



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 576

#### Docket No. NHTSA–2019-0035

#### RIN 2127-AL81

#### Record Retention Requirement

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This proposal is being issued pursuant to the Fixing America’s Surface Transportation (FAST) Act which requires the Secretary of Transportation (Secretary) to extend the period of time manufacturers of motor vehicles, tires and child restraint systems must retain records concerning defects and malfunctions that may be related to motor vehicle safety under the National Traffic and Motor Vehicle Safety Act (Safety Act). Section 24403 of the FAST Act directs the Secretary to issue a rule increasing the time of record retention to a period not less than ten years, instead of five years as presently required under the regulatory provisions.

Pursuant to its delegated authority, NHTSA is proposing to update our regulations in accordance with this mandate. This proposed update is not intended to change the scope of the existing rule, other than as specifically described in this notice, but is intended to aid in efficiently and effectively improving the agency’s ability to identify safety defects and noncompliances.

**DATES:** You should submit comments early enough to ensure that Docket Management receives them not later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

- Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

Regardless of how you submit your comments, please be sure you mention the docket number of this document located at the top of this notice in your correspondence.

You may call the Docket at 202-366-9826.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement, in the Federal Register published on April 11, 2000. 65 FR 19477-78.

*Confidential Information:* If you wish to submit any information under a claim of confidentiality, you should submit two copies of your complete submission, including the

information you claim to be confidential business information, and one copy with the claimed confidential business information deleted from the document, to the Chief Counsel, NHTSA, at the address given below under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should follow the procedures set forth in 49 CFR part 512 and include a cover letter setting forth the information specified in our confidential business information regulation. 49 CFR part 512.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the dockets or go to the street address listed above.

**FOR FURTHER INFORMATION CONTACT:** Thomas Healy, Trial Attorney, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590 (telephone: 202-366-2992).

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

#### ***I. Executive Summary***

#### ***II. Record Retention Requirements under the Safety Act Prior to the FAST Act***

#### ***III. NHTSA's Proposed Interpretation of the FAST Act Record Retention Requirement***

#### ***IV. Regulatory Analyses and Notices***

### **I. *Executive Summary***

The FAST Act was signed into law on December 4, 2015. Pub. L. 114-94. Section 24403 of the FAST Act directs the Secretary of Transportation to amend the amount of time manufacturers of motor vehicles, tires and child restraint systems are required to maintain records that contain information concerning malfunctions that may be related to motor vehicle safety. In the final rule, the Secretary

must lengthen the time that manufacturers must maintain these records to not less than ten years from the date the records were generated or acquired. Pub. L. 114-94, sec. 24403(a). Based on NHTSA's experience investigating potential defects and overseeing recalls, we have determined that a ten-year records retention requirement would ensure that the agency's investigative needs are met without unnecessarily burdening manufacturers of motor vehicles and equipment. In this NPRM, NHTSA is proposing to extend the record retention requirement for records required to be maintained under 49 CFR 576.6 to ten years.

Since the language of the statute grants the Secretary discretion to extend the period during which manufacturers must retain records beyond ten years, we also seek comment on whether there is justification for extending the time that manufacturers are required to maintain the records specified in 49 CFR 576.6 to fifteen, twenty or twenty-five years.

This rulemaking would not require manufacturers to retain any new information; it would merely require manufacturers to retain information they are already required to retain under 49 CFR part 576 for a longer period of time. This rulemaking also would not extend the time period that manufacturers of motor vehicles and motor equipment are required to retain records underlying information reported under 49 CFR part 579.

In accordance with the FAST Act, the extended time period would apply to records in manufacturers' possession on the effective date of the rule and records generated or acquired in the future. Pub. L. 114-94, sec. 24403(b). Access to records concerning defects and malfunctions that may be related to motor vehicle safety is essential for NHTSA to fulfill the Safety Act objective of identifying safety-related defects and noncompliances.

## **II. *Record Retention Requirements under the Safety Act Prior to the FAST Act***

Part 576 requires manufacturers of motor vehicles, tires, and child restraint systems to retain “all documentary materials, films, tapes, and other information-storing media that contain information concerning defects and malfunctions that may be related to motor vehicle safety.” 49 CFR 576.6. These records must be maintained for use in the investigation and disposition of defects related to motor vehicle safety or noncompliance with Safety Act requirements. 49 CFR 576.2. The requirement applies to motor vehicle manufacturers for records generated or acquired after August 16, 1969 and to motor vehicle equipment manufacturers for records in their possession, generated, or acquired on or after August 9, 2002. 49 CFR 576.3. Manufacturers of motor vehicles, child restraint systems, and tires must currently keep the records required to be maintained by 49 CFR 576.6 for five years after they are generated or acquired. 49 CFR 576.5(a). Manufacturers of motor vehicles and motor vehicle equipment must also keep documents underlying reporting required by 49 CFR part 579 for five years after they are generated or acquired. 49 CFR 576.5(b). However; according to 49 CFR 576.5(c), manufacturers of motor vehicles and motor vehicle equipment are not required to keep copies of documents reported to NHTSA as required by 49 CFR parts 573, 577, and 579. No manufacturer is required to keep duplicates according to 49 CFR 576.7.

### **III. *NHTSA’s Proposed Retention Requirement***

The FAST Act vests authority in the Secretary to increase the required time manufacturers must retain records under the Safety Act. Pursuant to 49 CFR 1.95 and 501.8, this authority has been delegated to NHTSA. The provision of the FAST Act requiring an extension of the record retention requirement applicable to motor vehicle and motor vehicle equipment manufacturers gave the Secretary discretion to determine the amount of time records are kept as long as the time is “a period not less than ten years.” Pub. L. 114-94, sec. 24403(a). NHTSA has determined that ten years is the appropriate length of time that manufacturers of motor vehicles,

tires, and child restraints should be required to retain records concerning defects and malfunctions that may be related to motor vehicle safety.

When a trend in consumer complaints or other data indicates a potential safety-related defect, NHTSA relies on information included in manufacturers' records, along with other agency data, to determine whether or not to open a formal defect investigation (as authorized by title 49 U.S.C. chapter 301 – Motor Vehicle Safety). Our proposed approach to extend the time manufacturers of motor vehicles, tires and child restraint systems must retain records is based on NHTSA's experience with the increasing age of motor vehicles and motor vehicle equipment and the importance of records from manufacturers, balanced against our desire to avoid unnecessarily burdening manufacturers of motor vehicles and motor vehicle equipment.

Based on our evaluation of the foregoing factors, NHTSA is proposing to extend the records retention period for records required to be maintained under 49 CFR 576.6 to ten years. NHTSA contends that a records retention period of ten years will ensure that manufacturers will preserve records that NHTSA needs to conduct defect and noncompliance investigations without imposing an undue record retention burden on manufacturers.

Increases in the age of the vehicle fleet since the time the five-year records retention requirement was established in 1974<sup>1</sup> and Congress' extension of the period during which vehicle and equipment manufacturers are required to provide a free remedy under 49 U.S.C. 30120 to fifteen years after first purchase both support extending the record retention period in part 576. The average age of the United States light vehicle fleet has been trending upward

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<sup>1</sup> 39 FR 30045 (Aug. 20, 1974).

reaching 11.6 years in 2016.<sup>2</sup> In 1974 the average age of passenger cars was 5.7 years and the average age of trucks was 7 years.<sup>3</sup> As of 2015, there are 44 million vehicles on the road between sixteen and twenty-four years old and an additional 14 million vehicles that are at least twenty-five years old.<sup>4</sup>

NHTSA has tentatively concluded that extending the records retention requirements for records required to be maintained under 49 CFR 576.6 to ten years would ensure that NHTSA has access to records pertaining to an investigation since the record retention period begins the date the records were generated. It is NHTSA's experience that in the vast majority of cases, the records most pertinent to a defect investigation will be those generated in the previous ten years because those are the records more likely to show an emerging defect trend.

While justified in this instance based on the age of the vehicle fleet, a ten-year long records retention period is of significant length when compared to records retention periods of similar scope of other operating administrations within US DOT<sup>5</sup> and federal agencies that regulate motor vehicles and child products.<sup>6</sup> The agency believes it should only move beyond

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<sup>2</sup> Vehicles Getting Older: Average Age of Light Cars and Trucks in U.S. Rises Again in 2016 to 11.6 Years, IHS Markit Says, IHS Markit (Nov. 22, 2016), <https://news.ihsmarkit.com/press-release/automotive/vehicles-getting-older-average-age-light-cars-and-trucks-us-rises-again-201> (last visited Sept. 19, 2018).

<sup>3</sup> Average Age of Automobiles and Trucks in Use, 1970-1999, Fed. Highway Admin., <https://www.fhwa.dot.gov/ohim/onh00/line3.htm> (last visited Sept. 19, 2018). From 1977 to 2017 the average of medium and heavy duty trucks increased from 11.6 years to 17.3 years and the average age of recreational vehicles increased from 4.5 years to 15.8 years. *See* Average Age of Automobiles and Trucks in Operation in the United States, Bureau of Transp. Statistics, <https://www.bts.gov/content/average-age-automobiles-and-trucks-operation-united-states> (last visited Sept. 19, 2018).

<sup>4</sup> *Average age of cars on U.S. roads breaks record*, USA Today (July 29, 2015), <http://www.usatoday.com/story/money/2015/07/29/new-car-sales-soaring-but-cars-getting-older-too/30821191/> (last visited May 11, 2018) (citing an IHS Automotive study).

<sup>5</sup> The Federal Railroad Administration requires railroads to retain records on employee injuries and illnesses and highway user injuries for five years after the end of the calendar year to which they relate. 49 CFR 225.27. The Federal Motor Carrier Safety Administration requires companies to retain certain records related to employee drug and alcohol testing for five years. 49 CFR 382.401.

<sup>6</sup> The Consumer Product Safety Commission requires manufacturers of products subject to a children's product safety rule to maintain records on certification testing and design changes for five years. 16 CFR 1107.26. The

the ten-year period required in the FAST Act if it has clear evidence that additional time is needed. NHTSA tentatively concludes that the benefits of extending the records retention period beyond ten years do not outweigh any burden or costs to manufacturers that would result in a lengthened retention period.

In addition to extending the record retention period applicable to manufacturers of motor vehicles, the FAST Act also requires us to extend the records retention requirements applicable to child restraint and tire manufacturers. While Congress did not provide discretion to establish a shorter records retention period for child restraint system and tire manufacturers, the manner in which these items differ from motor vehicles means that the costs and burdens of extending the records retention period in Part 576 for manufacturers of child restraints and tires will be different than the costs and burdens to motor vehicle manufacturers.

Like motor vehicle manufacturers, manufacturers of child restraint systems are required to provide a free remedy for fifteen years after purchase.<sup>7</sup> 49 U.S.C. 30120(g). However, manufacturers of child restraint systems typically label the restraint with an expiration date after which the manufacturer recommends that caregivers no longer use the restraint. The expiration date provided by the manufacturer is usually six to seven years after the date of manufacture of the restraint. Manufacturers of tires are required to provide a free remedy for a period of five years after the purchase of the tire. We seek comments on the costs and burdens of the proposed rule to manufacturers of child restraints and tires.

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Environmental Protection Agency requires manufacturers to retain records related to certification testing for a period of five years. 40 CFR 600.005.

<sup>7</sup> While there are limits in the Safety Act on the period for which manufacturers are required to provide a free remedy, there is no limit on the time for which NHTSA can order a manufacturer to notify consumers of a defect.

NHTSA has previously considered extending the records retention requirements in part 576 to correspond with the free remedy period in the Safety Act and declined to do so. After issuing a final rule in 1995 to increase the records retention requirement in part 576 from five years to eight years to correspond to the free remedy period in effect at the time, NHTSA rescinded the rule and restored the five-year records retention requirement.<sup>8</sup> At the time, NHTSA determined that the costs of extending the records requirement to eight years outweigh the benefits.<sup>9</sup>

When the Transportation Recall Enhancement, Accountability, and Documentation Act, Pub. L. 106-414, extended the free remedy period applicable to motor vehicles and equipment to ten years, NHTSA proposed extending the record retention requirements in part 576 applicable to motor vehicle manufacturers and child restraint manufacturers from five years to ten years.<sup>10</sup> The comments received in response to the proposal asserted that there was no justification for extending the records retention requirement to ten years and that records generated in the last five years are the records most relevant to discovering a defect.<sup>11</sup> In deciding to retain the existing retention period at that time, NHTSA concluded that the agency's investigative needs were adequately met by the five-year records retention period.

Lengthening the record retention period in part 576 beyond ten years would result in manufacturers being required to retain records generated late in the life of a vehicle, likely well after any defect trend has emerged. NHTSA also contends that manufacturers have an incentive to retain relevant records longer than required by part 576 in order to properly document the scope of any potential recalls and for other business purposes. Based on NHTSA's experience

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<sup>8</sup> 61 FR 274 (Jan. 4, 1996).

<sup>9</sup> Id.

<sup>10</sup> 67 FR 45873, 45868 (July 10, 2002).

<sup>11</sup> Id.

investigating potential defects and overseeing recalls, we have found that many manufacturers of motor vehicles and equipment currently retain some of the records subject to this rule for periods of time longer than the current five-year minimum.

As the length of time that vehicles remain on the road has increased in recent years, the amount of information generated and retained by vehicle manufacturers has also increased.<sup>12</sup> Extending the records retention requirement increases the total volume of information that must be stored either electronically or physically. NHTSA expects most records retained under part 576 to be in electronic format. While NHTSA anticipates the costs of electronic storage attributable to this proposal to be minimal, NHTSA does not believe that there is currently justification to extend the records retention requirements in part 576 beyond the length required by the FAST Act. For these reasons, NHTSA believes that extending the records retention period in part 576 to ten years best achieves NHTSA's need to preserve access to records for investigations while minimizing any costs to manufacturers of retaining records.

In addition to requiring manufacturers of motor vehicles, child restraint systems, and tires to retain all records involving information concerning malfunctions that may be related to motor vehicle safety, Part 576 also requires motor vehicle and motor vehicle equipment manufacturers to retain all the records underlying information reported under 49 CFR part 579. Part 579 requires that motor vehicle, child restraint system and tires manufacturers with certain production volumes report production information; information on incidents involving death and injury; and the number of property damage claims, warranty claims, consumer claims and field

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<sup>12</sup> See Confidential Business Information. 81 FR 57, 51 (Jan. 4, 2016) (discussing the increase in volume of electronic information submitted to NHTSA during defect investigations).

reports received by the manufacturer.<sup>13</sup> 49 CFR 579.21-26. Motor vehicle, tire and child restraint manufacturers who do not meet the production thresholds to be required to report production information and the number of property damage claims, warranty claims, consumer claims and field reports they receive and manufacturers of other motor vehicle equipment are required to report incidents involving death. 49 CFR 579.27.

NHTSA is not extending the period for which manufacturers are required to retain records underlying information reported to NHTSA pursuant to 49 CFR part 579 in this rulemaking. NHTSA contends that most of the records related to part 579 reporting that manufacturers of motor vehicles, tires, and child restraint systems are required to retain pursuant to 49 CFR 576.5(b) must also be retained under 49 CFR 576.6. Thus, the effects of extending the time that records underlying information reported under part 579 must be retained would be limited to motor vehicle equipment manufacturers who do not manufacture child restraint systems or tires. NHTSA does not anticipate that the benefits to NHTSA's programs of extending the record retention requirements for the motor vehicle equipment manufacturers that do not have record retention responsibilities under 49 CFR 576.6 would outweigh the added burdens to these manufacturers of retaining records.

NHTSA requests comment on manufacturers' current records retention practices. NHTSA also requests comments on the burden of increasing the records retention period for records required to be maintained by 49 CFR 576.6 to fifteen, twenty, or twenty-five years, any costs that might be associated with storage of electronic records, and the total volume of records retained pursuant to part 576 by a manufacturer.

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<sup>13</sup> Child restraint system manufacturers are not required to report property the number of damage claims they received and tire manufacturers are only required to report the number of property damage claims and warranty adjustments.

#### **IV. *Regulatory Analyses and Notices***

##### **A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the DOT's regulatory policies and procedures. This proposed rule was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, "Regulatory Planning and Review." It is not considered to be significant under Executive Order 12866 or the Department's regulatory policies and procedures.

This proposal would amend 49 CFR part 576 to require motor vehicle, tire, and child restraint systems manufacturers to maintain records for a longer period than the currently required five-year time period. This proposed rule would not require manufacturers to maintain any records they are not already required to maintain, but instead is designed to lengthen the time manufacturers retain certain records. Extending the period of time to ten years is expected to lead to various unquantifiable benefits such as formalizing manufacturers' records retention practices and ensuring that, in all instances, records that must be retained under section 576.6 are available in the case of a NHTSA investigation for a minimum of ten years.

Based on NHTSA's experience conducting investigations and overseeing recalls, NHTSA contends that most manufacturers of motor vehicles subject to this proposal already retain records for a longer period than currently specified in part 576. It is NHTSA's position that those manufacturers of motor vehicles or equipment who do currently retain records for longer than ten years would be able to adjust their record retention systems in response to this rulemaking with minimal cost. Because we expect any costs, benefits, or savings associated with

this rulemaking to be minimal, we have not prepared a separate economic analysis for this rulemaking.

### **B. Executive Order 13771**

Executive Order 13771, titled “Reducing Regulation and Controlling Regulatory Costs,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” are subject to these requirements. As discussed above, this rule is not a significant rule under Executive Order 12866 and, accordingly, is not subject to the offset requirements of 13771.

### **C. Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule would affect manufacturers of motor vehicles, tires and child restraint systems, a few of which may qualify as small entities. Such manufacturers are expected to have fewer records, because they produce fewer motor vehicles, tires and child restraint systems than the larger manufacturers. Accordingly, the burden imposed on smaller manufacturers to retain these records should be small. In fact, NHTSA believes there would be some years during which the small manufacturers would not be required to retain any records under this regulation. Additionally, this proposed rule will merely extend how long manufacturers keep the required

records, amounting to a minimal impact on small businesses. Thus, NHTSA believes that the regulation does not impose a significant burden on small manufacturers.

#### **D. Executive Order 13132 (Federalism)**

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has determined that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would apply to manufacturers of motor vehicles and motor vehicle equipment and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 is not implicated and consultation with State and local officials is not required.

#### **E. National Environmental Policy Act**

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act. The agency has determined that the implementation of this action will not have any significant impact on the quality of the human environment.

#### **F. Paperwork Reduction Act**

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB clearance number. This proposal would lengthen the time that manufacturers must retain

certain records, which is considered to be an information collection requirement, as that term is defined by the OMB in 5 CFR part 1320.

In compliance with the PRA, we announce that NHTSA is seeking comment on a revision of a currently approved collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 576, Record Retention.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2127-0042

Form Number: The collection of this information uses no standard form.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information:

Manufacturers must retain certain records for a period of five years from which they were created or acquired. 49 CFR part 576. NHTSA requires manufacturers of motor vehicles, tires, and child restraint systems to retain one copy of all records that contain information concerning malfunctions that may be related to motor vehicle safety for a period of five calendar years after the record is generated or acquired by the manufacturer under 49 CFR part 576. Manufacturers of motor vehicles and equipment must also retain for five years the underlying records related to early warning reporting (EWR) information submitted under 49 CFR part 579. The proposed rule would amend part 576 to require the manufacturers of motor vehicles, tires and child restraint systems to retain all records that contain information concerning malfunctions that may be related to motor vehicle safety for ten years instead of five.

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

The information collection supports the Department's Strategic goal of safety. The records that are required to be retained per 49 CFR part 576 are used to promptly identify potential safety-related defects in motor vehicles and motor vehicle equipment in the United States. When a trend in incidents arising from a potentially safety-related defect is discovered, NHTSA relies on this information, along with other agency data, to determine whether or not to open a formal defect investigation (as authorized by Title 49 U.S.C. chapter 301 – Motor Vehicle Safety). NHTSA normally becomes aware of possible safety-related defects because it receives consumer complaints.

Agency experience has shown that manufacturers receive significantly more consumer complaints than does the agency. This is because the consumer with the product does not know whether their particular vehicle or equipment has a problem that is common with an entire group of vehicles or equipment. Whereas consumers know the manufacturer of their vehicle or equipment, relatively few know how to file a complaint with the National Highway Traffic Safety Administration. Complaints filed with the manufacturer give the agency a fair indication of how widespread the potential problem may be.

Additionally, consumer complaints may contain information relating to older vehicles and equipment that becomes increasingly useful to NHTSA over time. A ten-year period of record retention aids the agency in identifying possible safety-related defects in aging vehicles which may become apparent through manufacturers' records. Since vehicle life is ever increasing, the records related to older vehicles remain pertinent. The value of the information in records relating to aging vehicles may increase over time as NHTSA or manufacturers may become aware of newly emerging safety-related defects. Extending the records retention

requirement to ten years will ensure that NHTSA has access to records relevant to NHTSA's investigative needs.

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

Approximately one thousand manufacturers of motor vehicles and equipment (including tires and child restraint systems) are required to maintain records. Part 576 requires the manufacturers to retain only one copy of all records concerning malfunctions that may relate to motor vehicle safety. The manufacturers are permitted to store this information by any means they wish and transfer the information from one means of storage to another as often as they wish. No information is submitted to the government under this regulation, and NHTSA does not conduct routine enforcement activities to ensure that the manufacturers have retained these records.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:

To the extent that there is an "average" record retention, we estimate the manufacturers' burden at 40 hours each for a subtotal of 40,000 hours (1,000 respondents x 40 hours). In the case of record retention by large manufacturers, which often consists of thousands of pages of records, on average, it would probably take about over 40 hours to properly retain the records. On the other hand, the typical small business that must retain only a single record should only need about five (5) minutes to fully comply with the regulation. Some small manufacturers may not have to retain any records at all. We believe that 40 hours per manufacturer is a reasonable estimate of the recordkeeping burden given the difference in the amount of time it takes for different manufacturers to retain records. We believe that the modifications to this collection

will not increase the burden of recordkeeping, as manufacturers are only required to keep records already maintained for a longer time; manufacturers are not required to retain any new records.

In addition, there are approximately 23,600 equipment manufacturers (excluding tires and child seat restraint systems manufacturers) whose record retention requirements under part 576 are limited to the documents underlying their part 579 reporting requirements. The manufacturers' part 579 requirements include only the reporting of incidents involving deaths. Based on the number of death reports submitted to date by these equipment manufacturers, we estimate that an additional 20 equipment manufacturers have record retention requirements imposed by part 576. We estimate that it will take one hour each to maintain the necessary records for a subtotal burden of 20 hours (20 respondents x one hour). We are not modifying the records retention requirements for these manufacturers, so the record keeping burden will not increase. Accordingly, the estimate of total annual burden hours is 40,020 hours (1000 respondents x 40 hours plus 20 respondents x 1 hour) for 49 CFR part 576.

The agency estimates that the hourly cost associated with the burden hours of 40,020 is approximately \$20 per hour. This is somewhat higher than the usual assumed hourly cost, reflecting the fact that although some of these hours would be computer time, a number of the hours may be clerical time. Accordingly, the agency estimates that the total annual cost associated with the burden hours is \$804,000 (40,020 annual burden hours x \$20 per hour).

Because the proposed revision to this information collection would not increase the burden hours of the collection, the costs associated with the burden hours for the collection also are not expected to increase as result of this proposal.

Comments are invited on:

- Whether the Department's estimate for the burden of record retention is accurate.

- Whether there are any costs for electronic storage of records.
- The volume of records retained pursuant to part 576.
- What the burden of record retention becomes if the rulemaking requires manufacturers to retain records for a period of ten, fifteen, twenty, or twenty-five years.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the FEDERAL REGISTER.

The agency recognizes that the collection of information contained in today's proposed rule may be subject to revision in response to public comments.

#### **G. National Technology Transfer and Advancement Act**

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." The amendment in today's proposed rule would extend the time manufacturers retain records, and does not involve any voluntary consensus standards as it relates to NHTSA or this rulemaking.

#### **H. Executive Order 12988 (Civil Justice Reform)**

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly

specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA has considered these issues and determined that this proposed rule would not have any retroactive or preemptive effect. The proposed rule would only apply to documents in manufacturers' possession at the time the rule goes into effect and documents generated or acquired by manufacturers in the future. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### **I. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This proposed rule would not result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually (adjusted for inflation with base year of 1995).

#### **J. Executive Order 13211**

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to Executive Order 13211.

#### **K. Regulation Identifier Number (RIN)**

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

#### **L. Public Participation**

##### How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.<sup>14</sup> We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help” or “FAQ.”

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<sup>14</sup> See 49 CFR 553.21.

- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.<sup>15</sup>

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at [https://www.whitehouse.gov/omb/fedreg\\_reproducible](https://www.whitehouse.gov/omb/fedreg_reproducible). DOT's guidelines may be accessed at [https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject\\_areas/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines/html/guidelines.html](https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_quality_guidelines/html/guidelines.html)

#### How Can I Be Sure That My Comments Were Received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope

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<sup>15</sup> Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.<sup>16</sup>

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

#### Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule. If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

#### How Can I Read the Comments Submitted By Other People?

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<sup>16</sup> See 49 CFR part 512.

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under ADDRESSES. The Docket Management Facility is open between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

#### **M. Privacy Act Statement**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78).

#### **List of Subjects in 49 CFR Part 576**

##### 49 CFR Part 576

Motor vehicle safety, Tires, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, NHTSA proposes to amend 49 CFR part 576 as follows:

#### **PART 576 – RECORD RETENTION**

1. Amend § 576.5 by revising paragraph (a) to read as follows:

##### **§ 576.5 Basic requirements.**

(a) Each manufacturer of motor vehicles, child restraint systems, and tires shall retain, as specified in § 576.7 of this part, all records described in § 576.6 of this part for a period

of ten calendar years from the date on which they were generated or acquired by the manufacturer.

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Issued in Washington, DC under authority delegated in 49 CFR 1.95 and 501.5.

**Heidi Renate King**

*Deputy Administrator*

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[Signature Page for Record Retention Requirement; Notice of Proposed Rulemaking]  
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