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