DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2004–19092]

RIN 2127–AJ07

Retro Fit On-Off Switches for Air Bags; Vehicle Modifications To Accommodate People With Disabilities

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

ACTION: Notice of proposed rulemaking.

SUMMARY: To facilitate further the modification of vehicles to accommodate individuals with disabilities, the agency is proposing to expand the existing exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. In response to petitions for rulemaking from members of the mobility industry, we are proposing to include provisions from the advanced air bag requirements, the child seat anchorage system requirements, and the upper interior head protection requirements in this exemption.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than November 16, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number above by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Submission of Comments heading under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the information regarding the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration:

For non-legal issues: Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards at (202) 366–5559.

For legal issues: Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

In order to facilitate the modification of motor vehicles for persons with disabilities, NHTSA provides a limited exception from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment so as to adversely affect their performance.

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (49 U.S.C. 30112). A manufacturer, distributor, dealer, or repair business may not then knowingly make inoperative any part or device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard (49 U.S.C. 30122; make inoperative provision). Any action that removes or disables safety equipment or features installed to comply with an applicable standard, or that degrades the performance of such equipment or features qualifies as a ''making inoperative'' and could lead to the assessment of civil penalties.

This prohibition poses a problem for persons with disabilities. While a vast majority of Americans can drive and ride in a motor vehicle as produced and certified by manufacturers, individuals with disabilities often require special modifications to accommodate their particular needs. Some of these modifications may require removal of federally required safety equipment. In order for individuals with disabilities to drive and ride in a motor vehicle in these instances, federally required safety features must be made inoperative.

Recognizing the specialized transportation needs of individuals with disabilities, NHTSA established an exemption from the make inoperative provision. 49 CFR 595 subpart C, Vehicle Modifications To Accommodate People With Disabilities, permits repair businesses to modify certain types of federally required safety equipment and features under specified circumstances. This exemption from the make inoperative provision was established because the previous policy of considering and responding to requests on a case-by-case basis was not effective or efficient for the vehicle modifiers, the persons requiring the modifications, or the agency. (66 FR 12638; February 27, 2001.)

When establishing the exemption from the make inoperative provision, the agency considered that, as of 1997, we estimated that approximately 383,000 vehicles had some type of adaptive equipment installed in them to accommodate a driver or passenger with a disability.[1] We also recognized that the modification of vehicles to accommodate persons with disabilities would increase in frequency as the population ages and as a greater number of individuals with physical disabilities take advantage of opportunities presented by the Americans With Disabilities Act.[2] In 2002, the Bureau of Transportation Statistics estimated between one million and 2.3 million households in the U.S. owned at least one modified vehicle.[3]

[1] *Estimating the Number of Vehicles Adapted for Use by Persons With Disabilities,* NHTSA Research Note, 1997.

[2] 42 U.S.C. 12101, *et seq.*

[3] 2002 National Transportation Availability and Use Survey, Bureau of Transportation Statistics.

The exemption from the make inoperative provision facilitates modifications by providing guidance to modifiers on the type of modifications that can be made without unduly decreasing the level of safety provided to the vehicle occupants and to others. Included in the exemption are the seat belt and passive restraint requirements for passenger cars, and light trucks, buses and multipurpose passenger vehicles, under Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection* [4] and head impact protection requirements for certain target points under FMVSS No. 201, *Occupant protection in interior impacts.*[5]

On February 5, 2002, Bruno Independent Living Aids (Bruno) submitted a petition to expand the specified requirements of FMVSS No. 208 exempted in § 595.7. We granted the petition for rulemaking from Bruno. The agency also received petitions for rulemaking from the Adaptive Driving Alliance (ADA) [6] and the National Mobility Equipment Dealers Association (NMEDA) to include the requirements of FMVSS No. 225, *Child restraint anchorage systems,* in § 595.7, on August 8, 2002, and January 13, 2003, respectively. The agency granted the FMVSS No. 225/part 595 petitions from the ADA and NMEDA. Later, the ADA and the NMEDA petitioned the agency to expand the specified requirements of FMVSS No. 201 exempted in § 595.7. Again, the agency granted the petitions for rulemaking from ADA and NMEDA.

II. Proposed Exemptions

To facilitate the modification of vehicles for persons with disabilities, the agency is proposing to amend the exemption from the make inoperative provision under 49 CFR part 595, by adding the FMVSS No. 208 advanced air bag requirements, a limited exemption for the FMVSS No. 225 LATCH requirements, and a limited exemption for the FMVSS No. 201 upper interior head protection requirements.

A. Advanced Air Bag Requirements

After the exemption from the make inoperative provision was published, the agency published a final rule that added requirements to FMVSS No. 208 to reduce the risk of serious air bag-induced injuries, especially to small women and young children, and to improve the safety for all occupants by means that include advanced air bag technology. (65 FR 30680; May 12, 2002; Advanced Air Bag Rule.) The advanced air bag technology requirements are being phased in beginning September 1, 2003, with full compliance required September 1, 2006. Motor vehicles subject to the phase-in will be required to minimize air bag risks by automatically turning off the air bag in the presence of an occupant who is a young child or deploy the air bag in a manner less likely to cause serious or fatal injury to an out of position occupant. [7] Among the technologies used to comply with these requirements are a variety of seat position, occupant weight, and pattern sensors incorporated into the seat structure.

In its petition for rulemaking, Bruno requested that the advanced air bag requirements be included with the other FMVSS No. 208 requirements excluded from the make inoperative provision. Bruno stated that the installation of one of its mobility aid products, the Turning Automotive Seat (TAS) [8] could be accomplished without making a conventional air bag inoperative, but would require deactivation of advanced air bag features. Bruno stated that maintaining the operation of seat position and occupant sensing devices used to comply with the advanced air bag requirements for numerous makes and models of motor vehicles is beyond its capability.

The August 8, 2002 ADA petition provided additional support for Bruno's request. The ADA argued that it is no more feasible for modifiers to comply with the advanced air bag requirements than the ''*existing* air bag requirements,'' which are currently exempted. Petitioners argued that maintaining compliance with the advanced air bag requirements would require modifiers to reinstall, modify, or design complex components of the air bag system. Petitioners stated that this was beyond the capabilities of most vehicle modifiers and would severely limit the opportunity for an individual needing to replace the driver's seat or front passenger seat in order to accommodate a disability to obtain such an accommodation.

Petitioners further argued that just as the current FMVSS No. 208 sections exempted under part 595 are incompatible with the one-of-a kind, custom fitted, nature of vehicle modifications designed to accommodate a specific individual's disability, so are the advanced air bag requirements. Petitioners explained that often when a vehicle is modified to accommodate a person with a disability, the nature of the work requires removal of the air bag or some part of the crash sensing system connected to the air bag. As with the Bruno TAS, modifications may require removal or disconnection of the seat position, occupant weight, and pattern sensors that are part of the seat structure. Since these modifications are unique to each vehicle and individual, petitioners stated that modifiers do not have the ability (engineering or financial) to develop alternative air bags or crash sensing systems.

To address this issue, we are proposing to add the following sections of FMVSS No. 208 to the make inoperative exemptions established at 49 CFR 595.7(c)(14):

S15, *Rigid barrier test requirements using 5th percentile adult female dummies;*

S17, *Offset frontal deformable barrier requirements using 5th percentile adult female test dummies;*

S19, *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds;*

S21, *Requirements using 3-year-old child dummies;*

S23, *Requirements using 6-year-old child dummies;*

S25, *Requirements using an out-of-position 5th percentile adult female at the driver position.*

In most instances, a vehicle modification requiring an exemption for the advanced air bag requirements would also rely on the current exemption from the occupant crash protection requirements of S5, *Occupant crash protection requirements for the 50th percentile adult male dummy,* of FMVSS No. 208. We expect that modifications requiring an exemption from the advanced air bag requirements in conjunction with the exemption from S5, as well as those requiring only an exemption from the advanced air bag regulations, would affect a very small number of motor vehicles each year in comparison to the overall number of motor vehicles in the country. The agency has tentatively concluded that these modifications would be essential to enable individuals with a disability to use a motor vehicle. Additionally, seating positions modified under the proposed exemption would

[4] Under 49 CFR 595.7(c)(14).

[5] 49 CFR 595.7(c)(7).

[6] The ADA is a trade association representing dealers and manufacturers that modify and sell vehicles adapted for people with disabilities.

[7] A majority of vehicle manufacturers are required to certify that a percentage of their fleet complies with these requirements according to the following phase-in schedule: September 1, 2003 to August 31, 2004—20 percent; September 1, 2004 to August 31, 2005—65 percent; September 1, 2005 to August 31, 2006—100 percent.

[8] Bruno described the TAS as seat replacement that is designed to pivot from the forward-facing position to the side-facing entry position, extend outward and lower the occupant to a suitable transfer height.

accommodate specific, individual needs making it less likely that these seating positions would be used by other occupants who would benefit either from the air bag itself, or from those features designed to minimize air bag risk.

B. LATCH Requirements

Prior to establishing the exemption from the make inoperative provision, the agency established FMVSS No. 225, which requires motor vehicles to be equipped with a lower anchorage and tether anchorage (LATCH) system designed exclusively to secure child restraint systems. (64 FR 10786; March 5, 1999; LATCH Rule) The lower anchorage consists of a straight rod, or bar that is attached to the vehicle in the location of the intersection of the seat cushion and seat back.

FMVSS No. 225 requires vehicles with three or more forward-facing rear designated seating positions, manufactured on or after September 1, 2002, to be equipped with (1) a LATCH system at not fewer than two forward-facing rear designated seating positions, with at least one system installed at a forward facing seating position in the second row in each vehicle that has three or more rows, and (2) a tether anchorage at a third forward-facing rear designated seating position.[9] Under S5(b) of FMVSS No. 225 a vehicle may be equipped with a built-in child restraint system conforming to the requirements of FMVSS No. 213, *Child restraint systems,* instead of one of the required tether anchorages or child restraint anchorage systems.

These LATCH requirements provide a more uniform method of securing a child restraint system and reduce the likelihood that a child restraint will be installed incorrectly.

In its petition for rulemaking, the ADA stated that compliance with LATCH requirements, like compliance with the advanced air bag requirements, would be impractical, and possibly not feasible for businesses modifying motor vehicles to accommodate disabled drivers and passengers. The ADA stated that such compliance would ''likely serve as a prohibition against the use of motor vehicles for people with disabilities,'' as well as ''significantly impact small businesses'' and ''unreasonably decrease consumer choice.'' The ADA explained that:

When, as part of modifying a vehicle for a disabled individual, an entire row of seats needs to be modified or removed (*e.g.* to allow wheelchair egress and ingress), then Part 595 must permit removal of the tethers and child restraint anchorages at those modified or removed locations. Otherwise, vehicle modifiers will be required to reengineer child restraint anchorages for installation at locations not contemplated by [the vehicle manufacturers].

The ADA suggested amending 49 CFR § 595.7 to include a limited exception to FMVSS No. 225 as follows:

(c)(16) 49 CFR 571.225 for the designated seating position modified or removed, in any cases in which the restraint system and/or seat at that position must be modified or removed to accommodate a person with a disability, provided that at least one child restraint anchorage system under 571.225 or built-in child restraint system under 571.213 is present in the vehicle.

The agency is proposing a limited exemption from the make inoperative provision for the vehicle LATCH requirements under FMVSS No. 225. The necessity for this exemption arises when a modifier makes changes to a vehicle, usually a van (standard size or minivan), to accommodate a wheelchair user. As explained by the ADA, typically one row of seats must be removed to allow a wheelchair user to enter the vehicle through either the side or rear door (fitted with either a ramp or a lift). The wheelchair is then either restrained in the space made vacant by the removed seats, maneuvered to permit a transfer to the driver's seat, or maneuvered into the driver's station to allow the user to drive from the wheelchair. In any event, at least one row of seats (typically two or three designated seating positions) must be removed.

Modifying a vehicle to accommodate a wheel chair could result in seating configurations that would take the vehicle out of compliance with FMVSS No. 225. If a vehicle with three rows of seating were to have LATCH systems only at the second row and the third row consisted of three designated seating positions, removal of that second row to permit wheelchair access to the driver's seat would remove the vehicle from compliance with FMVSS No. 225. Beyond this example, there are a myriad of van seating arrangements, desired wheelchair restraint positions, and vehicle entry/exit applications that could remove a vehicle from compliance with FMVSS No. 225.

The agency cannot anticipate all of these potential combinations and provide modifiers specific instructions for each situation. Therefore, we are proposing an amendment that would establish flexibility in the modification configurations and still allow a child seat to be restrained safely. NHTSA proposes to that an exemption be added to 49 CFR 595.7, to read as follows:

(c)(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225 must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

The proposed exemption is less demanding than that suggested by the ADA. Under the petitioner's language, if a vehicle complies with FMVSS No. 225 by having two LATCH systems and a tether anchorage in the second row of seating and no LATCH anchorages in the third row of seating, any modification resulting in the removal of the second row of seating would require the modifier to install complete LATCH systems in the third row of seating. Modifiers may not have the engineering and fabrication capabilities to install the lower anchorages in a seating position that was not originally equipped with the LATCH system. Under the agency's proposal, the modifier would only be required to install a tether anchorage. A child seat could still be installed in a modified vehicle through the use of the vehicle's seat belt system and still have the advantage of the tether.

Modifiers should note that if agency's proposal were made final, the tether anchorage(s) attached to any relocated seat would be required to remain compliant with 49 CFR 571.225 S6, S7 and S8 upon relocation. We tentatively conclude that this requirement to be within the capabilities of modifiers.

49 CFR 571.225 S4.4(c) requires that vehicles, manufactured on or after September 1, 2002, that do not have any forward-facing rear designated seating positions must have a compliant tether anchorage at each front passenger designated seating position. If a vehicle were to be modified such that only front designated seating positions remained, we expect that modifiers would have the capabilities to install conforming tether anchorages at the front forward-facing passenger designated seating positions (if not already provided by the original vehicle manufacturer).

The agency is seeking comment on whether or not modifiers should be required to add tether anchorages to

[9] Alternatively, until September 1, 2004, multipurpose passenger vehicles that have five or fewer forward-facing designated seating positions are not required to have a tether anchorage at a third seating position.

designated seating positions that were not so equipped by the original vehicle manufacturer.

C. Upper Interior Head Protection Requirements

On August 18, 1995, the agency issued a final rule amending FMVSS No. 201 to improve head protection in impacts with upper interior components of certain vehicles (60 FR 43031). The final rule, which mandated compliance with the new requirements, significantly expanded the scope of FMVSS No. 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors only. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). The resultant data must not exceed a Head Injury Criterion score of 1000.

The standard, as further amended on April 8, 1997 (67 FR 16718), provided manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. Twice the agency extended the effective date for manufacturers of vehicles built in two or more stages, which now must comply with the expanded FMVSS No. 201 requirements on and after September 1, 2006 (68 FR 51706; August 28, 2003).

In the rulemaking that established the make inoperative exemption, we recognized that compliance with FMVSS No. 201 at some target points could be problematic for certain modifications, specifically the installation of a platform lift. Currently, part 595 includes an exemption to FMVSS No. 201 with respect to:

(i) Targets located on the right siderail, the right B-pillar and the first right side ''other'' pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(ii) Targets located on the left siderail, the left B-pillar and the first left side ''other'' pillar adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle.

(iii) Targets located on the rear header and the rearmost pillars adjacent to the stowed platform of a lift or ramp that stows vertically, inside the vehicle (49 CFR 595.7(c)(7)).

The ADA and NMEDA each submitted a separate petition for rulemaking requesting that NHTSA expand the exemption of FMVSS No. 201 to include the provisions pertaining to upper interior head protection. According to the ADA petition, the addition of handles and vertical stanchion bars,[10] as well as the raising or lowering of vehicle roofs or floors, creates a situation in which compliance with the upper interior head impact protection requirements would be ''infeasible.'' The ADA asserted that such modifications are often unique to an individual customer's needs, size, and disability, and create the potential for many different configurations, each of which would have to be tested under FMVSS No. 201. The ADA requested that 49 CFR 595.7 be amended to include exemptions for requirements related to: (1) Targets located on any hand grip or vertical stanchion bar; and (2) all of S6 of 571.201 in any case in which accommodating a person's disability necessitates raising the roof or door, or lowering the floor of the vehicle.

The agency is proposing to amend the exemption from the make inoperative provision by adding a limited exemption from the upper interior head protection requirements of FMVSS No. 201. This amendment would facilitate the raising of a vehicle roof and the lowering of a vehicle floor in order to accommodate individuals with a disability. Also, in instances where a vehicle is not equipped with a grab bar, or the originally equipped grab bar is insufficient to accommodate an individual with a disability, the proposal would facilitate the installing of handles or stanchion bars.

The agency has already recognized the potential impact of the upper interior head protection requirements on manufacturers of vehicles manufactured in two or more stages and has provided additional lead time for compliance. The potential impacts of the upper interior head protection requirements on vehicle modifiers are analogous to those on manufacturers of vehicles manufactured in two or more stages.

We are making this proposal for the reasons stated by the petitioner.

III. Part 595 Title

The agency is also proposing to amend the title of part 595 to read ''MAKE INOPERATIVE PROVISIONS.'' This amendment would reflect the fact that 49 CFR part 595 currently covers more than the retrofit of motor vehicles with on-off switches for air bags.

[10] Handles and stanchion bars are added to vehicles to aid a disabled individual in entering or exiting a vehicle, or transferring from a wheel chair to the driver's seat.

IV. Proposed Effective Date

This proposal would remove a restriction on the modification of vehicles for persons with disabilities. To further the interest of providing vehicle modifiers the flexibility required to accommodate these individuals, we are proposing that, if adopted, this amendment would become effective 60 days after the publication of the final rule. The agency requests comments on the appropriateness of the effective date.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. NHTSA has determined that the impacts of this proposal would be so minimal that a full regulatory evaluation is not warranted.

The agency believes that the expanded exemptions might not have any adverse safety effects on individuals with disabilities. The proposed exemptions would allow an individual with a disability to operate or ride in a motor vehicle, while maintaining the benefit of all of the compatible safety standards. Absent the modifications that would be permitted by this rulemaking, individuals with disabilities might not be able to use the vehicles in question.

Modifying a vehicle to allow disabled individuals to operate or ride in a motor vehicle may result in some loss of safety for any individuals without disabilities who may operate or ride in those motor vehicles. However, any loss of safety would be minimal. We do not expect many individuals without a disability to use seating positions specially modified for individuals with a disability. Further, as noted above, the number of affected standards would remain small and the number of vehicles that would be modified would be relatively small.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Most motor vehicle modifiers are considered small entities. I hereby certify that this proposal would not have a significant economic impact on a substantial number of small entities. As explained above, this action would add several occupant crash protection

requirements, vehicle LATCH requirements, and upper interior head protection requirements to the current list of requirements exempted from the Make Inoperative Provision. While most modifiers are considered small entities, the proposal would not impose any mandatory significant impact on them since the proposal would permit greater flexibility when modifying a vehicle to accommodate an individual with a disability.

C. Paperwork Reduction Act

The collection of information burden under the labeling and recordkeeping requirements of 49 CFR 595.7, OMB clearance numbers 2127–0512 and 2127–0635, respectively, would not increase under the proposed rule. The agency anticipates that any vehicle modification using one of the proposed exemptions would be made in conjunction with one or more modifications based on the current exemptions. A vehicle modifier using one of the proposed exemptions would only be required to list the proposed exemption along with the other exemptions on the required disclosure to the consumer. The vehicle labeling and record keeping requirements do not vary on the number of exemptions per vehicle, only on the total number of vehicles modified.

D. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it 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 have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. The proposed rule would not repeal any existing federal law or regulation. Additionally, the proposed rule would not preempt any causes of action in state or Federal court. If made final, the proposed rule would not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule is procedural in nature and if adopted would not establish any standards, consensus-based or otherwise.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This proposed rule would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. 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.

VI. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) NHTSA 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 two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** You may also submit your comments to the docket electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your comments electronically. Please note, 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.[11]

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope 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**. 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 include a cover letter setting forth the information specified in NHTSA's confidential business information regulation (49 CFR part 512).

Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for the agency to consider it in developing a final rule (assuming that one is issued), the agency will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

1. The title to part 595 would be revised to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

2. The authority citation for Part 595 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

3. Section 595.7 would be amended by adding paragraphs (c)(7)(iv) and (v), revising paragraph (c)(14), and adding paragraph (c)(16) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(7) * * *

(iv) Targets located on any hand grip or vertical stanchion bar.

(v) All of S6 of 571.201 in any case in which the disability necessitates raising the roof or door, or lowering the floor of the vehicle.

* * * * *

(14) S4.1.5(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, S7.4, S15, S16, S17, S18, S19, S20, S21, S22, S23, S24, S25, S26 and S27 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or Type 2A seat belts meeting the requirements of 49 CFR 571.209 and 571.210 are installed at that position.

* * * * *

(16) 49 CFR 571.225 in any case in which an existing child restraint anchorage system, or built-in child restraint system relied upon for compliance with 571.225 must be removed to accommodate a person with a disability, provided the vehicle contains at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat. Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8.

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Issued on: September 13, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–20922 Filed 9–16–04; 8:45 am]

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