(b)(3) as (b)(3) and (b)(4), adding a new paragraph (b)(2), and adding paragraph (h) to read as follows:

970.5204–17 Legislative lobbying cost prohibition.

* * * * *

(b) * * *

(1) Providing Members of Congress, their staff members, or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members, or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees for the purpose of providing such information or advice shall also be reimbursable, provided the request for information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.

(2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by contractor employees shall also be reimbursable, provided such costs also comply with the allowable costs provision of the contract.

* * * * *

(h) In providing information or expert advice under paragraphs (b)(1) and (b)(2) of this clause, the contractor shall advise the Contracting Officer in advance or as soon as practicable.

[FR Doc. 95–30236 Filed 12–11–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–275]

Organization and Delegation of Powers and Duties Delegations of Authority to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) hereby delegates to the Maritime Administrator authority to carry out the provisions of sections 10 through 13 of the National Maritime Heritage Act of 1994, Public Law 103–451. These sections authorize the Secretary to convey all rights, title and interests of the United States Government in specified and non-specified vessels, and vessel equipment and spare parts, for various specified purposes and subject to specified conditions which vary among the recipients. This amendment to 49 CFR Part 1 adds a new paragraph 1.66(p) to reflect the delegation of authority to the Maritime Administrator.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Somerville, Chief, Division of Vessel Transfer and Disposal, Office of Ship Operations, Maritime Administration, MAR–631, Room 7324, 400 Seventh Street SW, Washington, DC, 20590, (202) 366–5821, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (C–50), Department of Transportation, Room 10424, 400 Seventh Street SW, Washington, DC 20590, (202) 366–9306.

SUPPLEMENTARY INFORMATION: Sections 10 through 13 of Public Law 103–451, 108 Stat. 4769, 4778–4782, cited as the ''National Maritime Heritage Act of 1994,'' authorize the Secretary of Transportation to convey a specified vessel, or a vessel of comparable size and class, as well as unneeded vessel equipment, to the Battle of the Atlantic Historical Society; an unspecified vessel, including related spare parts and vessel equipment, to the City of Warsaw, Kentucky; three specified vessels, including related spare parts and vessel equipment, to Assistance International, Inc.; and a specified vessel, as well as unneeded vessel equipment, to the Rio Grande Military Museum. The conveyance of one or more vessels to each specified recipient is for one or more specified purposes, respectively, a merchant marine memorial, historical preservation, and educational activities; the promotion of economic development and tourism; use in emergencies, vocational training, and economic development programs; and use as a military museum. Conveyances to each recipient are subject to specified common financial requirements and other conditions relating to the use and redelivery of the vessels. This amendment to 49 CFR 1.66 adds the subject authority to those already delegated to the Maritime Administrator. Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary, and the rule may become effective in fewer than 30 days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.66 is amended by adding a new paragraph (p), to read as follows:

§ 1.66 Delegations to Maritime Administrator.

* * * * *

(p) Carry out the provisions of sections 10 through 13 of Public Law 103–451, the National Maritime Heritage Act of 1994, 108 Stat. 4769, 4778–4782;

* * * * *

Issued at Washington, DC this 5th day of December 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–30144 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90–25; Notice 2]

RIN 2127–AD78

Rulemaking Procedures

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

ACTION: Final rule.

SUMMARY: NHTSA is amending its procedural regulations that apply to judicial review of regulations issued under Chapters 301, 325, 329, and 331 of Title 49 of the United States Code. The provisions at issue address the time within which affected persons may seek judicial review of a final rule issued by NHTSA under those statutes if a petition for agency reconsideration of that rule has been filed. The amendment will make the regulation consistent with the judicial review provisions of the statutes and with recent judicial decisions.

EFFECTIVE DATE: The amendments made in this rule are effective January 11, 1996.

Any petitions for reconsideration must be received by NHTSA no later than January 26, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Kenneth N. Weinstein, Assistant Chief Counsel for Litigation, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–5263.

SUPPLEMENTARY INFORMATION: Certain provisions of the former Motor Vehicle Information and Cost Savings Act (''Cost Savings Act'') and the former National Traffic and Motor Vehicle Safety Act (''Safety Act'') provide for judicial review of rules and standards issued thereunder. These statutes were recently recodified, ''without substantive change,'' as various chapters of Title 49 of the U.S. Code. Section 6 of Pub. L. 103–272.

With respect to Chapter 301, ''Motor Vehicle safety,'' 49 U.S.C. 30161(a) (formerly section 105(a) of the Safety Act) provides that any person adversely affected by an order prescribing a motor vehicle safety standard under chapter 301 may file a petition for judicial review of the order in an appropriate United States Court of Appeals ''not later than 59 days after the order is issued.''

With respect to Chapter 325, ''Bumper Standards,'' 49 U.S.C. 32503(a) (formerly section 103(a) of the Cost Savings Act) provides that any person who may be adversely affected by a standard issued under section 32502 may file a petition for judicial review of the standard in an appropriate United States Court of Appeals ''not later than 59 days after the standard is prescribed.''

With respect to Chapter 329, ''Automobile Fuel Economy,'' 49 U.S.C. 32909 (formerly section 504(a) of the Cost Savings Act) provides that any person who may be adversely affected by a regulation prescribed under sections 30901–30904, 32908, or 32912(c)(1) may file a petition for judicial review of the regulation in an appropriate United States Court of Appeals ''not later than 59 days after the regulation is prescribed.''

With respect to Chapter 331, ''Theft Prevention,'' 49 U.S.C. 33117 (formerly section 610 of the Cost Savings Act) provides that a person who may be adversely affected by any regulation prescribed under that chapter may obtain judicial review of that regulation in accordance with 49 U.S.C. 32909, as described in the previous paragraph.

None of these statutory provisions require parties to seek administrative reconsideration before filing a petition for judicial review. However, NHTSA has authorized the filing of petitions for reconsideration of standards and regulations issued under the Chapters 301, 325, 329, and 331. 49 CFR 553.35. Time limits and other procedures applicable to such petitions are set forth in 49 CFR 553.35–553.39.

Section 553.39 currently provides as follows:

> The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the Federal Register of the Administrator's disposition of any timely petitions for reconsideration.

Unfortunately, this regulatory provision contains several erroneous statements. First, the applicable time period for filing petitions for judicial review under these chapters is actually 59 days rather than 60 days. Prior to the recent recodification, the statutory language provided that petitions for review had to be filed ''prior to the sixtieth day'' after the order in question was issued. Each of the courts that considered the issue had ruled that this language required petitions to be filed not later than 59 days after the issuance of the order. The recodified language in each of the four chapters explicitly states that the applicable review period is 59 days.

Second, recent judicial decisions construing the judicial review provisions of the Administrative Procedure Act and similar statutory review provisions have made it clear that a person who files a petition for agency reconsideration of a regulation may not simultaneously seek judicial review of that regulation, since the original decision is rendered ''nonfinal'' as to that person. See, *e.g., Wade* v. *F.C.C.*, 986 F.2d 1433 (D.C. Cir. 1993); *United Transp. Union* v. *I.C.C.*, 871 F.2d 1114 (D.C. Cir. 1989); *West Penn Power Co.* v. *U.S. EPA*, 860 F.2d 581 (3rd Cir. 1988). See generally *I.C.C.* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987); *Bellsouth Corp.* v. *F.C.C.*, 17 F.3d 1487 (D.C. Cir. 1994).

Third, these decisions also demonstrate that the filing of a petition for agency reconsideration by one person does not affect the judicial review rights of other persons affected by the rule. See *ICG Concerned Workers Ass'n* v. *United States*, 888 F.2d 1455 (D.C. Cir. 1989); *West Penn, supra; Winter* v. *I.C.C.*, 851 F.2d 1056 (8th Cir.), *cert. denied*, 109 S. Ct. 308 (1988) [GET U.S. CITATION]; *Petroleum Communications, Inc.* v. *F.C.C.*, 22 F.3d 1164, 1171 n.6 (D.C. Cir. 1994).

Finally, contrary to NHTSA's current regulation, a person who files a petition for reconsideration may not file a petition for judicial review ''at any time'' prior to the expiration of the statute of limitations. Rather, a petition for review that is filed by a party prior to the agency's action on his or her petition for reconsideration is ''incurably premature'' and does not ''ripen'' when the ruling on reconsideration is issued. *TeleSTAR, Inc.* v. *F.C.C.*, 888 F.2d 132 (D.C. Cir. 1989).

On the basis of its review of the case law, NHTSA issued a Notice of Proposed Rulemaking (''NPRM'') to correct the erroneous portions of section 553.39. 55 FR 45825 (October 31, 1990). First, the agency proposed to eliminate the inaccurate reference to a 60-day limitations period for judicial review. The proposal did not refer to a 59-day period, however, since Part 553 applies to regulations issued under statutes other than the four chapters identified above that have statutory 59-day limitations periods. *See, e.g.*, 49 U.S.C. Chapters 323 and 327.

In addition, the agency proposed language to clarify that the filing of a petition for reconsideration tolls the limitations period for judicial review only as to the petitioner, and not as to other interested persons, and that such a petitioner may not seek judicial review until the agency acts on the petition for reconsideration.

Discussion of Comments

Three commenters responded to the NPRM: Chrysler Corporation (Chrysler), the Association of International Automobile Manufacturers (AIAM), and the Motor Vehicle Manufacturers Association (MVMA). (MVMA has subsequently changed its name to the American Automobile Manufacturers Association.)

None of the commenters objected to the elimination of the erroneous reference to 60 days as the time period within which a petition for judicial review may be filed. However, Chrysler

and MVMA sought clarification as to what constituted final agency action upon a petition for reconsideration and asked when ''a petitioner [is] presumed to have notice of that action.''

In the absence of a petition for reconsideration, regulations and standards promulgated under Chapters 301, 325, 329, and 331 are deemed final for purposes of judicial review when they are ''issued'' (49 U.S.C. § 30161(a)) or ''prescribed'' (49 U.S.C. §§ 32503(a) and 32909(b)). (In this context, NHTSA interprets the word ''prescribed'' to be synonymous with the word ''issued.'') The agency deems a decision in response to a petition for reconsideration, which usually will be either a denial of the petition or a revision to the regulation or standard that generated the petition, to be final for judicial review purposes on the date that it is issued or prescribed.

A petitioner is presumed to have notice of the agency's action when it is published in the Federal Register. See 44 U.S.C. § 1507; *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380 (1947). However, the language of each of these statutes indicates that the time period for judicial review does not begin to run on the publication date; rather it runs from the date that the regulation, standard, or decision on reconsideration is ''issued'' or ''prescribed'' by the agency.

MVMA and AIAM opposed the remainder of the proposed amendment, arguing that one party's petition for reconsideration should stay the statute of limitations for judicial review for all interested parties, not merely for the petitioner. They asserted that the proposed amendment was not compelled by the case law described in the NPRM. They also suggested that the amendment would increase paperwork and reduce efficiency and could lead to the filing of unnecessary petitions for reconsideration and/or protective petitions for review.

None of the commenters dispute the agency's conclusion that the filing of a petition for reconsideration stays the running of the limitations period for the petitioner because the filing of the petition renders the prior decision ''nonfinal'' as to that petitioner. (In this regard, NHTSA is aware that in a recent case, the Supreme Court ruled that a petition to reopen a decision of the Board of Immigration Appeals does not toll the limitations period or otherwise affect judicial review of the Board's decision. *Stone* v. *I.N.S.*, 115 S. Ct. 1537 (1995). However, the Court based its ruling on the specific language of the judicial review provisions of the Immigration and Nationality Act and policy considerations arising under that statute. Indeed, the Court explicitly confirmed that, in general, the filing of a request for agency reconsideration renders the underlying order nonfinal for purposes of judicial review and that the petitioning party cannot seek judicial review until the reconsideration is concluded. 115 S. Ct. at 1543.)

The commenters also agreed that persons who have not sought agency reconsideration may seek judicial review immediately, without waiting for the completion of the reconsideration process. However, in suggesting that such other persons should be able, at their option, to await the agency's decision on reconsideration before seeking judicial review, the commenters lose sight of the fact that the reason such persons may seek judicial review promptly is that the regulation is final as to them. ''If a party has sought only judicial review, agency action can be deemed final and hence reviewable as to that party, regardless of whether other parties have moved for administrative reconsideration.'' *ICG Concerned Workers*, 888 F.2d at 1457.

Given that the regulation is final as to all persons not seeking reconsideration, there is no basis on which the agency (or the courts) could legally extend the limitations period applicable to those parties beyond the 59 days provided by statute. The case law clearly demonstrates that ''finality with respect to agency action is a party-based concept.'' *IGC Concerned Workers*, 888 F.2d at 1457, citing *West Penn*, 860 F.2d at 586–87; *Winter*, 851 F.2d at 1062; and *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 541 (1970).

It is true that the cases on this subject have focussed primarily on whether a nonpetitioning party may seek judicial review of an agency action while another party's petition for reconsideration of that action is pending, rather than on whether such a party must seek such review within the statutory limitations period. However, in the agency's view, the latter principle necessarily follows from the fact that the original decision is final as to all nonpetitioning parties.

NHTSA recognizes that under this amendment, some parties may feel compelled to file protective petitions for reconsideration or judicial review that might ultimately be withdrawn depending on the agency's response to another party's petition for reconsideration. However, to the extent that this is ''wasteful,'' it is not the fault of the amendment; it is required by the case law. As noted in the NPRM, an agency's regulations may not expand the jurisdiction of the Federal courts beyond that established by Congress. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 336 (1957); *City of Rochester* v. *Bond*, 603 F.2d 927 (D.C. Cir. 1979).

The agency believes the public interest would be disserved by a regulation that erroneously purported to confer Federal court jurisdiction that does not exist, since a person might improperly rely on the regulation to his or her detriment. To further reduce the possibility of confusion or misunderstanding, NHTSA is adding a phrase at the end of the first sentence of the amended regulation that explicitly states that the expiration of the review period is not postponed for persons who have not sought agency reconsideration.

Chrysler requested clarification as to the amended rule's impact upon associations composed of various member companies. Chrysler suggested that an association's petition for reconsideration should stay the limitations period for judicial review for the members of the association as well as for the association itself.

NHTSA realizes that some individual members of an association might want to wait for the agency's response to their association's petition for reconsideration before deciding whether to seek judicial review. However, as MVMA emphasized in its comments, other members might want to seek such review immediately. Consistent application of the principle of finality requires that if individual members of an association are permitted to seek judicial review of the original regulatory action following disposition of the association's petition for reconsideration, they must be precluded from seeking immediate judicial review during the pendency of that petition.

Thus, when an association files a petition for reconsideration solely in its own name, such a petition would only extend the right of the association itself to seek judicial review following reconsideration. Under those circumstances, the members would not have any right to an extended period for seeking judicial review derived from the association's petition. However, if the association explicitly files its petition for reconsideration on behalf of all of its members, or some specifically identified members, those members would each be deemed as having filed a petition. Of course, under that scenario, none of the identified members could individually seek judicial review while the petition for reconsideration is pending.

The purpose of the amended rule is not to encourage pre-mature requests for judicial review; rather, the amendment seeks to provide notice of the applicable

law. Thus, each person who considers himself or herself to be aggrieved by a NHTSA rule or standard must file a timely petition for reconsideration or a timely petition for judicial review in order to preserve his or her ability to challenge the underlying rule.

NHTSA wishes to emphasize two additional points. First, this amendment does not preclude any person who is aggrieved by the agency's action in response to a petition for reconsideration from seeking judicial review of that response, since such a response is itself a reviewable agency action. Second, a person who files a petition for reconsideration may obtain judicial review of all aspects of the original order, not merely the portion of that order on which he or she sought reconsideration. See *Bellsouth Corp.,* 17 F.3d at 1489–90. However, persons who did not seek timely reconsideration or timely judicial review of the original agency action may only challenge the actions taken by the agency in response to the petition for reconsideration. All other issues were final as to the nonpetitioning parties at the time of the original action. Therefore, any court challenge by nonpetitioning parties to agency actions not affected by the response to the petition for reconsideration must be made within 59 days of the original agency action.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. Because the changes are only procedural in nature, they will not have any cost impacts.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. For reasons discussed above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

Civil Justice Reform

This final rule does not have any retroactive or preemptive effect.

List of Subjects in 49 CFR Part 553

Administrative practice and procedure.

PART 553—RULEMAKING PROCEDURES

In consideration of the foregoing, 49 CFR part 553 is amended as follows:

1. The authority citation for part 553 of title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.50.

2. Section 553.39 is revised to read as follows:

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner, and not as to other interested persons. For the petitioner, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

Issued on: December 5, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–30034 Filed 12–11–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 74–09; Notice 43]

RIN 2127–AF02

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Final rule; response to petitions for reconsideration, delay of compliance date.

SUMMARY: This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child restraint systems must comply with a final rule that was published July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' to add a greater array of sizes and weights of test dummies for use in compliance tests. Today's document responds to those requests in petitions for reconsideration of the rule relating to the compliance date. It provides needed leadtime to manufacturers of add-on (portable) child restraint systems to make necessary design changes to conform to the new requirements.

The agency will respond to the remaining requests in the petitions for reconsideration in another document that will be published in the Federal Register in the near future.

DATES: The effective date (i.e., the date on which the text of the CFR is changed) of the final rule published July 6, 1995 (60 FR 35126) and corrected September 29, 1995 (60 FR 50477), remains January 3, 1996.

For manufacturers of built-in child restraint systems, the compliance date for the amendments remains September 1, 1996.

However, for manufacturers of add-on child restraint systems, the compliance date for the amendments made by those rules (i.e., the date on which these manufacturers must begin complying with the amendments) is changed to September 1, 1996.

Petitions for reconsideration of the rule must be received by January 11, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919).

For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Background

This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child