./Canadian content.

A comment on the NPRM signed by Senator Carl Levin and several House members also illustrates how methodologies that permit conversion of substantial foreign content into U.S./Canadian content, for purposes of making country-of-origin determinations for materials suppliers use to produce equipment, could substantially affect the information on the vehicle label.

The comment stated:

> We are writing to urge you to draft American Automobile Labeling Act implementing regulations that reflect the legislation's intent to provide an accurate means of measuring the parts value content of a vehicle.
>
> The trend has been for Japanese transplants to purchase parts assembled in the U.S. by Japanese affiliated parts makers, a high percentage of which are merely assembled here using subcomponents and materials imported from Japan. Nonetheless, they are erroneously counted as U.S. parts for the purposes of calculating U.S. content levels. The Labeling Act was an attempt by Congress to establish a tool to more accurately measure the ''actual'' U.S. and Canadian content of vehicles sold in the U.S. based on the origin of where the parts are made, not where the parts are purchased or assembled. It is our hope that the Labeling Act will achieve this objective by imposing a stringent definition of what is an ''American or Canadian made'' auto part.
>
> Currently, Japanese transplant auto makers claim high levels of U.S. content in their U.S. made vehicles. But they will not provide the necessary data to measure accurately the U.S. content levels of the auto parts used in these vehicles, and thus, it is impossible to verify their claims. After tracing the actual source of parts, a 1992 Economic Strategy Institute study found that the U.S. auto parts used in a 1991 Honda Accord contained ⅔ Japanese content and only ⅓ ''actual'' U.S. content. Even with these low levels of U.S. content, Honda took credit for these parts being totally U.S.-made.
>
> In order to adequately distinguish between parts assembled in the U.S. using imported materials and parts made in the U.S. using U.S. materials, the Labeling Act must include tracing requirements similar to the tracing requirements in the NAFTA rule of origin, with the exception that Mexican parts would not be included as U.S. or Canadian. Tracing should be used to determine if suppliers can be designated as North America (U.S. or Canadian)—if they achieve the 70% North American content value—as well as to determine the country of origin for the engine and transmission. For example, if tracing were required, an engine or transmission that contains 75% Japanese content but is assembled in the U.S. would be correctly found to be primarily of Japanese origin, not of U.S. origin.

NHTSA has also concluded that the concerns identified by the petitioners for reconsideration and the Congressional report can be adequately addressed by making other changes in the procedures for determining value added in the U.S./Canada.

First, the agency is specifying in the regulation that, for materials used by suppliers in producing passenger motor vehicle equipment (other than for materials imported from third countries), suppliers must make a good faith estimate of the value added in the United States or Canada (to the extent necessary to make required determinations concerning the value added in the U.S./Canada of their passenger motor vehicle equipment). Thus, suppliers are not permitted to simply default the U.S./Canadian value of the materials they use to zero, since that would not represent a good faith estimate.

Second, NHTSA is providing greater flexibility to suppliers concerning the information they may use to make their good-faith estimates. Rather than specifying tracing as such, the regulation will permit suppliers to base their estimate on all information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

Third, NHTSA has concluded that it can reduce the number of stages for which suppliers must consider where value was added, although not to the degree recommended by AAMA. As indicated above, the basic problem with adopting AAMA's specific recommendation is that it would permit large amounts of foreign content to be transformed into U.S./Canadian content and counted toward the 70 percent threshold. The agency believes that this possibility can be substantially reduced or eliminated by adopting an approach that requires a supplier to consider, for materials it uses which were produced or assembled in the U.S. or Canada, where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use, rather than all the way back to raw materials.

NHTSA is adopting the following provision concerning how outside suppliers are to determine the U.S./Canadian content of materials used by the supplier which are produced or assembled in the U.S./Canada:

> (A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.
>
> (*2*) The supplier shall consider the amount of value added and the location in which that value was added—
>
> (*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.
>
> (*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

This approach can be illustrated by returning to the hypothetical situation involving a first-tier supplier of transmissions which purchases aluminum casings from a second-tier supplier located in the United States. Under the July 1994 final rule, the first-tier supplier could count the full value of the aluminum in those casings as U.S./Canadian content only if it traced the aluminum back to raw materials, i.e., back to bauxite, and found the bauxite to be of U.S. or Canadian origin.

Under today's amendments, the first-tier supplier need only consider where value was added back through two stages, i.e., the casting of the casing and the production of the aluminum. The second-tier supplier, with which the first-tier supplier directly deals, will have information on both of these stages, i.e., it will know about its own casting operations and it will know the source of the aluminum it uses for the casting.

If the casing was cast in the U.S. using aluminum made in the U.S. or Canada, the full value of the casing would be counted as U.S./Canadian content for purposes of determining whether the 70 percent threshold were met. If the casing was cast in the U.S. using imported aluminum, the value of the imported aluminum would have to be subtracted from the value of the casing

in determining the amount that could be counted as U.S./Canadian content.

It would not be necessary, under those two circumstances, for the supplier to attempt to determine the origin of the bauxite used to produce the aluminum. For example, if the aluminum were produced in U.S. or Canada, the value of the materials used to make it would be treated as value added in the country where the aluminum was produced. The agency believes that the value of a material this many stages back is likely to be so small as not to affect labeling information. Moreover, it would be much more difficult to obtain information for a still earlier stage (before the aluminum production), since it would likely require contacting parties with which the first-tier supplier does not ordinarily have privity or any other connection.

NHTSA notes that this approach for the materials used by suppliers is similar to the double substantial transformation test specified by customs for determining foreign value content. As indicated above, country of origin determinations for customs purposes do not connote value content. However, there are a number of programs where certain determinations of value must be made. The full value of imported materials is counted toward the full value of the good for purposes of programs such as the Generalized Systems of Preferences, the Caribbean Basin Economic Recovery Act, etc., only when the imported materials undergo what is known in customs law as a ''double substantial transformation.'' Under this standard, foreign materials can be considered ''materials produced in the beneficiary country'' when those materials are substantially transformed in that country into a new or different article of commerce which is then used in the production or manufacture of yet another new or different article (the final product). For a further discussion of this concept, see Treasury Decision 88–17, 53 FR 12143, April 13, 1988.

Particularly given the changes discussed in this section, NHTSA believes that the requirement for suppliers to make content determinations will not be burdensome. The agency notes again that the Labeling Act does not require outside suppliers to provide specific estimates of the U.S./Canada value added of their equipment, but instead only requires them to indicate whether the U.S./Canada value added is at least 70 percent.

NHTSA notes that AAMA indicated that a typical item of motor vehicle equipment represents 59 percent value added by the first-tier supplier and 41 percent purchased material. In order to determine in such an instance whether the 70 percent threshold is satisfied, a U.S./Canada outside first—tier supplier of transmissions would only need to determine whether enough of the 41 percent material cost (i.e., the cost of the casings and other transmission parts) represented value added in the U.S./Canada so as to raise the 59 percent figure for the transmissions to at least 70 percent. The agency notes that, assuming the same 59:41 ratio for value added to material cost for second-tier suppliers, about 83 percent (59 percent + (59 percent)(41 percent)) of the total value added of the transmissions would typically represent value added by the transmission supplier itself or the second-tier suppliers from which it purchases materials. Moreover, the second-tier suppliers will know the source of the materials they use.

As discussed above, the first-tier supplier is not limited to basing its estimates on actual tracing, but may instead consider all available information. To the extent that the value added in the U.S./Canada of motor vehicle equipment is well above or well below 70 percent, it will be easy for suppliers to make the required determination. The most difficult determinations will be for equipment whose value added in the U.S./Canada is close to 70 percent. To the extent that the reasonably available information to the supplier indicates that the U.S./Canada value added is near 70 percent, the supplier will simply have to make its best good-faith judgment whether it is ''at least'' 70 percent.

NHTSA believes that the revised clarifying procedures will, in addition to providing appropriate additional flexibility to suppliers, result in more accurate information being provided to consumers. Full tracing back to raw materials may often be impossible, and, for materials made in the U.S./Canada which are used by suppliers located in the U.S./Canada to make their motor vehicle equipment, the agency believes that good faith estimates by the suppliers of the U.S./Canada value added will be more accurate than a procedure which specifies that any untraced portions of the materials be considered foreign. The agency believes that the concerns expressed by Senator Levin and others in the Congressional comment on the NPRM will be adequately addressed by requiring the suppliers' estimates to reflect consideration of where value was added at each stage back to and including the two closest stages which represented a substantial processing operation into a new and different product with a different name, character and use.

2. Non-Responsive Suppliers

NHTSA included a provision in the final rule which specifies that if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. The agency stated that it does not believe that this situation will occur very often, and that the provision will ensure that U.S./Canadian content is not overstated as a result of the manufacturer or allied supplier simply assuming that equipment is of U.S./Canadian origin in the absence of information from the supplier.

AAMA argued that the agency's expectation that few suppliers will fail to report is unreasonable, especially within the first few years of implementation. That organization stated that, for a comparison, one of its members' requests for data from suppliers for NAFTA certificates of origin has yielded a response rate of 50 to 60 percent. (In later information provided to the agency, AAMA indicated that the percentage of suppliers reporting under NAFTA ranged from 60 to 65 percent for GM, Ford and Chrysler.)

AAMA argued that the content information ultimately provided to consumers will be more accurate if manufacturers are permitted to establish the U.S./Canadian content of components by other means when a supplier fails to respond. That organization recommended that if a manufacturer or allied supplier does not receive a response to its request for information, the manufacturer or allied supplier should be permitted to use the information in its records to determine the U.S. and Canadian content. The determination could be made by such means as examining the customs marking country, applying the substantial transformation test, or other methodologies used for customs purposes.

As indicated above, the FY 1995 Conference Report on DOT Appropriations stated that this provision of the final rule, among others, will not ensure that the most accurate, understandable, and cost-effective information is provided to consumers, and directed NHTSA to amend the final rule to permit manufacturers and allied suppliers to use other methods to determine U.S./Canadian content of equipment when suppliers fail to provide adequate information.

NHTSA has carefully considered AAMA's request and the Congressional report. As discussed below, the agency has concluded that it would be inappropriate under the statute to make the requested change. However, the agency believes that its one-year extension of the temporary alternative approach for data collection and calculations will provide appropriate flexibility in this area.

As discussed above, the Labeling Act provides that passenger motor vehicle equipment supplied by outside suppliers is considered U.S./Canadian if at least 70 percent of its value is added in the U.S./Canada. See 49 U.S.C. 32304(a)(9). The Labeling Act also provides that outside suppliers are required to certify, among other things, whether their equipment is of U.S./Canadian origin.

While it might appear at first glance to be reasonable to permit manufacturers and allied suppliers to make origin determinations concerning equipment provided by an outside supplier in the event that the outside supplier fails to do so, the problem is that the manufacturers and allied suppliers will not possess the information needed to make the required determination. The agency assumes that this is why AAMA suggests that manufacturers and allied suppliers be permitted to determine whether equipment is U.S./Canadian based on methods other than the value added approach specified in the statute. However, the results that would be obtained from those other methods would not necessarily be consistent with the value added approach.

NHTSA also notes that the most likely instance in which an outside supplier would not want to provide the required information is when the U.S./Canadian content was below 70 percent. In such an instance, it would be particularly inappropriate to permit the manufacturer to use alternative methods for determining whether the equipment was U.S./Canadian.

Moreover, the agency believes that vehicle manufacturers can obtain the required information from suppliers, assuming that the manufacturers and suppliers have the time to make any necessary arrangements. Apart from the fact that outside suppliers are required by Federal law to provide the information to manufacturers and allied suppliers, the outside suppliers are dependent on the auto manufacturers for their business. While NHTSA understands that there may be some confusion at the time a new program is first implemented, it does not believe that suppliers will deliberately refuse to provide the information in response to manufacturers' and allied suppliers' requests. The agency notes that the manufacturers can put specific provisions in their purchase agreements to ensure that they receive the required information.

In its March 1995 initial response to petitions, NHTSA extended by one year the temporary alternative approach for data collection and calculations which permits manufacturers and suppliers to use procedures that are expected to yield similar results. For a more complete discussion of this alternative, see 59 FR 37324–25, July 21, 1994.

The extension of this temporary alternative gives an extra year for manufacturers and suppliers to work out any arrangements that are necessary to ensure that suppliers provide the necessary information to manufacturers. The agency believes that this should provide appropriate flexibility in light of AAMA's concerns.

C. Procedure for Determining Major Foreign Sources of Passenger Motor Vehicle Equipment (Section 583.7)

As part of the procedure for determining major foreign sources of passenger motor vehicle equipment, NHTSA included a provision to prevent the possibility that the specified U.S./Canadian content and major foreign sources of foreign content for a carline will together exceed 100 percent. The agency was concerned that, due to differences in calculation methods for U.S./Canadian and foreign content, it would otherwise be possible for the sum of the U.S./Canadian and foreign label values of a carline to be over 100 percent, which could cause confusion for consumers. The agency decided to simply specify that if the U.S./Canada and major foreign source percentages add up to more than 100 percent, the foreign source percentages are proportionately reduced to the extent necessary to bring the percentages down to 100 percent.

AIAM stated that there are a number of serious problems raised by this provision, all involving the central question of the agency's authority to take this step. That organization made the following argument:

> As NHTSA implicitly acknowledges, the statute does not provide authority for such an arbitrary reduction, yet elsewhere in the preamble the Agency has argued that it is strictly bound by the language of the statute, (*see e.g.*, the Agency's discussion on the authority to exclude vehicles with low or high U.S./Canadian content . . .). The Agency has not identified what specific authority the statute affords NHTSA to reduce that number to 100 percent. The excuse the Agency relies upon—that ''such a procedure would necessarily be very complicated, given certain aspects of the procedure for determining U.S./Canadian content'' . . . has, in an analogous situation, been found wanting by NHTSA for giving relief to companies with little U.S. content and who for the sake of ''simplicity'' would agree to claim essentially all foreign content by merely indicating on the label that the U.S. content fell below a specified level. The Agency has refused to grant such a common sense exclusion because ''NHTSA has concluded that it does not have the authority to provide exclusions.'' * * *
>
> A second problem is the absence of any basis in the statute for the Agency's assertion (or justification) that U.S./Canadian percentage ''is the more important of the two items of information for consumers.'' . . . Again, we are unable to find in the language of the statute such a prioritization of the information. Accordingly, AIAM asks the Agency to amend the Rule by deleting § 583.7 to require the use of the percentages as calculated in accordance with the terms of the statute regardless of what the total might be.

NHTSA disagrees with the petitioner's suggestion that the agency lacks authority in this area. Section 32304(e) expressly provides that the agency is to prescribe regulations to carry out [the Labeling Act].

Moreover, AIAM draws an incorrect analogy in comparing this issue with that of whether the agency has authority to exclude vehicles with high or low U.S./Canadian content from certain statutory provisions. In the latter case, the relevant issue was whether the agency could create, by rule, exclusions from express statutory requirements. The provision concerning reducing foreign source percentages does not represent an exclusion from a statutory requirement but instead is simply part of the procedure for determining foreign source percentages.

Rather than representing a departure from the statutory requirements, the provision AIAM objects to was intended to ensure that the statutory provisions concerning determination of U.S./Canadian content are not effectively diluted. NHTSA explained in the final rule preamble that while the method for determining the U.S./Canada percentage is explicitly set forth in the statute, the methodology for determining major foreign source percentages is not in the statute. The agency also explained that since the statute provides a specific methodology for determining the U.S./Canada percentage, ''the § 583.7 procedures have the limited purpose of providing a method for calculating the extent to which the *remaining* percentage is attributable to foreign countries which individually contribute at least 15 percent of the parts content,

and the specific percentage attributable to each such foreign country.''

In the absence of a specific statutory procedure, NHTSA decided to provide wide flexibility concerning how manufacturers are to determine country of origin for purposes of major foreign source percentages. This was for the purpose of minimizing regulatory burdens on manufacturers and suppliers. At the same time, the procedure must not be so flexible that it interferes with other aspects of the statutory scheme. Permitting manufacturers to identify the U.S./Canadian content and major sources of foreign content for a carline as exceeding 100 percent would both confuse consumers and dilute the meaning of U.S./Canadian content as determined under the more specific statutory procedures. NHTSA therefore believes that, far from being arbitrary or inconsistent with the statute, the provision at issue was a reasonable limitation on how major foreign source percentages are determined.

On reconsideration, however, NHTSA has considered whether there may be a better way of addressing this potential problem. The agency notes that the only significant way [4] that U.S./Canadian content and major sources of foreign content can exceed 100 percent is if there is double-counting, i.e., the same value is considered to be both U.S./Canadian *and* foreign. Such double-counting would be inconsistent with the statute, which specifies that foreign content means passenger motor vehicle equipment that is not of United States/Canadian origin.

The agency has considered the extent to which such double-counting might occur under Part 583, absent the provision about reducing foreign percentages.

Double-counting would not occur for equipment supplied by outside suppliers. Such equipment is considered 100 percent U.S./Canadian if 70 percent or more of its value is added in the U.S. and/or Canada and 0 percent U.S/Canadian if less than 70 percent of its value is added in the U.S. and/or Canada. Moreover, the outside supplier is only to provide a country of origin, for purposes of major sources of foreign content, for equipment which has less than 70 percent of its value added in the U.S. and/or Canada. See section 583.10(a)(5).

[4] The U.S./Canadian content and major sources of foreign content could also potentially exceed 100 percent as a result of the vehicle manufacturer rounding the percentages to the nearest five percent, as permitted by the statute. However, this result does not appear likely.

NHTSA believes that Part 583 is not so clear with respect to possible double-counting for equipment supplied by allied suppliers. Under section 583.11, allied suppliers are to provide a specific percentage U.S./Canadian content for their equipment, as well as a country of origin for purposes of major sources of foreign content. A manufacturer might believe that it should count the actual U.S./Canadian content of such equipment for purposes of determining U.S./Canadian parts content, and the total value of such equipment for purposes of determining major sources of foreign content. This would, of course, result in double-counting. The agency has decided to replace the provision about reducing foreign percentages with one that makes it clear that, in calculating major sources of foreign content, manufacturers are not to count any value that has been counted as U.S./Canadian content.

D. Alternative Procedures for Manufacturers

In the final rule preamble, NHTSA addressed comments by a number of manufacturers urging it to permit simplified procedures for estimating U.S./Canadian content. GM, for example, had recommended the use of a high volume configuration model as the basis for establishing the U.S./Canadian content value for a carline.

NHTSA stated that it does not disagree with the concept of permitting simplified procedures for estimating U.S./Canadian content, if such procedures would always ensure reliable results. The agency concluded, however, that the procedures which were suggested by the commenters, which were based on either a high volume configuration or best selling model, would not appear to always ensure meaningful results. By way of example, the agency cited a situation where the high volume configuration or best selling model of a carline was produced in the U.S./Canada and the rest of the carline was produced in a foreign country. NHTSA noted that content calculations based on the portion of the carline assembled in the U.S./Canada would likely not be representative of the carline as a whole.

In petitioning for reconsideration, GM noted the agency's concern that alternative procedures must always produce reliable results, and requested that alternative, simplified procedures be permitted if the Administrator determines that the procedures produce substantially equivalent results. That manufacturer also stated that an optional procedure can be designed to take care of the problem in the example cited by the agency.

GM noted the Labeling Act's provision stating that regulations are to provide the best and most understandable information possible without imposing costly and unnecessary burdens on manufacturers. That company argued that the agency has chosen as the only allowed method of determining U.S./Canadian content the most burdensome and costly procedure possible. GM explained an optional calculation procedure as follows:

> When attempting to average a very large number of values when all of the values themselves are not known, certain well accepted and reasonable approximation procedures can be employed to reduce the amount of data gathering required to calculate with an acceptable level of confidence. In other words, a great deal of the burden can be reduced while maintaining reliable and equivalent test results. Such procedures are accepted by the Commerce Department under North American Free Trade Agreement and by the Environmental Protection Agency in determining whether vehicles are in the manufacturer's domestic or foreign fleet for Corporate Average Fuel Economy (CAFE) purposes. Also such a procedure is used when determining a manufacturer's CAFE. * * * As with any volume-weighted calculation, only that data associated with high volumes will significantly impact the final calculation. Any further data collecting would add significant burden and provide diminishing returns on the accuracy of the calculated average.
>
> GM believes that NHTSA should accept optional calculation methods as an accurate measure of the average percent of U.S./Canadian content. This will dramatically reduce the content data gathering burden while still maintaining a level of accuracy and reliability required by the AALA in the average content value calculation for the carline.

The FY 1995 Conference Report on DOT Appropriations stated that to ensure that the final rule does not impose costly and unnecessary burdens on manufacturers, the conferees also direct NHTSA to amend the rule to allow manufacturers to propose alternative procedures for determining domestic content if such procedure produces reliable results.

After considering GM's petition and the Congressional report, NHTSA has decided to add a provision along the lines suggested by GM. The agency wishes to reduce manufacturer and supplier costs to the extent possible, and the agency believes that the process recommended by GM is consistent with the agency's concern that alternative procedures must always ensure meaningful results.

NHTSA notes that GM suggested adding a single sentence to the regulation indicating that manufacturers may use alternative procedures to determine U.S./Canadian parts content provided the Administrator has determined that the alternative procedure will produce substantially equivalent results. The agency believes that it is also necessary for the regulation to specify the type of alternative procedures that manufacturers can petition for, and a more detailed procedure for manufacturers to follow in submitting petitions.

NHTSA is specifying that manufacturers may petition for an alternative calculation procedure that is based on representative sampling and/or statistical sampling. The agency notes that GM's request to use an optional calculation procedure was in the context of a representative sampling approach, such as the one used by EPA for calculating CAFE.

EPA's procedures provide that a manufacturer's CAFE is calculated based on testing a limited number of vehicles. Because EPA's procedures ensure that the tested vehicles are representative, with respect to fuel economy, of the manufacturer's fleet, the procedures result in a calculated average representative of the manufacturer's actual fleet average. (A manufacturer's actual fleet average would be the average fuel economy that would be measured using the prescribed test procedures if every car produced were actually tested.)

NHTSA believes it is appropriate to similarly permit manufacturers to use a calculation procedure for the motor vehicle content labeling program that is based on vehicles that are representative, with respect to content, for the carline. The agency recognized in the preamble to the July 1994 final rule that a particular high volume configuration carline model might not be representative, with respect to content, of the overall carline. However, the agency believes that the petition process recommended by GM will ensure that manufacturers select vehicles that are representative.

The agency also believes it is appropriate to permit manufacturers to petition for alternative calculation procedures that are based on statistical sampling. NHTSA notes that EPA, in developing its calculation procedures, considered statistical sampling approaches as well as representative sampling. That agency decided not to adopt a statistical sampling approach because it would have been much more costly than representative sampling, due to a need to test more vehicles. The motor vehicle content labeling program does not, of course, involve costly testing. Moreover, a statistical sampling approach would likely be less costly than the main approach specified by Part 583 and might, in some cases, be easier for manufacturers to implement than a representative approach. Therefore, NHTSA believes that statistical sampling, as well as representative sampling, should be included as an option for which manufacturers may petition. (For a further discussion of EPA's consideration of representative and statistical sampling approaches, see 41 FR 38677–79, September 10, 1976.)

The procedures specified in today's amendments require manufacturers to provide analysis demonstrating that the alternative procedure will produce substantially equivalent results. If the Administrator determines that the petition contains adequate justification, he or she will grant the petition.

The procedures also provide that the agency will publish a notice of receipt of the petition and provide an opportunity for the public to submit comments on the petition. The Administrator will consider the public comments in deciding whether to grant the petition. While a manufacturer may submit confidential business information in support of a petition, the basic alternative procedure and supporting analysis must be public information.

NHTSA notes that it is possible that alternative procedures may raise issues which require complex analysis. The agency is therefore including a provision in the regulation which specifies that petitions must be submitted not later than 120 days before the manufacturer wishes to use the procedure.

While GM's petition requested that manufacturers be permitted to petition for alternative procedures for calculating carline U.S./Canadian content, the agency is also making this option available for calculating major sources of foreign parts content. The latter calculations are also made on a carline basis, and the same considerations relevant to this issue apply to calculations for both items.

E. Legal Issues

1. Federal Preemption

AIAM stated that NHTSA did not respond to the concerns it raised in its comment on the NPRM about the possibility of actions taken against automotive manufacturers by state or local authorities as a result of the differential treatment of suppliers or what AIAM termed ''the misleading nature of the information required by the underlying statute or compliance with the final rule.'' That organization argued that the label could foster consumer confusion and requested that NHTSA provide an express statement of Federal preemption of any state or local action initiated as a result of providing the required information on the label in accordance with the rule.

NHTSA wishes to emphasize that, while it will respond to the issue of Federal preemption raised by AIAM, the agency is not accepting the petitioner's argument that the underlying statute or regulation results in misleading information or consumer confusion.

It is a basic principle of Constitutional law that Federal law, including agency regulations, can preempt state law. Section 32304(f) expressly provides that ''(w)hen a label content requirement prescribed under this section is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to the content of vehicles covered by a requirement under this section,'' although a state may prescribe requirements related to the content of passenger motor vehicles obtained for its own use. Moreover, Federal law impliedly preempts state law when, among other things, it is impossible to comply with both. In this context, ''state law'' includes the state's common law, as established through litigation.

Given these principles, and since manufacturers are required to comply with section 32304 and with Part 583, no person may bring an action under state or local law seeking to impose liability against a manufacturer on the basis that it provided information required by Federal law. This result follows from Constitutional law, and it is not necessary to put a specific provision to that effect in the regulation.

2. Due Process

AIADA submitted a very brief petition requesting that the agency ''reconsider and vacate its final rule on Motor Vehicle Content Labeling.'' As grounds for its request, it stated that ''(t)he rule is unconstitutionally vague and unequal and discriminatory in its application and therefore constitutes a denial of due process in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act.'' The petitioner also cited ''(a)l the reasons set forth in AIADA's letters * * * dated January 11, 1992 and January 18, 1994.''

NHTSA cannot grant AIADA's request. The agency notes that it cannot

simply ''vacate'' the content labeling final rule, since the rule is required by section 32304. NHTSA also notes that AIADA's stated concern about ''due process'' is so vague that it is not possible to identify what specific concerns about the final rule it might relate to. While the petition cites that organization's earlier letters, NHTSA has already responded to those issues in previous **Federal Register** notices, including the final rule preamble. AIADA did not discuss why it is unsatisfied with the agency's responses or even acknowledge the responses. Therefore, there is no basis for the agency to give any further consideration to AIADA's petition.

3. Authority to Exclude Vehicles With Low U.S./Canadian Content

VW requested the agency to reconsider its determination that it lacks authority to permit manufacturers selling vehicles with low U.S./Canadian content, e.g., less than 35 percent, from stating such content as ''minimal'' or ''less than 35 percent,'' instead of indicating an actual percentage, as specified in the statute. That company made the following argument:

> The NHTSA acknowledges that it has implied authority to create exclusions from the statutory requirements of the [Labeling Act] in cases of administrative need and where a literal application of the statutory language would lead to absurd or futile results or produces a gain of trivial value or of no value at all. The NHTSA concluded, however, that all manufacturers have the capability of implementing the statutory language literally and that disclosure on the label of the actual U.S./Canadian parts content percentage per carline offers a benefit to the consumer which is more than trivial. We disagree.
>
> While one may argue over whether or not disclosure of the actual percentage in the case of a carline with marginal U.S./Canadian parts content bestows more than trivial benefits on the public when compared with a disclosure of that content as ''minimal,'' we note that the Federal Court of Appeals in the case of *Alabama Power Company* v. *Costle,* 636 F.2d 323 (1979) did not view the ''trivial'' standard to be relevant to a situation where the benefits are exceeded by the costs associated with providing those benefits. The court stated that in that event, the Agency should be guided by the aims of the statute it is implementing and the Congressional intent as expressed in the statute's legislative history.
>
> In the case before us there appears to be no need to explore the legislative history because the statute is plain on its face in providing in section 210(d) that ''the regulations shall provide to the ultimate purchaser of a new passenger motor vehicle the best and most understandable information possible about the foreign and U.S./Canadian origin of equipment of such vehicles *without imposing costly and unnecessary burdens on the manufacturers.*'' (Emphasis supplied by VW)
>
> VW submits that the statute is clear in directing the NHTSA to strike a balance between communicating to the public ''the best and most understandable information possible'' and the ''cost'' and ''necessity'' of burdening the manufacturer. We believe that the NHTSA erred in striking the correct balance between these competing considerations as Congress directed it to do.

VW noted that it imports vehicles from both Germany and Mexico. It stated that the German vehicles are estimated to have a small fraction of U.S./Canadian parts content which could not reasonably be relevant to a U.S. consumer's purchasing decision. That company stated that while its Mexican vehicles are likely to have a greater U.S./Canadian parts content, that content is not sufficient to permit the conclusion that disclosure of the actual percentage would not be dictated by a correct balancing of the factors described in section 210(d). VW argued that its vehicles originating in Mexico are largely manufactured with equipment originating in Europe and Mexico, are marketed and perceived by the U.S. market as foreign made, and are purchased because they are unlike any other offerings to the market by the transplants or the domestic manufacturers.

VW also estimated that the assignment of a staff of five full time employees at a total cost of approximately $500,000 annually will be necessary at its various manufacturer locations to comply with the regulations as adopted, and that $150,000 of that amount is attributable to those portions of the regulation which require the calculation and disclosure of actual percentage figures rather than estimates designed to determine whether or not a particular carline has U.S./Canadian parts content below a range of about 20 percent to 35 percent.

VW argued that the Labeling Act is very specific in directing NHTSA to take costs into account in determining the form and content of the information which the manufacturer must disclose. That company argued that this directive is specific rather than general in nature and that it leaves no room for debate irrespective of whether or not the benefit to the public is trivial or non-trivial.

While NHTSA has carefully considered VW's arguments, it continues to believe that it lacks authority to provide exclusions, along the lines discussed above, for vehicles with low U.S./Canadian content. As discussed below, the agency believes that VW is incorrectly interpreting one sentence in section 210(d) (now replaced by 49 U.S.C. 32304(e)) as overriding more specific statutory provisions.

Since VW based its argument in part on the case of *Alabama Power Co.*, the agency will begin its analysis by quoting the relevant portion of that case:

> *Exemptions for De Minimis Circumstances.* Categorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis.* . . .
>
> Determination of when matters are truly *de minimis* naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes . . . permit such agency showings in appropriate cases.
>
> While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history. . . . 636 F.2d at 360–61.

In the final rule preamble, NHTSA explained that an exclusion cannot be justified on the *de minimis* theory if non-trivial benefits would otherwise be provided. The agency concluded that it does not have authority to provide the relevant exclusion for vehicles with low U.S./Canadian content because such an exclusion would permit the labels on a substantial portion of the vehicles sold to provide the consumer with significantly less information than Congress intended, thereby eliminating much of the benefit that the Labeling Act was intended to provide.

The agency added:

> For example, a ''low-end'' exclusion would permit a large percentage of foreign vehicles to be labeled with the words ''minimal'' or less than 35 percent (or some other specified percentage) U.S./Canadian content, instead of being labeled with a specific percentage. Consumers would not know whether vehicles bearing such labels contained (on a carline basis) 0 percent, about 15 percent, or possibly even nearly 35 percent U.S./Canadian content. A consumer wishing to make a purchase decision among vehicles bearing such labels would not be able to compare their U.S./Canadian content. . . .
>
> NHTSA notes that section 210(b)(2) allows rounding of the percentages, but limits the

rounding ''to the nearest *five percent*.'' This indicates that specific percentages must be listed (since general percentages aren't amenable to rounding) and that any rounding to a greater degree is prohibited. In this regard, it is particularly important to note that the degree of permissible rounding permitted by the enacted version of § 210 is significantly less than the degree that would have been permitted in the introduced version. In the introduced version, rounding would have been permitted to the nearest 10 percent. The enacted version permits rounding only to the nearest 5 percent. Thus, Congress focused particular attention on the issue of rounding and decided to adopt strict limits. Moreover, implicit in the enacted rounding provision is a judgment by Congress that differences in content of as little as five percentage points are significant enough to be considered by the consumer.

The agency continues to believe that the Labeling Act and its legislative history make it clear that requirements which enable consumers to distinguish vehicles with 0 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, and 35 percent U.S./Canadian content provide non-trivial benefits. While such information may not make a difference to consumers who wish to purchase a vehicle that is primarily of U.S./Canadian origin, the information may be relevant for consumers in making a purchase decision between vehicles with relatively low U.S./Canadian content, e.g., for a consumer who may be deciding between a vehicle with 0 percent U.S./Canadian content and one which has 20 percent U.S./Canadian content.

VW's primary argument on reconsideration is that ''NHTSA did not properly balance the statutory considerations requiring the parts content label to contain 'the best and most understandable information' to the consumer with the cost and administrative burdens imposed upon a manufacturer such as VW, as Congress expressly directed it to do in the form of a clear and precise mandate.'' However, VW is incorrectly reading a general statutory provision as overriding most of the rest of the statute.

Section 32304(e) reads in relevant part as follows:

> (e) REGULATIONS.—. . . The Secretary of Transportation shall prescribe regulations necessary to carry out this section, including regulations establishing a procedure to verify the label information required under subsection (b)(1) of this section. Those regulations shall provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and United States/Canadian origin of the equipment of the vehicles without imposing costly and unnecessary burdens on the manufacturers. . . .

VW is reading the second sentence of section 32304(e) outside of context. The first sentence makes it clear that the required regulations are ''to carry out this section.'' The term ''this section'' refers to section 32304, which includes numerous very specific requirements concerning the content information which manufacturers are required to provide. The second sentence is not an invitation for NHTSA to second-guess Congress on all of the specific requirements in section 32304 concerning content information, e.g., whether the information Congress decided to require manufacturers to provide is ''best,'' whether that information is ''most understandable,'' etc. The sentence instead indicates the factors NHTSA must consider in exercising its limited discretion in developing the required regulation. The agency observes that VW's reading of this sentence would reduce virtually all of the specific requirements of section 32304 to suggestions for NHTSA's consideration.

VW argued that the sentence at issue is specific rather than general in nature. That argument was apparently made in response to the agency's statement in the final rule preamble that, as a matter of statutory construction, general provisions cannot be construed as overriding specific ones. NHTSA isn't arguing that it need not follow that sentence. What is significant is that the second sentence of 49 U.S.C. 32304(e) is general as compared to other relevant provisions of the statute.

Of particular significance, section 32304(b) reads as follows:

> (b) MANUFACTURER REQUIREMENT.—(1) Each manufacturer of a new passenger motor vehicle * * * shall establish each year for each model year and cause to be attached in a prominent place on each of those vehicles, at least one label. The label shall contain the following information:
>
> (A) the *percentage* (by value) of passenger motor vehicle equipment of United States/Canadian origin installed on vehicles in the carline to which that vehicle belongs, identified by the words ''U.S./Canadian content.'' (Emphasis added.)

This subsection expressly and specifically requires manufacturers to provide certain information, on the label, including the percentage U.S./Canadian parts content. Following accepted principles of statutory construction, the agency cannot interpret a more general provision as overriding this specific provision.

F. Clarifying Amendments

NHTSA is making several amendments suggested by AAMA for purposes of clarity. The amendments help clarify when the U.S. and Canada are treated together and when they are treated separately in making country of origin determinations. The amendments also help clarify requirements concerning optional information for carlines assembled in the U.S./Canada and in one or more other countries.

G. Letter From Ford

Ford submitted a letter requesting NHTSA's concurrence on a procedure for determining the U.S./Canadian content and country of origin for foreign-sourced allied and outside supplier components. That company explained its request as follows:

> [Part 583] assigns zero domestic content to all passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, even if part of its material originated in the United States or Canada. 49 CFR 583.7 allows the supplier to use methodologies that are used for customs purposes to determine the country of origin. Ford expects that for any imported component, both allied and outside, suppliers would report that the domestic content is zero and the country of origin is the country of manufacture, based on the rules of substantial transformation.
>
> Ford can obtain the same information (zero domestic content, country of manufacture, purchase price) expected to be received from our foreign suppliers from our present purchasing systems. Since the process of soliciting the supplier is costly, Ford plans to assign the domestic content and country of origin of the foreign sourced components without soliciting the data from our foreign suppliers. We are concerned that even if Ford did submit the request to foreign suppliers, that suppliers would have to expend additional resources creating a document which Ford already knows the answer. Even if the foreign supplier does not respond, the domestic content and country of origin will not be any different than if they did respond. Ford believes that requiring these suppliers to respond will impose costly and unnecessary burdens on our foreign suppliers.

NHTSA notes that it decided to address Ford's request in this notice, since it was related to some of the issues raised by the petitions for reconsideration.

After carefully considering Ford's request in light of the Labeling Act and Part 583, NHTSA has decided that, for equipment supplied by foreign suppliers and imported into the U.S. or Canada, manufacturers may use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. The agency notes that this represents a change in position from the final rule preamble. The reasons for the agency's new position are set forth below.

In the final rule preamble, NHTSA noted that Toyota had commented that ''blanket certifications'' should be authorized for use where a supplier's parts contain no U.S./Canadian content and where the country of origin of the equipment is indicated in ordinary business records. In responding to this comment, the agency noted that the Labeling Act provides that the agency's ''regulations shall include provisions applicable to outside suppliers and allied suppliers to require those suppliers to certify whether passenger motor vehicle equipment provided by those suppliers is of United States origin, of United States/Canadian origin, or of foreign content and to provide other information * * * necessary to allow each manufacturer to comply reasonably with this section and to rely on that certification and information.'' 49 U.S.C. 32304(e). NHTSA concluded that, given this statutory provision, it cannot permit the use of ordinary business records instead of specific certifications. See 59 FR 37319. (The agency did note that a certification can cover multiple items of equipment and be incorporated into business records that contain other information.)

On further consideration, NHTSA has concluded that the above-quoted sentence of section 32304(e) should not be read to require manufacturers to obtain information from suppliers that the manufacturer can determine on its own. The agency believes that statutory requirement is met literally by section 583's requirement for suppliers to provide manufacturers and allied suppliers, upon their request, a certificate providing the relevant information. The agency also believes that there is no reason to require manufacturers to request information for which they already know the answer.

With respect to whether manufacturers can make the relevant content determinations, NHTSA believes that it is important to distinguish between passenger motor vehicle equipment that is assembled or produced in the U.S. or Canada, and equipment imported into the U.S. or Canada that was produced in third countries. For reasons discussed in the section on ''non-responsive suppliers,'' manufacturers and allied suppliers will not possess the information needed to determine whether equipment produced in the U.S. or Canada is of U.S./Canadian origin, i.e., whether the equipment has at least 70 percent U.S./Canadian content.

However, manufacturers may possess the information necessary to make content determinations for equipment imported into the U.S. or Canada that was produced in third countries. Under section 583.6(c), the U.S./Canadian content of such equipment is presumed to be zero. Moreover, section 583.7 provides considerable flexibility in making country-of-origin determinations for such equipment. Therefore, for equipment supplied by foreign suppliers which is imported into the U.S. or Canada, the agency believes it is reasonable to permit manufacturers to use any available information to make determinations of zero U.S./Canadian content, country of manufacture, and purchase price, as an alternative to relying on supplier certifications. Manufacturers can, of course, request the information of foreign suppliers instead of making their own determinations.

NHTSA does not believe that there is a need to change the regulation to reflect this new position. The agency notes that section 583.5(h) requires manufacturers and allied suppliers to request their suppliers to provide directly to them the information and certifications ''which are necessary for the manufacturer/allied supplier to carry out its responsibilities under [Part 583].'' Thus, manufacturers and allied suppliers are not required to request information which is unnecessary for them to carry out their responsibilities.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under Executive Order 12866. The July 1994 final rule was determined to be ''significant'' under the Department's regulatory policies and procedures, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade. This final rule is sufficiently related to that final rule to also be considered significant.

NHTSA discussed the costs associated with the July 1994 rule in a Final Regulatory Evaluation which was placed in the docket for this rulemaking. Today's amendments should slightly reduce manufacturer and supplier costs by simplifying the process for making content determinations.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor since the requirements are informational.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it will not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

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

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this final rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of the rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

2. Section 583.5 is amended by revising paragraph (e)(3) to read as follows:

§ 583.5 Label requirements.

* * * * *

(e) * * *

(3) A manufacturer selecting this option for a particular carline shall

provide the specified additional information on the labels of all vehicles within the carline, providing the U.S./Canadian content that corresponds to the U.S./Canadian content of the manufacturing location shown as the final assembly point (with all U.S. and Canadian locations considered as a single assembly point) on the label.

* * * * *

3. Section 583.6 is revised to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, are excluded from the calculation of U.S./Canadian parts content.

(b) *Determining the value of items of equipment.*

(1) For items of equipment received at the final assembly point, the value is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) For items of equipment produced at the final assembly point (but not as part of final assembly), the value is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(3) For items of equipment received at the factory or plant of an allied supplier, the value is the price paid by the allied supplier for the equipment as delivered to its factory or plant.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.*

(1) Equipment supplied by an outside supplier to a manufacturer or allied supplier is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and/or Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and/or Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States and/or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States and/or Canada.

(4)(i) Value added in the United States and/or Canada by an allied supplier or outside supplier includes—

(A) The value added in the U.S. and/or Canada for materials used by the supplier, determined according to (4)(ii) for outside suppliers and (4)(iii) for allied suppliers, plus,

(B) For passenger motor vehicle equipment assembled or produced in the U.S. or Canada, the value of the difference between the price paid by the manufacturer or allied supplier for the equipment, as delivered to its factory or plant, and the total value of the materials in the equipment.

(ii) Outside suppliers of passenger motor vehicle equipment will determine the value added in the U.S. and/or Canada for materials in the equipment as specified in paragraphs (A) and (B).

(A)(*1*) For any material used by the supplier which was produced or assembled in the U.S. or Canada, the supplier will subtract from the total value of the material any value that was not added in the U.S. and/or Canada. The determination of the value that was not added in the U.S. and/or Canada shall be a good faith estimate based on information that is available to the supplier, e.g., information in its records, information it can obtain from its suppliers, the supplier's knowledge of manufacturing processes, etc.

(*2*) The supplier shall consider the amount of value added and the location in which that value was added—

(*i*) At each earlier stage, counting from the time of receipt of a material by the supplier, back to and including the two closest stages each of which represented a substantial transformation into a new and different product with a different name, character and use.

(*ii*) The value of materials used to produce a product in the earliest of these two substantial transformation stages shall be treated as value added in the country in which that stage occurred.

(B) For any material used by the supplier which was imported into the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that material (determined according to the principles set forth in (A), such value added in the United States and/or Canada is counted.

(iii) Allied suppliers of passenger motor vehicle equipment shall determine the value that is added in the U.S. and/or Canada for materials in the equipment in accordance with (c)(3).

(iv) For the minor items listed in the § 583.4 definition of ''passenger motor vehicle equipment'' as being excluded from that term, outside and allied suppliers may, to the extent that they incorporate such items into their equipment, treat the cost of the minor items as value added in the country of assembly.

(v) For passenger motor vehicle equipment which is imported into the territorial boundaries of the United States or Canada from a third country, the value added in the United States and/or Canada is presumed to be zero. However, if documentation is available to the supplier which identifies value added in the United States and/or Canada for that equipment (determined according to the principles set forth in the rest of (c)(4)), such value added in the United States and/or Canada is counted.

(vi) The payment of duty does not result in value added in the United States and/or Canada.

(5) If a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) expected to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section, and

(3) Multiplying the resulting number by 100.

(e) *Alternative calculation procedures.*

(1) A manufacturer may submit a petition to use calculation procedures based on representative or statistical sampling, as an alternative to the calculation procedures specified in this section to determine U.S./Canadian parts content and major sources of foreign parts content.

(2) Each petition must—

(i) Be submitted at least 120 days before the manufacturer would use the alternative procedure;

(ii) Be written in the English language;

(iii) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590;

(iv) State the full name and address of the manufacturer;

(v) Set forth in full the data, views and arguments of the manufacturer that would support granting the petition, including—

(A) the alternative procedure, and

(B) analysis demonstrating that the alternative procedure will produce substantially equivalent results to the procedure set forth in this section;

(vi) Specify and segregate any part of the information and data submitted in the petition that is requested to be withheld from public disclosure in accordance with part 512 of this chapter (the basic alternative procedure and basic supporting analysis must be provided as public information, but confidential business information may also be used in support of the petition).

(3) The NHTSA publishes in the **Federal Register**, affording opportunity for comment, a notice of each petition containing the information required by this part. A copy of the petition is placed in the public docket. However, if NHTSA finds that a petition does not contain the information required by this part, it so informs the petitioner, pointing out the areas of insufficiency and stating that the petition will not receive further consideration until the required information is submitted.

(4) If the Administrator determines that the petition does not contain adequate justification, he or she denies it and notifies the petitioner in writing, explaining the reasons for the denial. A copy of the letter is placed in the public docket.

(5) If the Administrator determines that the petition contains adequate justification, he or she grants it, and notifies the petitioner in writing. A copy of the letter is placed in the public docket.

(6) The Administrator may attach such conditions as he or she deems appropriate to a grant of a petition, which the manufacturer must follow in order to use the alternative procedure.

4. Section 583.7 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item is the country which contributes the greatest amount of value added to that item (treating the U.S. and Canada together).

* * * * *

(f) In determining the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada, no value which is counted as U.S./Canadian parts content is also counted as being value which originated in a country other than the U.S. or Canada.

5. Section 583.8 is amended by revising paragraphs (c)(1) and (e) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only.

* * * * *

(c) * * *

(1) Except as provided in (c)(2), the country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item (the U.S. and Canada are treated separately).

* * * * *

(e) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment (the U.S. and Canada are treated separately).

Issued on: September 11, 1995.

Ricardo Martinez,

Administrator.

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