

be derived from a battery of tests that evaluated stopping performance at different speeds and on different surfaces. Monetary constraints have precluded (and in all likelihood will continue to preclude) the agency from spending additional money to further develop brake performance tests for consumer information.

4. *NAS Study.* While NHTSA has rescinded the stopping distance requirement, this decision does not signal that the agency disfavors consumer information. On the contrary, the agency believes that certain consumer information provides valuable information to the public. NHTSA is working with the National Academy of Sciences (NAS) to review and possibly expand the agency's consumer information efforts related to motor vehicle safety. According to the House Appropriations Committee report addressing the NAS study, "The study should focus on the validity of current programs, public and private, in providing accurate information to consumers on the real-world safety of vehicles, the possibility of improving the system in a cost effective and realistic manner, and the best methods of providing useful information to consumers." This study is currently in process with a legislative due date of March 31, 1996 for a final report on the NAS findings to the House and Senate Appropriations Committees. NHTSA will review the NAS study for insights into whether there is an effective means to provide consumers with information about vehicle stopping ability. However, since all parties agree that the current information is not meaningful or helpful to consumers, no purpose is served by retaining section 575.101.

C. Impacts of Rescission

1. *Economic costs and burdens of the regulation.* In the NPRM, NHTSA stated that rescinding the stopping distance information requirement would eliminate an unnecessary regulatory burden on vehicle manufacturers. The agency estimated that the costs associated with providing the stopping distance information to prospective customers was approximately \$600,000 a year. The agency reasoned that rescinding this provision would relieve the automobile industry of this cost, without depriving consumers of any truly meaningful information.

Several manufacturers stated their belief that rescinding the requirement would eliminate administrative costs. Chrysler, Volkswagen, AIAM, and Mr. Kourik agreed that rescinding the stopping distance requirement would relieve administrative costs. Ford

believed that no substantial cost results from requiring vehicle manufacturers to furnish stopping distance information to consumers.

NHTSA notes that the testing required by this requirement results in an unwarranted cost for the agency as well as the manufacturers. The agency incurs costs associated with monitoring the information reported by manufacturers. Similarly, manufacturers incur costs associated with testing to generate the stopping distance information as well as printing and distributing materials. These costs to the agency and manufacturers, while not large in absolute terms, serve no real safety purpose and are thus an unnecessary expense.

2. *Preemption.* Chrysler, GM, Ford, Honda, and Volkswagen were concerned about States or local jurisdictions issuing their own stopping distance information requirements if the Federal regulation was rescinded. Chrysler stated that where a Federal agency has determined that no regulation is appropriate, the United States Supreme Court has recognized a form of negative preemption. This led Chrysler to request that NHTSA "express its intent that all other levels of government be preempted from establishing any related or similar regulation." AIAM also requested that the agency state that other levels of government would be preempted from establishing similar requirements. It stated that such a statement would be consistent with the previous position taken by NHTSA in its revocation of Standard No. 127, *Speedometers and Odometers*, (47 FR 7250, February 18, 1982).

NHTSA believes that the States and local governments should not adopt requirements similar to the current Federal stopping distance information requirement. As noted elsewhere in this notice, the agency has concluded that the current Federal requirement has been ineffective in providing meaningful information to consumers about the stopping performance of passenger vehicles. Similar State and local government requirements would be likewise ineffective.

However, NHTSA lacks the authority to preempt the States from adopting such requirements. The agency reaches this conclusion because there is no express preemption in the area of stopping distance information, as there is in connection with Federal motor vehicle safety standards. See 49 U.S.C. 30103(b). Likewise, there would be no implied preemption of State action in this area. The agency does not "occupy the field." Further, there would be no

conflict between such a State or local government requirement and the Federal motor vehicle safety law.

The commenters appear to have an overly broad view of the potential for negative preemption under the Federal motor vehicle safety law. Contrary to Chrysler's apparent belief, negative preemption will not always be recognized when NHTSA has determined that no Federal standard or regulation on a particular subject is appropriate. A State information regulation addressing the same subject as a rescinded Federal information regulation would be preempted (under the doctrine of implied preemption) only if the State regulation conflicted with or otherwise frustrated the Federal statute or regulatory scheme. Moreover, according to recent judicial decisions, negative preemption will exist only if the Federal agency has affirmatively manifested an intention to shut out State action. See *Toy Manufacturers of America v. Blumenthal*, 986 F.2d 615 (2nd Cir 1992), citing *Hillsborough County v. Automated Medical Labs., Inc.*, 471 U.S. 707, 718, 105 S.Ct 2371, 2377, 85 L.Ed.2d 714 (1985). NHTSA is not taking that step here because the agency believes that there is no basis for asserting that State stopping distance information regulations would conflict with Federal law. Even if one State were to take one approach to informing its citizens about vehicle stopping distance and another State were to take a different approach, the agency does not believe that the differences in the approaches would conflict with any Federal program or have a deleterious effect on motor vehicle safety.

E. Effective Date

Each order is required to take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment eliminates a requirement with which manufacturers currently have to comply and since the public interest is served by not needlessly delaying when this rescission takes place, the agency has determined that there is good cause to adopt an effective date 30 days after publication of the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This