6. *Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners*, U.S. EPA–450/3–82–009 (September 1982).

7. *Control of Volatile Organic Emissions from Use of Cutback Asphalt*, U.S. EPA–450/2–77–037 (December 1977).

8. *2007 Ozone Plan*, San Joaquin Valley Air Pollution Control District (April 30, 2007). *http://www.arb.ca.gov/planning/sip/2007sip/sjv8hr/sjvozone.htm.*

9. *RACT Demonstration for Ozone SIP*, San Joaquin Valley Air Pollution Control District (April 16, 2009). *http://www.valleyair.org/Workshops/public_workshops_idx.htm#8hrOzone RactSIP%2004-16-10.*

10. *RACT Analysis for Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672*, San Joaquin Valley Air Pollution Control District (June 12, 2008).

B. Do the Rules Meet the Evaluation Criteria?

We believe that SJVAPCD Rules 4104, 4404, 4641, and 4672 are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 2, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–30169 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2009–0065]

RIN 2127–AK22

Make Inoperative Exemptions; Head Restraints

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

ACTION: Response to petition; Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking is being issued in response to a petition from Bruno Independent Living Aids to expand and update existing exemptions to the ''make inoperative'' prohibition with respect to the Federal motor vehicle safety standard on head restraints. These exemptions are included in a regulation that provides exemptions for the ''make inoperative'' provision for, among other things, vehicle modifications to accommodate people with disabilities. NHTSA is proposing two substantive changes to the regulation. The first is to expand the exemption from the minimum height requirements listed in the head restraint standard to include the right front passenger position in addition to the driver position. The second is to update the exemption to include relevant provisions of a new version of the head restraint standard. Additionally, this document proposes to update an existing reference in the exemption to reflect the current numbering in the Code of Federal Regulations. Finally, we are denying other requests to expand the exemption to certain other requirements of the head restraint standard.

DATES: You should submit our comments early enough to ensure that Docket Management receives them not later than February 16, 2010.

ADDRESSES: You may submit 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, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. 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 heading below.

Privacy Act: 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) or you may visit *http://DocketInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123 (E-mail: *gayle.dalrymple@dot.gov*) (Telephone: 202–366–2720) (Fax: 202–493–2739).

For legal issues, you may contact Mr. Ari Scott, Office of Chief Counsel, NCC–112 (E-mail: *ari.scott@dot.gov*) (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

a. History of the Make Inoperative Exemptions

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112). A vehicle manufacturer, distributor, dealer, or repair business generally may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable standard (*see* 49 U.S.C. 30122). However, the National Highway Traffic Safety Administration (NHTSA) has the authority to issue regulations that exempt regulated entities from the make inoperative provision (*see* 49 U.S.C. 30122(c)).

On February 27, 2001, the agency issued a final rule (66 FR 12638) establishing exemptions from the make inoperative provisions for certain sections of several FMVSSs under certain limited circumstances when vehicles are modified to be used by persons with disabilities. This rulemaking was undertaken to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. Since the publication of the 2001 rule, NHTSA has made updates to the exemptions to keep pace with changes in the standards for which those exemptions were written. An example of such a change includes a final rule issued on August 31, 2005 (70 FR 51673) adding exemptions for the updated sections of FMVSS No. 201, *Occupant Protection in Interior Impact,* and FMVSS No. 208, *Occupant Crash Protection,* as well as establishing an exemption for FMVSS No. 225, *Child Restraint Anchorage Systems.*

b. Current Exemptions in Part 595 Regarding Head Restraints

Currently, there are two portions of part 595 that deal with the head restraint requirements in Standard No. 202, *Head Restraints.* These exemptions from the make inoperative provision to accommodate people with disabilities include 49 CFR 595.7(c)(8), which provides an exemption from all requirements of Standard No. 202 for vehicles modified to accommodate a driver or right front passenger seated in a wheelchair and no other seat is provided, as well as 49 CFR 595.7(c)(9), which provides an exemption from the driver side head restraint height/width requirements for vehicles modified to accommodate drivers with a disability. There are currently no exemptions in Part 595 that pertain to the requirements in the upgraded FMVSS No. 202a.

c. Petition for Rulemaking

On January 2, 2007 NHTSA received a petition for rulemaking from Bruno Independent Living Aids (Bruno) requesting that we amend part 595 to add an exemption for passengers' side head restraint systems. In submitting its petition, Bruno wished to facilitate use of its product, called Turning Automotive Seating (TAS), which provides access to motor vehicles to people with disabilities. This device consists of a rotating, motorized seat, which replaces the OEM seat in a motor vehicle. The TAS pivots from the forward-facing driving position to the side-facing entry position and extends outward and lowers to a suitable transfer height, providing the driver and/or passenger easy entry into the vehicle. The transfer into the seat takes place while outside the vehicle, and the occupant remains in the seat during the entry process, using OEM seat belts while traveling in the vehicle. Exiting the vehicle is accomplished by reversing the process. Another TAS option is a mobility base, which converts the automotive seat into a wheelchair, eliminating the need for transferring from the seat altogether. Bruno states that TAS systems provide mobility-impaired persons with safer and easier ways to enter and exit a vehicle.

In its petition, Bruno states that the TAS provides substantial safety benefits. As a basis for this claim, Bruno cites a NHTSA Research published in 1997.[1] In this note, the agency stated that between 1991 and 1995, 7,121 people were killed or injured due to the

[1] *Wheelchair Users Injuries and Deaths Associated with Motor Vehicle related Incidents,* September 1997, available at *http://www.nhtsa.dot.gov.*

following reasons: improper or no securement, lift malfunction, transferring to or from a motor vehicle, falling on or off the ramp, and a collision between the wheelchair and a motor vehicle.[2] According to Bruno's petition, the TAS will help prevent 74% of those injuries—which includes all injuries except those occurring when a wheelchair is struck by a motor vehicle. This is because the TAS will provide wheelchair users an easy and safe way to enter and exit these vehicles.

Bruno indicated that the TAS currently complies with FMVSS No. 202. However, the clearance between the top of the head restraint and the door opening can restrict the number of viable vehicle applications. Bruno also stated that the increased head restraint height required by the new FMVSS No. 202a will significantly reduce the number of available vehicle applications.

To facilitate the installation of the TAS on vehicles, Bruno requested that the make inoperative exemptions of 49 CFR part 595 be expanded and updated to cover both driver and passenger side head restraints, for persons not in a wheelchair, to reflect the new FMVSS No. 202a. Bruno suggested that the expanded exemptions it requires be added to either or both of the current Part 595 exemptions addressing head restraints.

In requesting that the exemptions be updated to reflect the new FMVSS No. 202a, Bruno requested that the make inoperative provisions that provide exemptions to portions of FMVSS No. 202 be extended to cover the equivalent portions of FMVSS No. 202a. Additionally, that company requested that the exemptions in part 595 be expanded to cover several aspects of FMVSS No. 202a that are not currently provided for FMVSS No. 202. Specifically, Bruno requested more broadly that Part 595 be updated to include an exemption for 49 CFR 571.202a S4.2.1 through S4.2.7. These paragraphs encompass requirements on minimum height, width, backsets, gaps, energy absorption, height retention, backset retention, displacement, and strength.

Finally, Bruno noted an error where § 595.7(c)(9) mistakenly points to S4.3 of Standard No. 202, instead of S4.2. In the current version of FMVSS No. 202, paragraph S4.3 contains documents incorporated by reference, while paragraph S4.2 contains the requirements for head restraints at issue.

[2] *Id.,* Table 2.

II. Response to Petition

NHTSA has decided to partially grant Bruno's petition. Specifically, and as discussed below, we are proposing to extend the height exemption in paragraph (c)(9) to cover the head restraints for the right front passenger as well as the driver. Additionally, we are proposing to update the exemption to cover the relevant portions of FMVSS No. 202a addressing height and width, and to correct the reference to paragraph S4.3 noted by Bruno. We are denying Bruno's request to provide exemptions for portions of FMVSS No. 202a other than ones addressing the height/width of head restraints. We are also proposing to update the exemption in paragraph (c)(8) to cite FMVSS No. 202a.

a. Agency Analysis of the Benefits of the TAS and Similar Systems

As stated above, Bruno made several arguments as to why the TAS provides safety and other benefits for people with disabilities. Therefore, it argues, it is in the public interest to expand the make inoperative provision of part 595 to facilitate the installation of the TAS in vehicles. The agency believes that these potential benefits apply not only to the TAS, but to similar systems that allow people with disabilities to enter and exit a vehicle in a similar fashion. In particular, the agency generally agrees that the TAS, and similar systems, provide benefits for people with disabilities, who may have difficulty entering or exiting a motor vehicle. Among other things, these systems permit people to enter and exit vehicles in a sitting position, without the need to climb or descend the height differential between the floor of the vehicle and the ground. In this fashion, they provide benefits in allowing people with disabilities to retain their mobility.

While there may be some degradation in whiplash protection if the minimum size requirements of Standard No. 202 and 202a are not adhered to, it is our tentative conclusion that the benefits for people with disabilities outweigh those potential drawbacks. Therefore, we are proposing several amendments to part 595 to facilitate the installation of these kinds of systems.

b. Response to Request for Changes to Part 595

i. Proposal To Expand the Current Head Restraint Exemption to Right Front Passengers

Section 595.7(c)(9) provides an exemption with regard to the height and width of the head restraint, as stated in paragraphs S4.2(b)(1) and (2) of FMVSS No. 202. This provision was established at the time of the first make inoperative final rule because NHTSA was aware of drivers who had a limited range of motion in turning their heads, and a head restraint of the size required by FMVSS No. 202 could interfere with the driver's ability to look behind for a lane change or backing.[3] We did not provide the exemption for passenger seating positions because we wished to keep the exemptions as narrow as possible, and we were not aware of any needs for changes to passengers' head restraints.

With the advent of new technology such as the TAS, head restraint height becomes a problem for passenger seating positions as well, due to the problem of clearance between the head restraint and door opening. We believe the requested exemption is a reasonable trade-off of some possible degradation in whiplash protection in exchange for facilitating vehicle entry and exit, and the value of mobility for people with disabilities. Therefore, we are proposing to expand the exemption in § 595.7(c)(9) regarding height to include right front passengers.

We note that, in its petition, Bruno stated that the ''remedy we seek is an amended 49 CFR part 595 Exemption in § 595.7(c)(8)(i), (c)(8)(ii), and/or (c)(9) to accommodate both *drivers and passengers, not in a wheelchair,* in a vehicle modified for persons with a disability to drive or be transported'' [emphasis in original]. It appears that Bruno was requesting that the agency modify part 595 to accommodate the TAS either by amending the exemption in paragraph (c)(8), or that in paragraph (c)(9). In order to achieve the maximum safety benefit of the regulations, it is our desire to provide the narrowest exemption possible in order to accommodate the needs of disabled persons, without expanding its use to situations where the benefits of the exemption may be outweighed by the drawbacks of noncompliance with the safety standard.

Currently, § 595.7(c)(8) provides an exemption from the entirety of FMVSS No. 202 for vehicles modified to accommodate either a driver ((c)(8)(i)) or right front passenger ((c)(8)(ii)) in a vehicle in which no respective seat is supplied with the vehicle. This provision was written to allow for the situation in which the vehicle was modified to use a wheelchair as a vehicle seat and no other seat was provided. If there is no seat, there is no head restraint, and therefore FMVSS No. 202 would have been made inoperative. By contrast, § 595.7(c)(9) provides, for driver head restraints, an exemption

[3] *Id.*

from the minimum dimension requirements set forth in paragraph S4.3(b).

Given the two alternatives of providing an exemption from the whole standard, or just giving an exemption from the requirements relating to the dimensions of the head restraint, we are not proposing modification of § 595.7(c)(8) in order to accommodate systems such as the TAS.

Section 595.7(c)(9) grants a more narrow exemption with regard to the size of the head restraint, as stated in paragraphs S4.2(b)(1) and (2) of FMVSS No. 202. Since expansion of this more narrow exemption would accommodate systems such as the TAS, we believe it is the more appropriate approach to take.

ii. Proposal To Update the Exemptions To Reflect Standard No. 202a

1. Proposal To Update Paragraph (c)(8)

Currently, § 595.7(c)(8) contains an exemption for vehicles where either the entire driver's seat or right front passenger's seat is removed so that the position may be occupied by a person seated in a wheelchair and no other seat is delivered with the vehicle. This exemption currently provides an exemption from Standard No. 202 in its entirety for those vehicles. For the reasons stated above, NHTSA is not proposing that paragraph (c)(8) be expanded to include passengers other than those whose only vehicle seat is a wheelchair. However, NHTSA is proposing to update the exemption in paragraph (c)(8) to include an exemption from Standard No. 202a as well. This will continue to allow vehicles to be modified such that wheelchairs can be used in lieu of other vehicle seats.

2. Proposal To Update the Paragraph (c)(9) Exemption To Include Head Restraint Height and Width Requirements for Drivers and Minimum Height Requirements for Right Front Passengers

Section 595.7(c)(9) already contains a provision permitting an exemption for the driver's head restraint from Standard No. 202 S4.2(b)(1) and (2), which set the minimum requirements for the height and width of a head restraint, as stated above. The portions of Standard No. 202a that correspond to S4.2(b)(1) and (2) of Standard No. 202 are paragraph S4.2.1(b) and S4.2.2, respectively. For reasons of clarity, in the proposed changes to part 595, we are placing the exemptions from the height requirements of FMVSS No. 202a in paragraph (c)(9)(iii), and the exemption from the width requirement in FMVSS No. 202a in paragraph (c)(9)(iv). Therefore, for the regulatory text to reflect the continuity of this exemption, we are proposing several changes. The first, reflected in § 595.7(c)(9)(iii), is to include a reference to paragraph S4.2.1(b) of Standard No. 202a in § 595.7(c)(9). Similarly, we are including a reference to S4.2.2 of Standard No. 202a in § 595.7(c)(9)(iv), to update the current exemption for the driver's head restraint to include the updated FMVSS. This will enable the current exemption to apply to Standard No. 202a in addition to Standard No. 202.

With regard to the passenger seating position, and in accordance with the petition for rulemaking, NHTSA is proposing to expand the exemption in § 595(c)(9) to include an exemption from the minimum height requirements of 49 CFR 571.202a, S4.2.1(b), for the right front passenger position. As stated above with regard to the proposed expansion of Part 595 to the right front passenger head restraint requirements of FMVSS No. 202, we believe that this will facilitate the use of motor vehicles by persons with disabilities. As this relates to the minimum height requirement, this exemption will also be included in § 595.7(c)(9)(iii). Therefore, we are proposing to add regulatory text to § 595.7(c)(9), which reads:

- For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1(b) of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver or a front outboard passenger with a disability.
- For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.2 of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver with a disability.

3. Reasons for Denying Bruno's Petition To Expand the Exemption for Vehicle Passenger Positions To Include Paragraphs S4.2.1(a) and S4.2.2 Through S4.2.7

In its petition, Bruno requested that the exemption in 59 CFR 595.7 be expanded to include an exemption for paragraphs S4.2.1 through S4.2.7 of FMVSS No. 202a for all vehicle passenger positions. NHTSA, however, is proposing to limit the scope of the exemption to paragraph S4.2.1(b) (minimum height requirement). The other requirements listed in the paragraphs referenced by Bruno include:

- A requirement that the front head restraints be able to attain a height of at least 800 mm in at least one position of adjustment (*see* paragraph S4.2.1(a)).
- Width requirements similar to those listed in the current version of FMVSS No. 202 (*see* paragraph S4.2.2).
- New requirements limiting the distance between the back of the occupant's head and the head restraint on front head restraints (*see* paragraph S4.2.3).
- Limits on the size of gaps and openings in front restraints (*see* paragraph S4.2.4).
- New energy absorption criteria (*see* paragraph S4.2.5).
- New height retention criteria (*see* paragraph S4.2.6).
- Certain height, strength, position retention, and energy absorption levels for voluntarily installed rear head restraints (*see* paragraph S4.2.7).

Bruno's petition described the potential problems if the TAS must adhere to all provisions of Standard No. 202a. Essentially, the problem was that the head restraint, attached to the TAS, would be too large, when installed in some vehicles, to clear the door frame on its path to provide an easy-to-access seat for a mobility-impaired driver or passenger.

Our reason for denying the petition for an exemption for the requirements in Standard No. 202a, other than S4.2.1(b), is that Bruno has not provided a rationale for expanding the exemption to cover those areas of Standard No. 202a. Furthermore, most of these requirements are not dimensional in nature, and should not affect the ability of systems such as the TAS to enter and exit the vehicle. While the requirement in paragraph S4.2.1(a) is dimensional, it is a requirement that the head restraint be able to reach a certain height in only one position of adjustment. Therefore, because the head restraint can be lowered from that height, it should not interfere with the ability of the TAS to enter or exit the vehicle. We also note that the requirement in S4.2.2 is dimensional, and is discussed below.

As Bruno stated in its petition:

> [S]ince the entire seat rotates and exits the vehicle while assisting the occupant's access, *clearance between the top of the head restraint and the door opening* can restrict the number of viable vehicle applications. In first row applications, the rearward-slanted A-pillar is often the controlling feature for seat head restraint clearance with a large radius joining the top of the door opening. The *increased head restraint height of FMVSS 202a will significantly reduce the number of vehicle applications* where people with disabilities will have safe vehicle access with a Bruno TAS seat. [emphasis added]

Based on this statement, NHTSA understands the need for an exemption

for the head restraint height requirement in FMVSS No. 202a, S4.2.1(b). However, Bruno did not provide reasons that the other requirements of FMVSS No. 202a (*i.e.,* those listed in paragraphs S4.2.1(a) and S4.2.2 through S4.2.7) would impede installation of the TAS. Therefore, in keeping with our desire to keep the exemptions as narrow as possible, we are not proposing to provide exemptions for these other requirements.

NHTSA notes that Bruno did not provide a rationale for why an exemption for the width requirement is needed for the passenger seat. However, because the A-pillar slopes forward as it heads toward the roof of the vehicle, it is possible that the width of the head restraint (as required by paragraph S4.2.2) may also cause the A-pillar to interfere with the TAS as it attempts to exit and enter the vehicle. Therefore, we request comment on whether an exemption from S4.2.2 of FMVSS No. 202a for the front outboard passenger seat should also be included in the final rule. Additionally, we request comments on whether any of the additional exemptions requested by Bruno may be relevant to facilitate mobility for persons with disabilities.

iii. Correcting Reference to Paragraph S4.3 of Standard No. 202

As discussed above, paragraph (c)(9) of 49 CFR part 595 contains a make inoperative exemption for FMVSS No. 202, *Head Restraints.* The current exemption was added as part of the original rulemaking creating part 595 on February 27, 2001.[4] This exemption currently reads: ''S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.''

The sections of FMVSS No. 202 (the version in place in 2001 when the make inoperative exemptions were put into place) to which the above section refers read: ''S4.3(b) It shall, when adjusted to its fully extended design position, conform to each of the following: (1) When measured parallel to torso line, the top of the head restraint shall not be less than 700 mm above the seating reference point; (2) When measured either 64 mm below the top of the head restraint or 635 mm above the seating reference point, the lateral width of the head restraint shall not be less than i. 254 mm for use with bench-type seats; and ii. 171 mm for use with individual seats;''

Since the make inoperative exemption for FMVSS No. 202 was first put in place, NHTSA has changed and upgraded FMVSS No. 202. There are two parts to this change. First, on December 14, 2004, NHTSA published FMVSS No. 202a (69 FR 74883), which is an updated version of FMVSS No. 202 and subject to a phase-in, becomes mandatory beginning on September 1, 2009. Manufacturers also have the option to comply with FMVSS No. 202 or FMVSS No. 202a during an interim period. Second, the current version of FMVSS No. 202 (which, at the manufacturer's option, is applicable to vehicles manufactured during this interim period) has been updated to allow manufacturers to comply with either the existing version of FMVSS No. 202, ECE 17, or FMVSS No. 202a. The December 14, 2004 final rule also changed the paragraph numbering of FMVSS No. 202. The requirements that were formerly given in S4.3 are now located in S4.2. Because of these changes, it is necessary to update the make inoperative exemption to be consistent with the numbering in the current FMVSS No. 202. Therefore, NHTSA is proposing to correct § 595.7(c)(9) to account for this change.

As § 595 may be applied to vehicles certified under different versions of Standard No. 202 (depending on the vehicle's date of manufacture), NHTSA is proposing an amendment to split this part of the exemption into two parts. The proposed regulatory text for the portion of 49 CFR 595.7(c)(9) at issue is:

- For vehicles manufactured before March 14, 2005, S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.
- For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2(b)(1) and (2) of 49 CFR 571.202, in any case in which the head restraint must be modified to accommodate a driver with a disability.

This text will have the same effect as the text in 595.7(c)(9) does currently. However, it will help to alleviate the confusion currently caused by the fact that the text references only paragraph S4.3, which now lists items incorporated by reference in the current version of the CFR. For vehicles manufactured before March 14, 2005, the reference will continue to point to S4.3, the proper paragraph of the CFR as it existed at the time the vehicle was certified. For vehicles manufactured after that date, the reference will point to paragraph S4.2, which is the correct citation of the CFR as it existed when those vehicles were certified.

III. Proposed Effective Date

Because this proposal would remove a restriction on the modification of vehicles for persons with disabilities, NHTSA anticipates making this amendment effective 30 days after the publication of a final rule under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Rulemaking Analysis

Executive Order 12866 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 rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has analyzed this proposal and determined that it is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has also determined that the effects are so minor that a separate regulatory evaluation is not needed to support the subject rulemaking. For this particular proposal, no costs will be imposed by the agency's actions. The cost of doing business for the vehicle modification industry will not be changed by the subject proposal, and if anything, there could be a cost savings due to the proposed exemptions.

Modifying a vehicle in a way that degrades the performance of head restraints could produce some negative safety effects for the occupants of the vehicle. However, the number of vehicles potentially modified would be very few in number, and the agency believes any disbenefits would be minimal. This is essentially the trade-off that NHTSA is faced with when increasing mobility for persons with disabilities—when necessary vehicle modifications are made, some safety may unavoidably be lost to gain personal mobility.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small

[4] It should be noted that in the original rulemaking establishing Part 595, the exemption erroneously referred to paragraphs S3(b)(1) and S3(b)(2) of FMVSS No. 202, which do not exist. This was changed to S4.3(b)(1) and S4.3(b)(2) in a correction notice issued April 20, 2004 (69 FR 21069).

entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. While most dealers and repair businesses would be considered small entities, the proposed exemption would not impose any new requirements, but would instead provide additional flexibility. Therefore, a Preliminary Regulatory Flexibility Analysis is not required.

Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not 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.''

As this proposal is only to provide an exemption from a Federal requirement, we do not foresee that it will have any preemptive effect on State laws. We are unaware of any State law that would prohibit the actions permitted by this rule under Federal law.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, *Executive Order 12988* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language 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) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. 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.

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.'' 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. No voluntary standards exist regarding this proposed exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 exemption 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.

National Environmental Policy Act

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain any new reporting requirements or requests for information.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

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.

V. Proposed Regulatory Text

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we propose to amend 49 CFR part 595 as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

1. The authority citation for part 595 continues to read as follows:

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

2. Amend § 595.7 by revising paragraphs (c)(8) and (c)(9) to read as follows:

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

* * * * *

(c) * * *

(8) 49 CFR 571.202 and 571.202a, in any case in which:

(i) A motor vehicle is modified to be operated by a driver seated in a wheelchair and no other seat is supplied with the vehicle for the driver;

(ii) A motor vehicle is modified to transport a right front passenger seated in a wheelchair and no other right front passenger seat is supplied with the vehicle; or (9) (i) For vehicles manufactured before March 14, 2005, S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.

(ii) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2(b)(1) and (2) of 49 CFR 571.202, in any case in which the head restraint must be modified to accommodate a driver with a disability.

(iii) For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1(b) of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver or a front outboard passenger with a disability.

(iv) For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.2 of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver with a disability.

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Issued: December 10, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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