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## **Part III**

# **Department of Transportation**

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**National Highway Traffic Safety  
Administration**

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**49 CFR Part 595**

**Exemption From the Make Inoperative  
Prohibition; Final Rule**

## DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety  
Administration

## 49 CFR Part 595

[Docket No. NHTSA-01-8667]

RIN 2127-AG40

Exemption From the Make Inoperative  
ProhibitionAGENCY: National Highway Traffic  
Safety Administration (NHTSA), DOT.

ACTION: Final rule.

**SUMMARY:** NHTSA is taking action to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The agency is accomplishing this by issuing a limited 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. The exemption is limited in that it allows repair businesses to modify only certain types of Federally-required safety equipment and features, under specified circumstances.

**DATES:** *Effective Date:* This rule is effective April 30, 2001.

*Petitions:* Petitions for reconsideration must be received by April 13, 2001.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Gayle Dalrymple, Office of Crash Avoidance Standards, NPS-20. Telephone: (202) 366-5559. Fax: (202) 366-4329.

For legal issues, you may contact Rebecca MacPherson, Office of Chief Counsel, NCC-20. Telephone: (202) 366-2992. Fax: (202) 366-3820.

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

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**I. Background and Overview***A. Reasons for This Rulemaking*

We initiated this rulemaking because although the intended effect of the Federal motor vehicle safety standards is to protect the safety of all Americans, the standards can inadvertently limit the mobility of those Americans with disabilities. The vast majority of Americans can drive and/or ride in motor vehicles as they are produced by the motor vehicle manufacturers in full compliance with the Federal motor vehicle safety standards. When they use these vehicles, they benefit from the safety features required by those standards.

However, individuals with disabilities are often unable to drive or ride in a passenger vehicle, such as a passenger car or van, unless it has been specially modified to accommodate their particular conditions. Some modifications, such as the installation of mechanical hand controls or a left foot accelerator, are relatively simple and inexpensive. Others, such as the installation of a joystick that controls steering, acceleration and braking or a lowering of the vehicle floor, can be complex and expensive. In some cases, it is necessary to alter or even remove federally-required safety equipment to make those special modifications. In those cases, it may not be possible to enable individuals with disabilities both to enjoy the opportunity to drive or ride in a motor vehicle as well as to receive the benefits from the full array of federally-required safety features.

The need to alter or remove federally-required safety equipment poses a problem because there is a statutory provision prohibiting making such features inoperative (49 U.S.C. section 30122).<sup>1</sup> While that prohibition does not

<sup>1</sup> Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSS or standard) (49 U.S.C. section 30112). They must continue to comply until the time of their first retail sale. As noted above, when installing adaptive equipment in a motor vehicle, a modifier may need to remove items of equipment or features that were installed in compliance with the standards issued by NHTSA pursuant to our statutory authority (49 U.S.C. section 30111). At other times, the installer may need to modify or bypass the safety equipment or features so that the adaptive equipment can be used. In either instance, the vehicle modification renders the affected equipment or features, as originally certified, inoperative. As noted above, such removal or alteration violates a statutory provision that prohibits certain entities from making such equipment and features inoperative. Specifically, manufacturers, distributors, dealers, and repair businesses may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard (49 U.S.C. section 30122). We have interpreted the term "make inoperative"

apply to vehicle owners, it does apply to modifications made by the types of commercial entities that modify vehicles for persons with disabilities.

However, the National Highway Traffic Safety Administration (NHTSA) may issue regulations that exempt persons from the "make inoperative" prohibition.<sup>2</sup> Such regulations may specify which equipment and features may be made inoperative, as well as the circumstances under which they may be made so. To date, the agency has only issued one such regulation. That regulation permits the installation of retrofit air bag on-off switches under certain circumstances. In all other instances, we have addressed the need to remove, disconnect, or otherwise alter mandatory safety equipment by issuing a separate letter assuring the individual requestor that we will not seek enforcement action against the business modifying the vehicle. The vast majority of these instances involve persons seeking modifications to accommodate persons with disabilities.

Our policy of handling requests for permission to make modifications on an individual, case-by-case basis does not serve the best interest of the driving public, the vehicle modifiers, or this agency. The case-by-case approach is ill-suited to dealing effectively with the volume of motor vehicles needing modification. We estimate that, as of 1997, approximately 383,000 vehicles had some type of adaptive equipment installed in them to accommodate a driver or passenger with a disability.<sup>3</sup> We estimate that approximately 2,295 vehicles are modified for persons with disabilities per year. We do not know how many of these modifications involved making a federally-required safety feature inoperative. We do know that the modification of motor vehicles for the benefit of persons with disabilities is a growing phenomenon. The number of vehicles modified annually will increase as the population ages and as greater numbers of individuals with physical disabilities pursue employment, travel, and recreational opportunities presented by the passage of the Americans With Disabilities Act (ADA).<sup>4</sup>

to mean 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. Violations of this provision are punishable by civil penalties of up to \$5,000 per violation.

<sup>2</sup> 49 U.S.C. section 30122(c)(1).

<sup>3</sup> Estimating the Number of Vehicles Adapted for Use by Persons with Disabilities, NHTSA Research Note, December, 1997, Docket No. NHTSA-01-8667-2.

<sup>4</sup> 42 U.S.C. section 12101, *et seq.*

Further, the unwieldiness of the case-by-case approach causes many vehicle modifiers to bypass it. The permission granted in the agency letters is directed to specific owners of specific vehicles and cannot be transferred to other owners or other vehicles. Thus, a business performing modifications must obtain written permission for each customer who needs a vehicle modified in a way that adversely affects compliance with the standards. Because agency resources for evaluating individual modification requests are limited, an individual with a disability may wait a significant period of time before the agency can issue a letter stating its intent to not enforce the statute for the vehicle modifications affected. During that time period, the individual may be without any means of independent transportation. Partially as a result of the unwieldiness of this process, only a handful of the vehicles modified annually are covered by a letter from NHTSA granting permission to make a piece of federally-required safety equipment inoperative.<sup>5</sup> Most are made without permission and without the benefit of any guidance about the opportunities for making modifications without sacrificing safety.

We believe that it is appropriate, therefore, to replace the case-by-case approach with an exemption that accommodates the needs of persons with disabilities and promotes a constructive dialogue between the modifiers and the agency. Congress anticipated the need for such an exemption. The legislative history of the make inoperative provision includes the statement that "exemptions may be warranted for owners with special medical problems, who require special controls \* \* \*."<sup>6</sup> In addition to eliminating the need for case-by-case approvals, the exemption will facilitate making needed vehicle modifications by providing guidance to modifiers on the types of modifications we believe can be made without unduly decreasing the level of safety provided to the vehicle occupants and to others.

#### B. Notice of Proposed Rulemaking

In developing the proposed exemption, we sought to balance mobility and safety. To that end, we conducted a comprehensive analysis of both our standards and the types of adaptive equipment currently available.

<sup>5</sup> A discussion of the basis for the agency's belief that many modifiers make mandatory safety equipment inoperative without first seeking authorization from NHTSA can be found in the preamble to the NPRM. 63 FR 51547 (September 28, 1998), Docket No. NHTSA 98-4332-1.

<sup>6</sup> H. Rep. 93-1191, pp 34-5 (1974).

We sought to distinguish between those instances in which there are methods of modification that make it possible, at reasonable cost, to accommodate persons with disabilities while avoiding making the original safety equipment or features inoperative from those instances in which it is not possible to do so. We determined that vehicle modifications fell into the following categories:

1. Modifications that did not affect the original federally-required safety equipment or feature.

2. Modifications that involved the installation of adaptive equipment capable of being operated in lieu of the original equipment, which remained in place and fully operable separately, or in conjunction with the original equipment.

3. Modifications that resulted in making safety equipment inoperative even though other methods of making the modification were readily available that could have accommodated the needs of the disabled occupant at reasonable cost without making the original equipment inoperative.

4. Modifications that made the original equipment inoperative, but either did not appear to lead to a degradation of safety or all methods available to accommodate the needs of the disabled occupant rendered the original equipment or feature inoperative.

5. Modifications that made the original equipment inoperative and resulted in possible degradation of safety so severe that we did not believe an exemption was warranted, and other methods of modification that did not make the original equipment inoperative were either available or a compliant system is easily produced.

In proposing to waive the make inoperative provision for some portions of some safety standards, we determined that modifications in the first two categories listed above did not make the required safety features or equipment inoperative, while modifications in the third category did make the equipment inoperative but could be performed in a way that is consistent with modification performed under the first two categories. Modifications within the fourth and fifth categories could not reasonably be performed in a manner that would not render the original equipment inoperative.

Based on our assessment, we issued a notice of proposed rulemaking (NPRM) on September 28, 1998 (63 FR 51547; Docket No. NHTSA-98-4332-1). We proposed to exempt only those modifications in the fourth category. Modifications within this category did

not degrade safety sufficiently to prohibit the modification and were, in some cases, the only means of accommodating a particular disability. We did not consider exempting modifications within category five because we believed that the needed modification should not degrade the level of safety to such an extent as to place vehicle occupants in an inherently unsafe environment.

*C. Summary of Public Comments on the NPRM*

Thirty-nine comments were submitted addressing details of the NPRM. Only one organization representing persons with disabilities, Access to Independence and Mobility (AIM), commented on the proposed rule. One consumer safety group also commented, as did two vehicle manufacturers, and several modifiers, alterers, and driver rehabilitation specialists.<sup>7</sup> Two individuals representing state interests also commented.

In general, the comments to the notice were very supportive of our efforts. However, some commenters, primarily Advocates for Highway and Auto Safety (Advocates), vehicle alterers and AIM, raised concerns that the rule, as proposed, would unduly decrease the level of safety provided to persons with disabilities. The primary concern voiced by these entities was that the agency was not proposing to implement a rule that ensured significant, on-going monitoring of vehicle modifications. Other commenters, including modifiers and driver rehabilitation specialists,

urged that exemptions be provided for some standards which we had not included in the proposed list of exemptions.

Expressing concerns regarding the safety of vehicle modifications, the University of Virginia Automobile Safety Laboratory urged that on-going studies be performed to identify vehicle modifications that constitute an unreasonable risk to safety. However, the commenter went on to say that it recognized that real world injury data would likely never be available to accurately determine the level of risk involved in vehicle modifications and to fully support NHTSA's proposal to issue limited exemptions.

While the majority of modifiers saw no need to impose any paperwork or labeling requirements on modifiers, Advocates, some alterers, and the State of Connecticut argued that paperwork and/or labels were needed to assure that only necessary modifications were performed or that vehicle owners or subsequent purchasers were aware of the modifications that were performed and that there could be some degradation of overall safety. A lively debate arose among commenters concerning the need for persons with disabilities to have a written prescription detailing the types of modifications needed. These comments were submitted primarily by members of the Association for Driver Rehabilitation Specialists (ADED) on one side of the issue and occupational therapists who are not members of ADED, some modifiers and the State of

Connecticut on the other side of the issue.

**II. Final Rule**

Based on our review of the comments, we are today issuing a final rule that exempts certain vehicle modifications from the make inoperative provisions. The exemptions are listed in the regulatory text and will become Subpart C of Part 595 of Title 49 of the Code of Federal Regulations (CFR). This preamble explains our response to the comments and our decision to issue the final rule. While it provides important explanations of the agency's rationale in making its decision, the preamble is not part of the regulation. It should, however, be read carefully since it provides important information on why we decided to grant exemptions for some, but not all, standards; what types of modifications require an exemption; who may rely on the exemptions; and what standards may be affected by vehicle modifications, regardless of whether there is an exemption for that modification.

The exemptions adopted in this final rule generally only apply to a portion of each included standard and may have other conditions, such as the installation of wheelchair tie-down devices, placed upon it. The following chart details the standards with respect to which modifications are exempted, as well as those standards for which modifiers need to be aware that certain modifications may expose them to civil penalties.

TABLE 1

FMVSS covered by the make inoperative exemption	FMVSS not covered by the make inoperative exemption	
	Modification could affect vehicle compliance	Modification would not affect compliance
101, Controls and displays, <i>except</i> for S5.2(a), S5.3.1, S5.3.2 and S5.3.5.	102, Transmission lever sequence, starter interlock, and transmission braking effect.	106, Brake hoses.
108, Lamps, reflective devices, and associated equipment, S5.1.1.5 only, when the modified motor vehicle does not have a steering wheel and it is not feasible to retain the turn signal self-canceling device installed by the vehicle manufacturer.	103, Windshield defrosting and defogging systems.	109, New pneumatic tires.
114, Theft protection, S4.4 and S4.5 only, when the original key-locking system must be modified.	104, Windshield wiping and washing system.	110, Tire selection and rims.
118, Power-operated window, partition, and roof panel systems, S4(a) only, when the medical condition of the person for whom the vehicle is modified requires a remote ignition to start the vehicle.	105, Hydraulic brake systems .....	116, Motor vehicle brake fluids.
123, Motorcycle controls and displays, S5.1 and S5.2.1 .....	111, Rearview mirrors .....	117, Retreaded pneumatic tires.
135, Passenger car brake systems, S5.3.1 only, when the vehicle modification requires removal of the vehicle manufacturer installed foot pedal.	113, Hood latch systems .....	119, New pneumatic tires for vehicles other than passenger cars.

<sup>7</sup> Four trade associations, the Association for Driver Rehabilitation Specialists (ADED), the American Occupational Therapy Association (AOTA), the National Automobile Dealers

Association (NADA), and the National Mobility Equipment Dealers Association (NMEDA), filed comments on behalf of their members who are occupational therapists and driver rehabilitation

specialists in the first two instances, and alterers and modifiers in the second two instances.

TABLE 1—Continued

FMVSS covered by the make inoperative exemption	FMVSS not covered by the make inoption exemption	
	Modification could affect vehicle compliance	Modification would not affect compliance
201, Occupant protection in interior impact, only with respect to targets on the side rail, B-pillar and first "other" pillar adjacent to the stowed platform of a lift or ramp, or the rear header and rearmost pillars adjacent to the stowed platform of a lift or ramp.	121, Air brake systems .....	120, Tire selection and rims for vehicles other than passenger cars.
202, Head restraints, when the motor vehicle is modified to be driven by an individual in a wheelchair and no other seat is provided for the driver or the front passenger sits in a wheelchair and no other front passenger seat is provided, and S4.3(b)(1) and S4.3(b)(2) only, when the driver's head restraint must be modified to accommodate a driver with a disability.	124, Accelerator control systems ..	122, Motorcycle brake systems.
203, Impact protection for the driver from the steering control system, S5.1 only, when the modification requires a structural change to or removal of the original steering shaft, and S5.2 only, when an item of adaptive equipment must be mounted on the steering wheel.	206, Door locks and door retention components.	125, Warning devices.
204, Steering control rearward displacement only, when the modification requires a structural change to or removal of the original steering shaft.	209, Seat belt assemblies .....	129, Non-pneumatic tires for passenger cars.
207, Seating systems, S4.1 only, when the motor vehicle is modified to be driven by an individual in a wheelchair and no other seat is provided for the driver and a wheelchair securement device is installed in the driver position.	210, Seat belt assembly anchorages.	131, School bus pedestrian safety devices.
208, Occupant crash protection, S4.1.5.1(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, and S7.4 only, when Type 2 or type 2A seat belts meeting the requirements of FMVSS Nos. 209 and 210 are installed in the affected seating position.	216, Roof crush resistance .....	205, Glazing materials.
214, Side impact protection, S5 only, when the affected seating and/or restraint system must be modified to accommodate a person with a disability.	301, fuel system integrity .....	212, Windshield mounting
	302, Flammability of interior materials.	213, Child restraint systems.
	303, Fuel system integrity of compressed natural gas vehicles.	217, emergency exits and window retention and release. 218, Motorcycle helmets. 219, Windshield zone intrusion. 220, School bus rollover protection. 221, School bus body joint strength. 222, School bus passenger seating and crash protection. 223, Rear impact guards. 224, Rear impact protection. 225, Child restraint anchorage systems*. 304, Compressed natural gas fuel container integrity.

\*FMVSS No. 225, Child restraint anchorage systems, was issued after the publication of the NPRM proposing exemptions to the make inoperative provisions for vehicles modified to accommodate persons with disabilities. Accordingly, NHTSA has not determined whether such systems may need to be removed or modified in order to accommodate an individual with a disability. Should such a need arise, it can be addressed in a future rulemaking.

*A. Summary of Key Differences Between Proposal and Final Rule*

The final rule largely adopts the proposed rule except for four changes. We will require a permanently affixed label that states the vehicle may no longer comply with all Federal Motor Vehicle Safety Standards. Also, we are allowing limited exemptions for modifications affecting FMVSS Nos. 123, 201 and 114.

*B. Limitations on Exemptions*

In the NPRM, we proposed to issue exemptions for modifications affecting some, but not all, Federal motor vehicle safety standards. The number of exemptions was restricted for several reasons. First, the needed vehicle modifications have no impact on the safety features installed in compliance with many standards; thus, there is no need in those cases for an exemption from the make inoperative provision. Second, we decided that if, after modifications are made, the original

equipment remains fully functional and readily usable by drivers or passengers other than the individual with a disability, we would not consider the modifications as making the safety equipment inoperative even though the adaptive equipment itself may not be able to meet the requirements of the affected safety standard.<sup>8</sup> We also

<sup>8</sup> When the modified system completely by-passes or alters the original equipment such that it cannot be used in conformance with the applicable standard, the modification will be considered a violation of the make inoperative provision even

determined that we would not consider a modification to violate the make inoperative provision when the original safety equipment is removed or modified so that it could not be used as designed, but the new system retains the original equipment's performance and function relative to the affected standard. Finally, we looked at all other types of modifications that could potentially void a vehicle certification and assessed the likely loss in safety that could result from a modification that fell outside of the categories described above. In most instances, we determined that the modifications would not result in a significant loss of safety. However, in some instances, we determined that the possible degradation of safety was too great to make it appropriate to grant an exemption.

Advocates was particularly vocal in expressing the belief that the NPRM did not do enough to promote the safety of persons with disabilities. As an initial matter, it challenged whether there was a need for an exemption and whether issuing an exemption would serve the interests of motor vehicle safety, stating

NHTSA has no reliable information on the nature and extent to which vehicle modifications falling within the ambit of the FMVSS have adhered to or significantly departed from the level of safety that should be ensured for disabled vehicle occupants. Despite agency assertions that equivalent levels of safety should be provided when possible, it has no information in the record verifying that vehicle modifications to date have provided that equivalent safety.

Advocates maintained that granting a blanket exemption from a number of the safety standards to all persons engaged in the business of altering or modifying vehicles for use by the disabled drivers does nothing to assure disabled occupants that their vehicles will be altered properly and safely, that modifiers will make only those changes permitted by the exemption and will certify their work, or that future purchasers will be informed that the safety equipment has been rendered inoperable. That organization noted that the agency acknowledged in the NPRM that a substantial number of vehicle modifiers "do not possess sufficient knowledge of the standards to judge whether a particular modification may

affect a vehicle's compliance with the standards. Advocates stated that it could not understand how the proposed exemption would resolve problems posed by this lack of knowledge, stop modifiers' from performing modifications that negatively impact safety and provide adequate safety for the disabled. While acknowledging that a listing of the standards or the portions of the standard that are subject to exemption provide some clarity, it argued that

\* \* \* nothing in the proposed rule provides any assurance that the list will be read, understood, and correctly applied by modifiers, that modifications will be limited to only those portions of the standard that are exempt, that the modifications will be properly performed, or that the disabled driver will know what specific items of equipment were modified, in what way, and the extent to which these modifications may affect operating safety and vehicle crashworthiness.

While Advocates expressed support for vehicle modifications, including safety equipment, that are necessary to meet the mobility needs of disabled persons, it also said that the agency should adopt a stronger regulatory presence in this burgeoning area of motor vehicle safety. That organization maintained that providing a blanket exemption with no oversight fails to ensure an appropriate balance between mobility and safety, and invites abusive practices and inadequate and unsafe modifications.

Finally, Advocates claimed that the agency is proposing a broad exemption, with corollary proposals to eliminate any form of reporting or even of vehicle labeling advising of modifications, and that the proposed change in basic agency policy relinquishes fundamental oversight responsibilities at a time when effective oversight of vehicle modifications is becoming more pervasive and more important. Advocates then averred that NHTSA must maintain agency supervision and oversight of the issue, collect essential data on vehicle modifications for the disabled, and provide consumer safety information for the disabled and future purchasers of vehicles altered to accommodate the disabled.

Vantage Mini-vans, a manufacturer of minivans designed for persons with disabilities, stated that consumers deserve to drive a vehicle that meets certain safety standards. It argued that if modifications are required to make a vehicle wheelchair accessible, the consumer should know that there are no other options available other than those necessary to take the vehicle out of compliance. It said also that if there

were a viable option available that would enable to modifier to leave the original safety features intact, that option should be preferred or required. After acknowledging that the companies that modify vehicles for the disabled are often very small and do not have the financial resources to crash test for every conceivable configuration of adaptive equipment, Vantage went on to state that, for modifications involving hand controls, steering modifications and seat belt modifications, an exemption for modifications affecting compliance with the relevant FMVSSs may be in order, provided another viable alternative is not available that would not take the vehicle out of compliance.

We agree that these commenters have expressed legitimate concerns. We have decided to issue a final rule establishing limited exemptions because we believe this is the best way at this time to promote the mobility of persons with disabilities while ensuring some level of safety for those persons. We also strongly recommend that equipment manufacturers, vehicle modifiers, and driver evaluators work together to ensure that the installed equipment is appropriate for both the particular vehicle and the driver, considering factors such as vehicle geometry and driver size before selecting the equipment to be installed.

We disagree with Advocates' characterization of the exemptions as broad-based. The exemptions should be viewed in the context of all standards issued by NHTSA. The exemptions have been tailored to allow for the least amount of degradation possible. The majority of modifications subject to an exemption will not result in any degradation of safety. This is because many of the exemptions are designed to address design criteria within the applicable standards that have no impact on vehicle performance. For example, FMVSS No. 135 requires the brake be operated by a foot control, even though this requirement was included in the standard to achieve harmonization rather than because of a need based on engineering principles. Modifications affecting some standards, like FMVSS No. 201, could result in a degradation of safety, but cannot be accommodated any other way. FMVSS 201 requires that test results of impacts with certain targets on specific areas of the vehicle fall below a certain level. When a lift is installed in a vehicle, the stowed platform blocks some target points. Requiring compliance with FMVSS 201 would prevent an individual who must use a wheelchair from driving or riding in a vehicle,

though the original equipment remains in the vehicle. (See NHTSA letter of interpretation to Senne, Kelsey & Associates, Inc., dated March 26, 1999. The agency determined that the installation of an electronic gas and brake control constituted a violation of the make inoperative provision because it did not allow for the return of the throttle to an idle position in the event of a severance or disconnection in the accelerator control system in contravention of FMVSS No. 124.)

because he or she would not be able to enter. In order to diminish any degradation in safety, we have limited the exemptions to those portions of the standard that are directly affected by the vehicle modification and have, in most instances, placed other requirements on the modifier to address legitimate safety concerns.

As pointed out by the University of Virginia, we do not have firm statistics on the effect of current vehicle modifications on vehicle safety. Current methods of obtaining motor vehicle safety statistics are based on total vehicle populations within classes of vehicles (e.g., passenger cars, light trucks). We will likely never have sufficient data to verify that modified vehicles are providing a level of safety comparable to that of non-modified vehicles. Merely identifying dangerously modified vehicles is like finding the proverbial needle in a haystack. Drawing a statistically significant correlation between such vehicles and the overall fleet that comprises our databases would be even more difficult. However, we do not believe the lack of data justifies inaction on our part.

If we do not issue a regulation providing some measure of relief to persons with disabilities, there are two likely outcomes: modifications will continue to be performed with no agency oversight, and a significant number of persons with disabilities will be unable to drive or ride in personal vehicles.

We have analyzed both available methods of making necessary modifications and our standards to determine where exemptions may be needed in order to provide reasonable accommodation of the needs of persons with disabilities. In instances in which we believe the cost of a modification that does not affect compliance with the FVMSSs is reasonable enough to be viable, we have decided against issuing an exemption. Likewise, we are not issuing exemptions for standards that address a severe risk of injury or death when alternative modification methods are available or should be easily developed. This may mean that the manufacturers of some adaptive equipment will need to either retool their products or stop selling them. Thus, far from being a "blanket exemption," today's rule affects only those areas where we believe there is a minimal reduction in safety, if any.

We have decided against requiring the type of agency oversight that Advocates appears to support; i.e., approval of each modification, because such oversight has proved unworkable in the past. We

receive relatively few requests to grant an exemption for the modification of specific vehicles. As discussed in the NPRM, the number of vehicles modified significantly exceeds the number of exemption requests received by this agency. Additionally, NHTSA simply does not have the staff available to review every vehicle modification request for persons with disabilities in a reasonable amount of time. Thus, today's rule more effectively analyzes the level of risk involved than the case-by-case determinations that are currently provided. Likewise, we have decided against requiring modifiers to submit detailed records of all modifications to NHTSA. Such submissions would serve no value unless they were scrutinized by agency staff who would make independent determinations as to the appropriateness of the modifications. As is the case with pre-modification submissions, we simply do not have the staff to conduct such a review. We do note that nothing in today's rule restricts our ability to bring enforcement actions against entities that make modifications that go beyond or are inconsistent with these exemptions pursuant to our statutory authority under 49 U.S.C. 30122.

We also acknowledge that today's rule does not, in and of itself, guarantee that vehicle modifications will only be performed subject to the exemptions. Today's rule will provide responsible modifiers the ability to make needed modifications without fear of running afoul of the law. It also alerts these modifiers that they need to exercise special care in performing certain modifications. In some instances, these modifiers will be required to stop performing certain modifications that they may have believed were safe. We believe this rule, in conjunction with the existing industry standards and our consumer information brochure, will significantly reduce the likelihood that vehicle modifications will be made in a manner that places the vehicle occupants at undue risk.

We have decided against adopting the position advocated by Vantage that would require all modifications be performed in conformance with all applicable safety standards unless no other method exists for performing the modification. Certainly we agree that all modifications should be performed in a manner that minimizes the impact on vehicle conformance with all safety standards. However, such a requirement would be unenforceable, since it is inherently unobjective. Instead, we believe that the criteria we have employed in determining whether an exemption is appropriate adequately

ensures that modifications that are likely to have an impact on motor vehicle safety are only exempted when they cannot be done in a manner that does not void the vehicle's compliance with the standards.

### *C. Applicability of Exemption to Modifications Performed by Repair Businesses*

In the NPRM, we proposed that the exemptions to the make inoperative provision would be available to dealers and repair businesses. Under our statutory authority, we can also issue exemptions to manufacturers and distributors.

Volvo commented that the exemptions should also apply to vehicle manufacturers since the logic presented in the NPRM appears to apply to manufacturers as well as modifiers. Independent Mobility Systems voiced a concern that vehicle alterers, who have the duty to certify, may believe the exemptions apply to them. The National Automobile Dealers Association (NADA) urged NHTSA to clarify that a "first purchase of a vehicle in good faith for purposes other than retail" occurs when a contract for sale is entered into between a new vehicle dealer and a purchaser. NADA argued that such a definition would ensure that only a small percentage of disability-related modifications will constitute "alterations" under NHTSA's regulations, thereby minimizing the number of modifications that will be eligible for the "make inoperative" exemption.

We do not believe that vehicle manufacturers, including alterers, should be allowed to take advantage of the exemptions in today's rule. The need for an exemption arises from two sources:

- The need to custom fit the vehicle to the disabled individual's needs and/or
- Compliance with the applicable standards could only be demonstrated by testing the vehicle after all pertinent modifications have been made, potentially destroying a unique vehicle.

We do not believe manufacturers need an exemption for either reason because they do not custom fit their vehicles. Instead, they produce a vehicle that possesses many, but not all, of the attributes needed by the end user of the vehicle.<sup>9</sup> All final fitting for a driver

<sup>9</sup> We note that this is the practice in the disability community. We are aware of other types of specialized manufacturing where the end user may order a specific vehicle that is then built by a final-stage manufacturer. In these instances, there may be cases where the final stage manufacturer is only

with a disability is done by a modifier. Thus, the manufacturer produces several vehicles of the same configuration and has the ability to test that configuration in order to certify compliance. However, we recognize NADA's concern that there are instances in which the final fitting is arguably performed prior to the vehicle's first retail sale. This would have the effect of making the business performing the work an alterer rather than a modifier. Unlike modifiers, who cannot make mandatory safety equipment inoperative without a waiver or exemption, an alterer cannot make any changes to a vehicle other than the addition of readily attachable components without certifying that vehicle, as altered complies with all safety standards that are potentially affected by the alteration. As an alterer, the business would be unable to use the exemptions provided today. The precipitating event that determines whether the work performed is an alteration or a modification is the "first purchase of a vehicle in good faith for purposes other than retail."

Individuals purchasing vehicles that need to be modified to accommodate a disability may enter into extensive negotiations with a dealership whereby the dealership procures the vehicle and arranges to have a business that specializes in such modifications perform the actual work. Vehicle title may or may not be passed to the end user before the modifications are made, depending on who is paying for the modifications. Often a state or the Federal government picks up the cost of some or all of the modified vehicle. They may wish to be assured that the required modifications are completed in a satisfactory manner before they submit payment for the vehicle. In such an instance, the business performing the modifications could be placed in the position of an alterer for reasons beyond its control. Thus, we believe that it is appropriate to define a "first purchase of a vehicle in good faith for purposes other than retail" as something other than the transfer of title. On the other hand, we believe that more is required than general inquiries about the availability of a suitable vehicle, since there is no firm commitment to purchase a vehicle at that time.

We have decided to define "first purchase of a vehicle in good faith for purposes other than retail" for purposes of this rule as the point at which the seller and the end user enter into a sales

manufacturing one or two vehicles of a specific configuration. Issues related to those manufacturers are being addressed in a rulemaking on the certification responsibilities of vehicles built in two or more stages.

contract that identifies a specific vehicle to be delivered. This definition will reduce the risk of a business being deemed an alterer because it is unable to transfer title at the time the modifications are made, while ensuring that businesses do not use the exemptions to produce "showroom" vehicles that have been significantly altered but have not been fitted for a particular customer.<sup>10</sup>

We are also aware of instances in which vehicle manufacturers modify vehicles for a specific customer after the vehicle has been certified as a compliant vehicle. Several vehicle manufacturers have expressed concern in the context of the exemptions for retrofit air bag on-off switches that they cannot install a retrofit on-off switch because they are not a dealer or repair business. Similar concerns exist in this rulemaking as well. 49 CFR part 595 controls both retrofit switches and modifications to vehicles for persons with disabilities. "Motor vehicle repair business" is defined in 49 U.S.C. section 30122(a) as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." Part 595 clarifies that this term includes businesses that receive compensation for servicing vehicles without malfunctioning or broken parts or systems by adding or removing features or components to or from those vehicles or otherwise customizing those vehicles. 49 CFR 595.4. Thus, a modifier would be a motor vehicle repair business within the context of Part 595.

However, a manufacturer or dealer could also be a motor vehicle repair business depending on the type of service provided in a particular circumstance. For instance, if an individual takes his or her vehicle into the dealership for repairs, the dealership is acting as a motor vehicle repair business, rather than as a "dealer." In some instances, vehicle manufacturers will send technicians to work on a problem that is particularly difficult to resolve. A manufacturer could also have a vehicle transported to a centralized facility to perform a particularly difficult repair. In both instances, the vehicle manufacturer is operating as a motor vehicle repair business rather than as a manufacturer of the vehicle. We believe that the same situation

<sup>10</sup> We are limiting this definition to this rule because of the unique payment arrangements that are common for vehicles modified for persons with disabilities. We have maintained in other contexts (e.g., the alteration of a hard-top sedan into a convertible) that if the work performed affects the vehicle's mandatory safety features, a label certifying compliance as to the affected portion of the vehicle is required.

should exist for exemptions under Part 595, if the business is not operating in its primary capacity as a dealer or manufacturer. If a dealer or manufacturer adds or removes features to or from a vehicle, or otherwise customizes a vehicle after the first purchase of a vehicle in good faith for purposes other than retail, then the dealer or manufacturer may utilize the exemptions detailed in Part 595. Because a dealer can also be a motor vehicle repair business, referencing dealers in the regulatory text is redundant. Accordingly, the term has been removed.

#### *D. Standards for Which Permission Is Granted To Make Safety Features Inoperative*

##### 1. FMVSS No. 101, Controls and Displays

The purpose of FMVSS No. 101 is to ensure the accessibility and visibility of motor vehicle controls and displays to reduce the diversion of the driver's attention from driving and mistakes in selecting controls. In the NPRM, we proposed exempting all of the standard *except* the following: S5.2(a),<sup>11</sup> which governs the symbols and abbreviations used for certain controls; S5.3.1, which requires illumination of certain controls when the headlights are on; S5.3.2, which governs the color of telltales; and S5.3.5, which requires cabin lighting forward of the driver's H point to be able to be adjustable or turned off.

Only the Texas Transportation Institute (TTI) commented on the proposed exemption. TTI argued against an exemption to S5.2(a), positing that the lack of an exemption will require modifiers to use the symbols required by FMVSS No. 101, giving uniformity to secondary control keypads, an area that currently is not uniform. We have decided against providing an exemption to S5.2(a) because we agree that uniformity is desirable and compliance with the standard is easily accomplished.

##### 2. FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

FMVSS No. 108 is designed to ensure that roadways are adequately illuminated, drivers can signal their intentions to others, and vehicles are conspicuous. We had proposed to include S5.1.1.5, which requires a turn signal be self-canceling when the steering wheel rotates within the exemption. The exemption would be

<sup>11</sup> The NPRM incorrectly stated that an exemption was contemplated for S5.1(a). There is no such paragraph in FMVSS No. 101. The correct reference is S5.2(a).



limited to vehicles where the steering wheel has been removed and the original turn lever cannot be retained. The agency also sought comment on whether there are cases in which the original turn signal actuating device and function is not retained, and if so, if they had a self-canceling feature (particularly a self-canceling feature that is not controlled by steering wheel rotation).

We received several responses to our questions. According to one commenter, some horizontal systems remove the OEM turn signal lever. TTI noted that in other instances, a user is unable to operate the OEM turn signals and a redundant circuit is used. These systems may leave the OEM equipment intact but use a timed circuit to cancel the signal. TTI went on to maintain that these provisions can and should be required for all modifications. However, MossRehab, a driving school for people with disabilities, commented that floor-mounted hand controls generally have turn signal operation incorporated into the controls unit. These signals are not self-canceling. MossRehab went on to state that it finds manual signals to be preferable to the timed self-canceling signals.

Based on the comments, we have decided to issue the exemption as proposed. If some systems work better without a self-canceling feature, we are disinclined to prohibit that technology.

### 3. FMVSS No. 114, Theft Protection

We originally did not propose to allow an exemption for FMVSS No. 114 because we did not believe that any vehicle modifications would have the effect of rendering equipment installed in compliance with this standard inoperative. The standard is intended to reduce the incidence of crashes from the unauthorized operation of a vehicle and from the rollaway of vehicles with automatic transmissions that result from children playing with the gear shifts of parked vehicles.

TTI and the California Department of Rehabilitation urged us to include this standard within the exemption. According to TTI, an exemption should be added for FMVSS No. 114 since the ignition key switch is routinely replaced by a pushbutton or keypad. Many severely disabled drivers cannot use a conventional ignition key. Additionally, the steering column housing the ignition is often removed. Theft is unlikely given the formidable appearance of adaptive equipment. The California Department of Rehabilitation expressed a different concern. It argued that FMVSS No. 114 should be included because anyone who knew how to bypass a steering wheel

lock function that was not key operable would know enough about the system to bypass it in any case.

Previous interpretations by our Office of the Chief Counsel regarding the use of a device other than a traditional key to meet the requirements of this standard have stated that a push button code can be a key.<sup>12</sup> Thus, an exemption would not be needed to address TTI's concern. However, we believe that the concern raised by the California Department of Rehabilitation is valid. Given the complexity of the modified systems, it is unlikely that someone unfamiliar with the system would know how to operate it. We are including S4.4 and S4.5 of the standard within the exemption because the requirements specifying the number of key-locking combinations is both unrealistic and unnecessary given the low number of vehicles involved.

### 4. FMVSS No. 118, Power-Operated Window, Partition, and Roof Panel Systems

Standard No. 118 specifies requirements for the operation of power-operated windows, partitions, and roof panels to help prevent injury or death from a window, partition, or panel closing on vehicle occupants, particularly children. The agency proposed to include S4(a) of the standard when a remote ignition device is necessary to accommodate an individual's disability. The exempted paragraph requires that ignition key be in the "start," "on," or "accessory" position in order to close the vehicle's power windows, partitions, or roof panels.

We received no comments on this proposal and it is being adopted in this rule as originally proposed.

### 5. FMVSS No. 123, Motorcycle Controls and Displays

FMVSS No. 123 specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, as well as requirements for motorcycle stands and footrests. Because we believed there are no common vehicle modifications that should affect this standard, it was not discussed in the NPRM. ADED commented that modifications to motorcycle controls should be addressed so that such

modifications are done in the safest manner possible.

We are now aware that some individuals with disabilities have their motorcycles modified so that they can ride on them. Such modifications could affect the placement of controls. S5.1 and S5.2.1 contain requirements that certain controls (engine stop, brake, clutch, etc) be activated by a hand or foot on a particular side of the body. The purpose of the requirements contained in these sections is to ensure safety of motorcycle operation through uniformity of controls location and operation. These requirements may be inconsistent with a particular person's disability. In those instances, the needed modification could not be performed in a manner consistent with the requirements of the standard. Uniformity of control location and operation is not a safety issue for persons with disabilities since their vehicles have been custom modified, therefore there would be no degradation of safety if controls are switched from one side to the other, or from the foot to the hand, as long as vehicle functions are not degraded. Accordingly, we have decided to allow exemption from S5.1 and S5.2.1 of FMVSS 123, when changes to motorcycle controls are necessary to allow a person with disabilities to operate his or her motorcycle.

### 6. FMVSS No. 135, Passenger Car Brake Systems

Standard No. 135 specifies requirements for the service brake and associated parking brake systems to ensure safe braking performance under normal and emergency braking conditions. S5.3.1 of the standard requires a foot control to operate the brakes. Believing that this foot control may need to be removed to accommodate some physical conditions, we proposed to provide an exemption from that paragraph. We sought comment on whether there are brake modifications that incapacitate the original brake controls and would affect the vehicle's compliance in any of the required performance tests. We were particularly interested in learning whether the use of a joy stick prevented an able-bodied driver from using the original brake pedal and whether either a joy stick or a power assist affects the vehicle's braking potential during the specified performance tests.

We received numerous comments about this proposed exemption. As an initial matter, it does not appear that either joy sticks or power assists have an effect on a vehicle's braking potential during the performance tests specified

<sup>12</sup> See letter dated May 22, 1992 to Stephen E. Selander, General Motors, and letter dated January 30, 1997 to corporation requesting confidential treatment of portions of the letter, including the name of the requestor. Confidential treatment was granted and those portions of the letter have been redacted.

in the standard or under real world driving conditions. According to the National Mobility Equipment Dealers Association (NMEDA), power-assist braking systems work in conjunction with the OEM system. TTI commented that no powered gas/brake controls (i.e., joysticks) prevent the use of OEM brake pedals or accelerators although they may introduce delays or lags. In a well-designed system, these delays are 0.1 seconds or less.

Significant disagreement arose over whether it was ever necessary to remove the brake foot pedal to accommodate a disability. Several commenters stated that they had never seen the brake pedal removed and that a removable guard be placed over or in front of the pedal if needed. The California Department of Rehabilitation argued that pedals should not be removed or blocked by adaptive equipment because non-disabled individuals need to be able to drive vehicle if necessary. TTI stated that while there may be instances in which the foot pedal needs to be removed, such an extreme modification should not be the subject of a generic exemption but should be addressed by the agency on a case-by-case basis.

Other commenters, notably NMEDA and AIM, argued that an exemption from S5.3.1 is appropriate as some conditions, such as cerebral palsy, can lead to spasms that may require the removal of the OEM foot pedals. NMEDA also stated that some technology cannot separate braking functions from steering functions, such that the OEM equipment becomes redundant. NMEDA also noted that concerns with spasms can generally be accommodated by placing a guard over the pedal.

A commenter representing the Connecticut Department of Motor Vehicles noted that any exemption to this standard should not include the requirement for an emergency braking system if a single hydraulic component fails. He noted that this function is often inadvertently eliminated in current modifications.

As proposed and adopted, the exemption to FMVSS No. 135 is limited to S5.3.1, which requires a foot control. No other portions of the standard are subject to an exemption and modifiers need to assure that all other portions of the standard, including that requiring emergency braking, are adhered to. We have decided to issue an exemption for the foot control even though the commenters stated that a pedal guard would generally resolve any potential problems. We have decided to provide an exemption for two reasons. First of all, neither FMVSS No. 105 or FMVSS

No. 121 requires braking via a foot pedal. The requirement for such a pedal in FMVSS No. 135 is overly restrictive. Second, we are aware of instances where the installation of a pedal guard will not accommodate a disability. This occurs when the individual needing the accommodation is positioned in the vehicle in such a way that there is inadequate leg room. In this instance, the pedal can interfere with the individual's ability to fit in the vehicle. Since foot pedals are only rarely removed now, we do not believe that this exemption will lead to widespread removal of pedals.

#### 7. FMVSS No. 201, Occupant Protection in Interior Impact

Standard No. 201 specifies requirements to afford protection to vehicle occupants when they strike the interior of the vehicle. While we are aware that some modifications could affect the vehicle's compliance with the standard, we did not propose extending an exemption to the standard. However, we did seek comment on whether the changes in upper interior component padding would impinge on a large, wheelchair-seated driver's line of sight.

In general, several commenters, including TTI, DaimlerChrysler, Ahnafield and Todd Vans, stated that there would be no need to provide an exemption as a result of increased padding installed by the original manufacturer because dropped floors will place the driver's line of sight at the same level as an individual seated in the original vehicle seat.<sup>13</sup>

NMEDA urged us to apply the exemption to wheelchair lifts and ramps that are stowed inside the vehicle while the vehicle is in use. According to this commenter, vehicles equipped with interior-mounted wheelchair lifts or ramps cannot reasonably comply with the standard because of the rigid surface of the lifts or ramps that are not

<sup>13</sup> Two commenters, Todd Vans and Ahnafield, objected to the practice of modifiers raising vehicles off the frame rather than lowering the floor. These concerns were not limited to FMVSS No. 201, although this was the context in which the concerns were raised. Rather, their concerns were with the change in the center of gravity and driver maneuverability. Raising vehicles off the frame does not directly implicate any safety standards. Typically vehicles are only raised off the frame a couple of inches. While this could raise the vehicle's center of gravity slightly, there is no indication that this has a negative effect on vehicle handling or that these vehicles are substantially more likely to roll over. Additionally, vehicles with dropped floors can also be more difficult to handle than the unmodified vehicle, depending on how the modification is performed. Dropping vehicle floors can also have negative consequences on the vehicle structural integrity and the fuel system. Thus, we are unable to state with any confidence that one system of modification is preferable to the other.

susceptible to padding. Placing a padded barrier between the lift or ramp and the occupant would be unwieldy and likely would not be used. While lifts or ramps that stow under the vehicle would not implicate FMVSS No. 201, they are generally three times as expensive as systems that are stowed inside the vehicle. Thus, NMEDA requested an exemption from the standard when the lift or ramp is stowed aft of the vehicle's B-pillar.

We believe NMEDA's concerns are valid and are accommodating those concerns in this rule. The exemption applies to vehicles that have lifts or ramps that stow inside the vehicle and block the test targets called for in the standard. The exemption applies to the following:

- A right- or left-side mounted lift or ramp with a platform that stows vertically and inside the vehicle for targets located on the right or left side rail, the B-pillar, and the first "other" pillar (not the A-pillar) adjacent to the stowed platform or ramp.<sup>14</sup>
- A rear-mounted lift or ramp with a platform that stows vertically and inside the vehicle for targets located on the rear header and rearmost pillars adjacent to the stowed platform or ramp.

#### 8. FMVSS No. 202, Head Restraints

To reduce the frequency and severity of neck injuries in rear-end and other collisions, Standard No. 202 requires all vehicles to be equipped with a head restraint at each front outboard seating position that meets specific size and performance requirements. In the NPRM, we proposed to include the standard in the exemption when the vehicle is modified for a wheelchair-seated driver or front seat passenger, and no other seat for the affected seating position is provided, or when the head restraint must be altered to accommodate a driver's impairment. The agency solicited comment on whether any wheelchair head rests were likely to meet the requirements of the standard.

All commenters addressing this standard agreed that neither swing away head rests or attachable head rests could meet the standard. Accordingly, we included the standard as part of the exemption as proposed in the NPRM.

#### 9. FMVSS No. 203, Impact Protection for the Driver From the Steering Control System, and FMVSS No. 204, Steering Control Rearward Displacement

FMVSS No. 203 serves to reduce the likelihood and severity of head, chest,

<sup>14</sup> These vehicle structural components are listed and defined in FMVSS No. 201.

neck, and facial injuries that result from impacts with the steering wheel. We proposed including S5.1 of the standard as part of the exemption if a modification requires a structural change to, or removal of, the vehicle steering shaft. Standard No. 204 reduces the likelihood and severity of head, chest, neck, and facial injuries that result from vehicle components forcing the steering shaft rearward toward the driver during a crash. We proposed including this standard in the exemption if the modification requires a structural change to, or removal of, the vehicle steering shaft. We asked whether the following modifications can be performed in a manner that preserves the vehicle's compliance with Standard No. 204's steering column displacement requirements: (1) the extension of the steering shaft, (2) the installation of horizontal steering, or (3) the installation of mechanical hand controls. We also sought comment on whether there are modifications which require changes to the steering column but not the steering shaft that could only be made in such a way as to affect the vehicle's compliance with either FMVSS No. 203 or FMVSS No. 204.

The Connecticut Department of Motor Vehicles stated that FMVSS No. 204 should not be exempted since there is no need to remove the lower steering shaft in newer systems and when the entire steering column is removed, the method of attachment is not robust enough to allow the column to transmit sufficient forces to fail FMVSS No. 204. However, both TTI and Ahnafield supported including the standard as part of the proposed exemption. According to TTI, servo steering adaptations may require the removal of the OEM steering column and associated equipment. Servo steering units are replacing horizontal steering columns in some areas of the country. Ahnafield remarked that horizontal steering systems may affect compliance with the standard. Ahnafield also requested an exemption for S5.2 of Standard No. 203, which restricts the likelihood that jewelry or loose clothing will be caught by the steering control, pointing out that jewelry can become caught on steering wheel-mounted steering control devices.

Notwithstanding the comment from the Connecticut Department of Motor Vehicles, we have decided to include S5.1 of FMVSS No. 203 and FMVSS No. 204, in its entirety, as part of the exemption. This is because other commenters indicated that at least some current market designs for adaptive steering systems do affect compliance with the standards. We do not believe

that the steering column should be replaced with a non-compliant column except in the most extraordinary circumstances since the replacement of the column alone can generally be done in a manner that does not run afoul of the standards. Thus, the exemption is restricted to cases where the modification involves the removal of the steering shaft, rather than the steering column alone. In instances where the steering shaft must be removed, we will allow the modifier to also replace the steering column. This is because a modification that requires the removal of the steering shaft is so drastic that there is no way to effect the modification without taking the steering column out of compliance with the standards.

We have decided to include S5.2 of FMVSS No. 203 in the exemption as well. Some steering control devices are inherently incompatible with loose jewelry and clothing. We do not believe that a device that could catch loose clothing and jewelry is necessarily a poor design choice for individuals with certain disabilities. Since these steering control devices cannot be installed without running afoul of S5.2, we believe an exemption is appropriate in cases in which an item of adaptive equipment must be mounted on the steering wheel.

#### 10. FMVSS No. 207, Seating Systems

To minimize the likelihood that a seat will collapse during a collision, FMVSS No. 207 requires vehicle seats to meet certain performance, installation, and attachment requirements. In the NPRM, we proposed to include S4.1 of the standard in the exemption when the vehicle is modified for a wheelchair seated driver and no other seat for that seating position is provided and a wheelchair securement device is supplied for that seating position. S4.1 requires that a compliant driver's seat be provided with the vehicle. Removing seats other than the driver's seat to replace the seat with a wheelchair location does not make inoperative FMVSS No. 207, because no other seats are specifically required by the standard and wheelchairs are not regulated as vehicle seats.

DaimlerChrysler stated that the exemption should also be given for passenger seats. We have not proposed to do so because the standard does not require that the vehicle come equipped with any seats other than one for the driver.

MossRehab agreed with our assessment in the NPRM that 6-way power base seats do not need an exemption because the base of the seat

should be attached to the floor. It did question, however, whether the seat portion would remain on its base. We do not believe an exemption for 6-way power seat base is appropriate because the seat manufacturer should be able to assure that the seat does not separate from the vehicle. Likewise, the seating portion of the seat should remain attached to the base portion of the seat. Accordingly, we are limiting inclusion of FMVSS No. 207 in the exemption to S4.1, given a wheelchair securement device is supplied for the driver seating position, as proposed in the NPRM.

#### 11. FMVSS No. 208, Occupant Crash Protection

The purpose of FMVSS No. 208 is to reduce the number of vehicle occupant injuries incurred in a collision. We recommended including the standard in the exemption as long as Type 2 or Type 2A seat belts meeting the requirements of FMVSS No. 209 are installed. An exemption would not be available if a retrofit air bag on-off switch was sufficient to accommodate the individual's disability. NHTSA sought comment from lowered floor minivan alterers on whether they have been able to certify compliance with the standard and from hand control operators on whether the original components installed to meet the standard (e.g., knee bolsters) are made inoperative by the installation of the hand controls. Finally, we sought comment from modifiers on how often they are required to disable seat belt pretensioners and why.

Comments focused on two separate requirements of the standard: air bags and knee bolsters. MossRehab stated that there are many situations in which drivers cannot position themselves far enough away from the air bag to avoid injury. Individuals who use hand controls to operate acceleration and braking may sit much closer to the wheel than is typical. According to Ahnafield, people with limited mobility do not need to sit close to the steering wheel; they can use remote devices. Independent Mobility Systems stated that there should not be a blanket inclusion of FMVSS No. 208 in the exemption, since able-bodied individuals would lose the benefit of the occupant protection system. It argued that an exemption for FMVSS No. 208 should be limited to a seating position occupied by a wheelchair. We believe this comment was directed primarily to the deactivation of the air bags.

Commenters noted that generally the installation of hand controls requires the removal of some part of the knee bolster. TTI maintained that careful

selection of mechanical hand controls and installation should eliminate or significantly reduce the amount of knee bolster removal. The California Department of Rehabilitation noted that the risk of injury from the hand control could be greater than the risk of injury from a compromised knee bolster. Crow River, NMEDA, and Independent Mobility Systems also favored an exemption from the performance requirements governing femur loads because of the need to modify knee bolsters in vehicles equipped with hand controls.

As discussed in the NPRM, only some portions of FMVSS No. 208 would be included in the exemption, and the exemption would only apply in instances where a retrofit air bag on-off switch cannot accommodate the individual's disability and the modified seating position is provided with Type 2 or Type 2A safety belts that meet the requirements of FMVSS Nos. 209 and 210.

Because of this rule, individuals who need modifications that include, but are not limited to, the installation of an air bag on-off switch or the permanent disconnection of the air bag do not need to first request permission from the agency under its existing processes for authorizing on-off switches or permanent deactivation. That permission is given here. However, with the limited exceptions discussed below, individuals who do not require *additional* vehicle modifications because of a recognized disability, e.g., short-statured individuals or the elderly, must continue to submit those requests. The only exceptions to this policy are for drivers with achondroplasia, and for passengers with atlantoaxial instability. We are not requiring prior agency authorization for these conditions because they are two of the four conditions that physicians at a National Medical Conference on evaluating air bag risks determined would always justify the deactivation of an air bag.<sup>15</sup> The other two conditions, scoliosis and Down's Syndrome, are not subject to the exception because not all individuals with these conditions are likely to face an increased risk from a deploying air bag. These individuals, as well as any individual whose treating physician recommends deactivation because of a specific medical condition, remain eligible for permanent air bag deactivation upon written request to the agency when no on-off switch is available.

We note that air bag on-off switches will no longer be allowed after September 1, 2012 for individuals other than those who are entitled to take advantage of this rule's exemption.

## 12. FMVSS No. 214, Side Impact Protection

Standard No. 214's requirements serve to minimize the risk of serious or fatal injuries to vehicle occupants in side impact collisions. In the NPRM, we proposed to include S5 of the standard in the exemption. This paragraph details the dynamic performance requirements that vehicles must meet in order to comply with the standard. We requested comments on whether there were modifications, other than those that change the seat position, that would affect a vehicle's compliance with the dynamic performance requirements of the standard.

Only one commenter, NMEDA, responded to this request. It stated that modifications would not necessarily reduce door strength to an extent that the strength requirement of the standard could not be met. However, the controls or displays could be positioned between the driver and the side of the vehicles such that the thoracic injury criteria of S5.1 could not be met. Likewise, for rear seat occupants, a stowed lift could fail the standard's injury criteria.

We are limiting the exemption to instances where the restraint system or the seat must be changed to accommodate a person with a disability. We believe the exemption is appropriate in this instance because the change in the location of the seat or in the restraint system could affect the measurement of the injury criteria specified in the standard. We do not believe it is necessary to include the standard in the exemption to accommodate equipment mounted between the driver and the door (such as touch pads), because this equipment is generally light and would not be likely to cause the chest injuries that the standard seeks to prevent. We also note that FMVSS No. 214 already excludes vehicles with wheelchair lifts from the requirements of S3(f) and S5. Thus, an exemption for vehicles equipped with wheelchair lifts is unnecessary.

### *E. Standards for Which Permission Is Not Granted To Make Safety Features Inoperative*

#### 1. Standards Which Could Be Compromised by Vehicle Modifications

A detailed discussion of the types of vehicle modifications that could affect a vehicle's conformance with a specific safety standard can be found in the

NPRM. Unless expressly addressed in the responses to that document, we will not describe those systems again here.

a. *FMVSS No. 102, Transmission lever sequence, starter interlock, and transmission braking effect.* FMVSS No. 102 requires automatic transmissions to have: (1) A specified transmission shift lever sequence, (2) a starter interlock, and (3) at least one low gear. We solicited comment on whether modifications to the method by which the vehicle is started and the transmission gear is selected are necessary to accommodate a person with a disability.

NMEDA replied that it is aware of one touchpad system where the transmission shifter is located in the keypad which could change the sequence, disable the starter interlock, or disable the lower forward drive gear. We have decided against including Standard No. 102 as part of the exemption because we believe that the existence of a single, noncomplying system is insufficient to justify an exemption to the standard. Other, complying systems are available. We also note that merely placing the shifter on a touchpad does not make the original equipment inoperative. As stated in our withdrawal of rulemaking on this standard in November 1999, "Standard No. 102 only specifies a sequence for shift 'levers.' Therefore, possible automatic transmission designs like pushbuttons, keypads, and touch screens are not subject to the shift lever sequence requirements, since they have no levers."

b. *FMVSS No. 103, Windshield defrosting and defogging systems, and FMVSS No. 104, Windshield wiping and washing systems.* FMVSS No. 103 and FMVSS No. 104 specify requirements for the area of the windshield that must be cleared by the defrosting and defogging systems and the windshield wiping and washing systems, respectively. As noted in the NPRM, vehicle modifications commonly result in the relocation of switches and a reduction in the features normally available to the driver while the vehicle is in motion. We are unaware of any reason why a modification would affect the performance level of these systems to the extent that a vehicle no longer complied with these standards. We received no comments on the NPRM indicating that there was, in fact, a need for an exemption. Accordingly, we are not including these standards.

c. *FMVSS No. 105, Hydraulic brake systems, and FMVSS No. 121, Air brake systems.* Standard No. 105 and Standard No. 121 govern the performance of various braking systems in different

<sup>15</sup> The report from this conference may be viewed at the NHTSA web site at <http://www.nhtsa.dot.gov>.

types of vehicles. Standard No. 105 applies to multipurpose passenger vehicles (MPVs), trucks, buses and passenger cars with hydraulic brake systems that were manufactured before September 1, 2000. Standard No. 121 applies to trucks, buses and trailers equipped with air brake systems. Like Standard No. 135, these two standards help ensure safe vehicle braking performance in normal and emergency driving situations. In the NPRM, we sought comment on whether there are brake modifications that incapacitate the original brake controls and would affect the vehicle's compliance in any of the required performance tests. We were particularly interested in learning whether the use of a joy stick prevented an able-bodied driver from using the original brake pedal and whether either a joy stick or a power assist affects the vehicle's braking potential during the specified performance tests.

Our discussion of braking systems, as well as our summary of the comments submitted to the NPRM, are provided earlier in the discussion on FMVSS No. 135. Unlike that standard, neither of these standards require a foot control. Accordingly, no exemption is needed.

d. *FMVSS No. 111, Rearview mirrors.* To ensure that drivers have a clear and unobstructed view to the rear of the vehicle, Standard No. 111 specifies the location, field of view, magnification and labeling of rearview mirrors on all vehicles. Crow River commented that a modifier may need an exemption if the placement of the driver, due to modifications, changes the driver's field of view through the rearview mirror. When mirrors are relocated, extra mirrors are added, or larger mirrors are substituted for the original rear view mirrors when vehicles are modified for persons with disabilities, NHTSA does not believe these modifications should affect the vehicle's certification with the standard. Additionally, NHTSA does not believe that such a modification is advisable since it could unduly restrict the driver's field of view. Accordingly, no provision is being made to include FMVSS No. 111 in the exemption.

e. *FMVSS No. 113, Hood latch systems.* Standard No. 113 requires that cars, MPVs, trucks and buses have a second latch position on the hood latch system to prevent the hood from unlatching, opening, and blocking a driver's view through the windshield. As stated in the NPRM, we are not aware of any modifications that are made to the hood latch system, although we realize that the method of unlatching the system may sometimes need to be modified. We asked whether there are modifications that would require

eliminating the second latch position in contravention of the standard. We received no comments on this issue. Accordingly, we have decided against including this standard in the exemption.

f. *FMVSS No. 124, Accelerator control systems.* Standard No. 124 is intended to help prevent runaway acceleration of vehicles. The standard requires a vehicle's throttle to return to its idle position when the driver withdraws all force from the accelerator control or when there is a disconnection in the accelerator system between the control and the engine. The predominant vehicle modification affecting compliance with this standard is the removal or blocking of the accelerator pedal when the driver uses hand controls. The standard does not require a foot pedal serve as the accelerator.

DaimlerChrysler noted that it is aware of complete servocontrol systems that use a joystick that may preclude the use of the accelerator pedal and require its removal. We believe that this situation is directly analogous to brake pedals and the requirements of FMVSS Nos. 105 and 121. For the same reasons provided in the discussion of those standards, we do not believe an exemption is needed. Additionally, we note that systems where the hand-operated control bypasses the original accelerator and the modified accelerator cannot meet the requirements of the standard, an exemption would be inappropriate because the driver may be unable to stop the vehicle.<sup>16</sup>

g. *FMVSS No. 206, Door locks and door retention components.* To minimize the likelihood that vehicle occupants will be ejected from a vehicle during a crash, Standard No. 206 requires hinged side doors, rear doors and sliding doors to meet certain performance requirements. It also requires hinged side door latches to have both a primary latching position and a secondary latching position.

All commenters who responded to the portion of the NPRM addressing this standard except DaimlerChrysler argued that an exemption should be allowed for the standard. DaimlerChrysler stated that the use of existing occupant restraints is more important in reducing the likelihood of ejection than a compliant door latch. Some electrically and remotely operated door systems do not retain the original latch/locking mechanism. However, there are some power-operated door lock/latch systems that are coupled with the OEM latch/lock systems; accordingly, no exemption

is needed. The standard currently has an exclusion for side doors equipped with platform lifts as long as the lifts are linked with an alarm system. We sought comment in the NPRM on whether the original latching mechanisms must be disabled or changed in the course of vehicle modifications in a manner that takes them out of compliance with the standard.

TTI stated that all the sliding door or swinging door automatic openers that it has encountered on full-size van conversions involve the removal of or making inoperative the OEM latches. The doors are held shut by the cable, chain or actuator arms of the automatic door opener (the minivan conversions retain the OEM latch in some form). TTI does not know if these systems are as effective as the OEM latches. However, for independent driving, an automatic door opener is crucial.

NMEDA commented that all aftermarket automatic door openers require the removal of the OEM systems. The OEM automatic door openers are not yet available to modifiers. In the same vein, Crow River suggested a temporary exemption to allow for the retooling of existing automatic door openers.

The California Department of Transportation stated that NHTSA should include FMVSS No. 206 in the list of exempted standards, because no aftermarket door openers retain the OEM latch. This commenter believes that the fact that no one has presented any evidence that discarding the door latch is *necessary* to the installation of an automatic door opener is not a good reason to deny the exemption for this standard. It also argued that the current exemption for doors equipped with platform lifts that have alarm systems is misguided since it offers no guarantee that there will not be an ejection.

We are evaluating the current exclusion in FMVSS No. 206 regarding side doors with lifts. Part of this evaluation includes the pending petition to extend the exclusion to vehicles with ramps. We are not addressing that exclusion in this rule. We have decided against allowing a broader exclusion from Standard No. 206 as part of this rulemaking even though several commenters support such an exclusion. The primary purpose of the standard is to prevent ejections from vehicles. Currently, ejection through windows or doors accounts for nearly 25% of all motor vehicle fatalities.

We agree with DaimlerChrysler that extending the exemption to FMVSS No. 206 would be inappropriate. While most of the existing modifications to vehicle doors may take the vehicle out of

<sup>16</sup> See NHTSA letter of legal interpretation to Senne, Kelsey & Associates, Inc., dated 3/26/1999.

compliance with the standard, the current performance requirements for Standard No. 206 are not onerous. Additionally, we are very concerned about the risk of an ejection should a door latch and/or hinge system fail. Finally, we are aware of remote access designs being developed by vehicle manufacturers that would allow vehicle modifications that do not take the vehicle out of compliance with the standard. Accordingly, we do not believe an exemption would be consistent with motor vehicle safety. We recognize that many automatic door opener manufacturers will need to retool their products if they wish to continue selling them. However, developing the necessary technology should not be difficult and best serves the need for motor vehicle safety. Thus, other than the exclusion that is already contained within FMVSS No. 206, we do not believe an exemption is warranted.

h. *FMVSS No. 209, seat belt assemblies.* This standard sets out requirements for seat belt assemblies as items of motor vehicle equipment. We did not propose to include Standard No. 209 as part of the exemption in the NPRM since we saw no reason that modifiers could not use compliant assemblies. Simply moving the belt anchors or using a different belt does not necessarily cause a noncompliance with FMVSS No. 209 or FMVSS No. 210. We received no comment regarding this issue and are not including the standard in the exemption.

i. *FMVSS No. 210, Seat belt assembly anchorages.* Standard No. 210 is a vehicle standard that establishes strength and location requirements for seat belt assembly anchorages. The requirements ensure that the belt loads during a crash are transferred to the skeleton of the occupant and not to the occupant's soft tissue. The standard also ensures that the restraint anchorages are strong enough to withstand a crash. Like FMVSS No. 206, compliance with this standard is fairly simple to measure. We did not propose including this standard in the exemption in the NPRM because we believed that if belt anchorages are moved, or otherwise modified to accommodate a person with a disability, measurements, calculations, or engineering judgment could be used to ensure that the standard continues to be met.

Only TTI commented on this section of the notice, commenting that it was not always possible for wheelchair users to use the original safety belt. As noted in the NPRM, compliance with this standard is easily demonstrated.

Accordingly, no exemption is warranted.

j. *FMVSS No. 216, Roof crush resistance.* FMVSS No. 216 is intended to reduce the number of deaths and injuries caused by a roof crushing into the vehicle cabin during a rollover. As explained in the NPRM, we do not believe it is necessary for a raised roof to be installed in a manner that takes the vehicle out of compliance with the standard. However, we requested comment on whether there are raised roofs that must be installed in a way that adversely affects the vehicle's compliance with the standard or if there are ways to raise the roof other than through the installation of a commercially-made raised roof.

NMEDA commented that the available replacement roofs that it is aware of do not assure compliance with FMVSS No. 216. However, reinforcements can be added that would not take the raised roof out of compliance. According to TTI, many vocational rehabilitation agencies require raised roofs to be supplemented by a reinforced structure under the roof. However, the California Department of Rehabilitation cautioned that the added weight to raised roofs to prevent roof crush creates handling problems that should not be discounted.

Our Office of Vehicle Safety Compliance has done one demonstration test using the FMVSS No. 216 compliance test on a conversion van that was fitted with a fiberglass roof and that did not have a reinforcing cage. The vehicle was able to pass the test. Accordingly, we do not believe it is necessary to include this standard in the exemption.

k. *FMVSS No. 301, Fuel system integrity and FMVSS No. 303, Fuel system integrity of compressed natural gas vehicles.* To reduce deaths and injuries occurring from fires caused by leaking fuel during and after a crash, Standard No. 301 and Standard No. 303 set performance requirements for fuel systems in crashes. Preserving fuel system integrity in a crash to prevent occupant exposure to fire is extremely important to all persons, but perhaps even more so for persons with disabilities since they may require more time to exit a vehicle. Accordingly, we did not propose including these standards in the exemption even though we know some vehicle modifications could take a vehicle out of compliance with the applicable standard.

Congressman John Moakley wrote that exemptions should not be allowed for modifications to fuel systems that would take a vehicle out of compliance because conversions can be performed that do not affect the alteration of the

fuel system. Likewise, NMEDA commented that no exemption should be offered for FMVSS Nos. 301 and 303 because the process of moving the fuel tank, supply lines, and filler neck while lowering a floor can compromise compliance with the standards. Ahnfield claimed that there have never been any reported or documented problems with the fuel system modifications that have been made by the industry so far. We continue to believe that including Standard Nos. 301 and 303 in the exemption is inappropriate.

l. *FMVSS No. 302, Flammability of interior materials.* Like Standard No. 301 and Standard No. 303, FMVSS No. 302 is designed to reduce the likelihood of death or injury from fires. In order to reduce this risk, particularly from fires that originate in the vehicle's interior, Standard No. 302 specifies that any material within one-half inch of the occupant compartment air space meet specified flammability requirements. Materials meeting the standard are readily available and the standard's test procedure is relatively easy. Accordingly, we did not propose to provide an exemption to this standard.

We received no comments suggesting that an exemption was either needed or appropriate. Accordingly, we are not including the standard in this rule.

## 2. Standards Which Are Unaffected by Vehicle Modifications

We believe the following safety standards are unaffected by any vehicle modifications needed to accommodate an individual with a disability. None of the commenters to the NPRM indicated that these standards could be so affected. These standards are not subject to an exemption from the make inoperative provision: FMVSS No. 106, Brake hoses; FMVSS No. 109, New pneumatic tires; FMVSS No. 110, Tire selection and rims; FMVSS No. 116, Motor vehicle brake fluids; FMVSS No. 117, Retreaded pneumatic tires; FMVSS No. 119, New pneumatic tires for vehicles other than passenger cars; FMVSS No. 120, Tire selection and rims for vehicles other than passenger cars; FMVSS No. 122, Motorcycle brake systems; FMVSS No. 125, Warning devices; FMVSS No. 129, New non-pneumatic tires for passenger cars; FMVSS No. 131, School bus pedestrian safety devices; FMVSS No. 205, Glazing materials; FMVSS No. 212, Windshield mounting; FMVSS No. 213, Child restraint systems; FMVSS No. 217, Bus emergency exits and window retention and release; FMVSS No. 218, Motorcycle helmets; FMVSS No. 219, Windshield zone intrusion; FMVSS No.

220, School bus rollover protection; FMVSS No. 221, School bus body joint strength; FMVSS No. 222, School bus passenger seating and crash protection; FMVSS No. 223, Rear impact guards; FMVSS No. 224, Rear impact protection; FMVSS No. 225, Child restraint anchorage systems; and FMVSS No. 304, Compressed natural gas fuel container integrity.

#### *F. Modifications not Contemplated by the Final Rule*

In the NPRM, we stated that we intended to preserve our existing procedure for making case-by-case determinations on whether to waive enforcement against modifications that would not be subject to the exemption under final rule and that could not be made in a manner that did not compromise the vehicle's compliance with the standards. NMEDA and Advocates for Ohioans with Disabilities agreed that we need to provide some mechanism that will allow for adaptations not contemplated by the NPRM. We have decided to continue to review these individual requests upon written submission. All requests should be submitted as early as possible, since the agency will need time to review the request and draft an appropriate response.

#### *G. Gross Vehicle Weight Ratings*

Gross vehicle weight ratings (GVWR) are not controlled by any specific standard. However, the requirements of a given standard may vary depending on a vehicle's GVWR. Only the vehicle manufacturer can specify GVWR. Often vehicle modifications can significantly add to a vehicle's "unloaded vehicle weight" and therefore can reduce the load carrying capacity of a vehicle. Consumers would likely not realize, and often are not told, that the load carrying capacity of their vehicle, in terms of passengers, luggage, and routine cargo, has been reduced by the vehicle modifications. Overloading can lead to premature wear of vehicle components and can create significant safety problems. Accordingly, the modifier must provide the consumer with specific information about the load carrying capacity of the vehicle after the modifications are completed if that load carrying capacity has been reduced by more than 220 pounds (100 kg). In providing this information, the modifier must state whether the weight of a user's wheelchair is included in the available load capacity.

#### *H. Applicability of Exemptions to Commercial Vehicles*

Two commenters raised concerns that were unique to commercial vehicles. Congressman John Moakley wrote that commercial vehicles should only be allowed to transport passengers using SAE-compliant wheelchairs that are tested in the specific conversion in which they will be used. Suspension Compression Systems strongly disagreed with including any standard in the exemption that affects the front seat passenger seat position in commercial applications, in particular FMVSS Nos. 201, 202 and 208, averring that the front seat occupant has not made a conscious choice to trade off safety benefits for increased mobility. We do not believe there is a need to exclude commercial vehicles from the exemption created by this rule.

Most commercial vehicles used for transporting persons with disabilities can be altered prior to their first retail sale since there is no need to fit the vehicle for a specific individual. In such a case, there is no exemption from any standards. In instances in which the vehicle is modified after the first retail sale, we believe that prohibiting modifiers from utilizing the exemption because of the commercial/personal use status of the vehicle is unworkable. Such a prohibition would place the onus on the modifier rather than the owner to determine how the vehicle would be used. Additionally, we note that Congressman Moakley's suggestion would require that each commercial vehicle come with SAE-compliant wheelchairs since the vehicle operator would have no other way of guaranteeing that passengers have such wheelchairs. Such a requirement would seriously limit the amount of space available in the vehicle since the passengers' personal wheelchair would have to be stowed somewhere on the vehicle. Likewise, prohibiting wheelchair passengers in the front seat reduces the carrying capacity of the vehicle. As a general matter, occupants are safer in the back seat than the front seat. However, there is no indication that a passenger seated in a wheelchair to the rear of the B-pillar is at any greater risk from whiplash, the condition contemplated by FMVSS No. 202, than a front seat occupant. Proper use of tie-down devices and safety belts would help ameliorate any additional risk for a wheelchair-seated occupant in the right front seating position as compared to a wheelchair-seated occupant in a rear seating position, particularly when the passenger air bag

has been disabled pursuant to the exemption for FMVSS No. 208.

### **III. Prescriptions, Labeling, and Recordkeeping Requirements**

#### *A. Prescriptions and Professional Evaluations*

In the NPRM, we noted that an occupational therapist or other trained professional often evaluates the driving capabilities of a person with a disability and then writes a prescription detailing needed vehicle modifications. We did not contemplate specifying who was qualified to make a determination of driving ability. We did, however, ask several questions regarding current industry practice in conducting of driver evaluations and the use of prescriptions, and regarding whether such prescriptions assist in ensuring that only necessary modifications are made. The purpose underlying the questions was to determine whether we should require vehicle modifiers to keep a record of vehicle and equipment prescriptions to induce the modifiers to take care that modifications for persons with disabilities are completed in a manner that truly meets the particular individual's needs without any unnecessary modifications and to discourage modifiers from circumventing the requirements of the various safety standards.

Two issues, whether a prescription should be required as a condition of the exemption and who should be considered to be qualified to write that prescription, produced the greatest divergence in opinion among the commenters. Comments on those issues were received from occupational therapists, vehicle modifiers, certified driver rehabilitation specialists, NADA, and one state.

Those supporting mandatory prescriptions argued that an exemption from Federal motor vehicle safety standard requirements should be provided only when vehicle modifications are absolutely necessary. They stated that the determination of what modifications are necessary is typically done by means of a driver evaluation and prescription for driving equipment provided by a qualified specialist. The commenters averred that the most appropriate person to evaluate an individual desiring vehicle modifications is a trained driver evaluator. Noting that the technology currently available for use by persons with disabilities to drive independently or to ride safely as a passenger in a vehicle is advancing and constantly changing and improving, the commenters argued that trained

individuals are needed to keep up with the technology and how that technology can best be used. Commenters supporting this view were the American Occupational Therapy Association, ADED, and NMEDA, among others.

According to ADED, a certified driver rehabilitation specialist is such a trained individual. The American Occupational Therapy Association advocated that prescriptions be issued by either occupational therapists or certified driver rehabilitation specialists. It maintained that occupational therapists are adequately qualified to make driver evaluations based on their specialized training regardless of whether they are certified driver rehabilitation specialists. However, individuals in other professional disciplines may also be qualified to make an evaluation if they have completed the training required to become certified.

Those opposed to mandatory prescriptions, primarily modifiers, but also some representatives of state organizations and persons with disability advocacy groups, argued that excluding individuals who are not certified driving rehabilitation specialists from evaluating and prescribing vehicle modifications would unnecessarily increase the burden on the disabled community, increasing costs and limiting access to needed vehicle modifications (particularly in rural areas). They said that prescriptions, while helpful to many disabled individuals unaware of current technology, should not be required as a condition for a make inoperative exemption. These commenters claimed that driving capability evaluations and prescriptions are unnecessary to limit modifications to individuals who need them because it is unlikely that an able-bodied individual would have a vehicle modified as contemplated by the NPRM so as to avoid mandated safety measures. Access Wheels, a modifier, commented that prescriptions are rarely used and then only to justify the payment of the modification costs by a third party. It then stated that sophisticated modifications generally are the result of a professional determination of driver capability in large part because of the exceptionally high cost of such modifications. It stated also that the vast majority of modifications involve relatively simple, and less expensive vehicle alterations, and thus are modifications for which professional evaluations of capabilities are unnecessary.

NADA did not take any position on whether prescriptions were needed, stating that prescriptions, evaluations, or other reports should be provided to

the modifier, consistent with current practice. It went on to say that a NHTSA-approved customer request process is not needed. The Connecticut Department of Motor Vehicles noted that some states require prescriptions. For those that do not, it believes requiring an individual without a prescription to receive permission from NHTSA is not onerous.

After evaluating the comments and based on our own knowledge of the industry, we conclude that it is unlikely that persons without disabilities will try to take advantage of the exemptions in today's final rule because they are so narrowly written and because of the expense of such modifications. Additionally, given the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.

#### *B. Labeling Requirements and Customer Information*

We did not propose any specific requirements for labels, customer information, or recordkeeping in the NPRM. However, we solicited comment on whether such requirements were needed to aid disabled persons or regulations enforcement personnel and what burden such requirements might place on modifiers, who are largely small businesses.

Several commenters, including NMEDA, the Connecticut Department of Motor Vehicles, and NADA, stated that labels identifying the work performed on the vehicle should be required so that questions of future modifiers/repair businesses about how the work was done can be answered. Access Wheels maintained that labeling is an unnecessary burden. It said that it had never seen a modification that was not immediately apparent. Also, anyone selling a modified vehicle would likely advertise the modifications rather than attempt to hide them, since this would allow them to recover some of the cost of the modifications.

We have decided to require a label stating that the vehicle has been modified pursuant to the exemption in part 595 and may no longer comply with all safety standards and providing the name and street address of the modifier. This label, which is to be affixed to the vehicle directly adjacent to the manufacturer or alterer's certification label in the same manner as that label, will allow repair businesses and subsequent owners to determine who modified the vehicle. The persons can contact the modifier if they have

questions about the specific nature of the work performed and the potential safety consequences of that work. We are requiring a street address, instead of a post office box, to assist in locating the modifier through the Internet or directory assistance. We are not requiring modifiers to indicate on the label which exemptions they have taken advantage of because we want to keep the label sufficiently small so that it can be placed next to the certification label.

The same commenters who supported labels (e.g., NMEDA, the Connecticut Department of Motor Vehicles, NADA, and Advocates) argued that requiring modifiers to identify potential safety consequences of modifications and tell customers before the work does not seem overly burdensome and is already required by at least one state (Connecticut). They stated customers should be specifically informed about potentially noncompliant, but exempt, modifications, and modifiers should also be required to identify any steps they would take to minimize noncompliance. Advocates averred that the agency has a responsibility to require modifiers to include permanent notification to any subsequent owners in the vehicle identifying the specific modifications that have been made to that vehicle, the specific safety standards that were affected, and the effects that those modifications will have on operating safety and vehicle crashworthiness. The Connecticut Department of Motor Vehicles stated that such disclosure would clear up questions by end users who say they had no idea of the trade-offs and accordingly did not make an informed decision.

Access Wheels argued against such a requirement, stating that mandatory disclosure of steps taken to minimize noncompliance would add to modifiers' costs and administrative burdens. It stated that other factors, such as liability insurance premiums, state motor vehicle regulations, funding specifications, and OEM warranty constraints, as well as the cost of modifications, dictate that a modifier make as few changes to the vehicle as possible.

We considered three types of owner's manual inserts that could be used to provide information to the vehicle user:

(1) A generic insert describing the most commonly made modifications and the possible safety consequences of those modifications;

(2) An insert listing the standards affected by the modifications to the particular vehicle; and



(3) An insert describing the particular modifications made to that particular vehicle.

We have decided against requiring any type of owner's manual insert for several reasons. The information in a generic insert may not apply to a particular vehicle and could be confusing. We have also determined that the development of a very detailed insert tailored to each modified vehicle would be overly burdensome. Additionally, the vehicle invoice, which is received once the modifications were performed, often provides some details about what modifications were made. As discussed earlier, modified vehicles are normally customized for a particular individual. Accordingly, we believe persons with disabilities will know many of the modifications that will be needed to accommodate their particular disabilities. Likewise, in many instances, the effect of the modification on an existing system and the safety consequences that the modifications will have on crash avoidance and crashworthiness will be readily discernible.

We are, however, requiring modifiers to provide the vehicle owner with a list of standards, or portions thereof, with which the vehicle may no longer be in compliance due to modifications performed under this exemption. This document, which could simply be the invoice, would also have to indicate any reduction in load carrying capacity of more than 220 pounds (100 kg). The modifier would be required to retain a copy of this document for a period of five years.

Nothing in today's rule precludes a modifier from detailing in writing the specific modifications to be performed on the vehicle and the potential impact of those modifications on the vehicle's crash avoidance and crashworthiness capabilities. We note, however, that *requiring* modifiers to provide detailed information on how each modification was performed and what effect the modification could have on compliance with applicable safety standards could result in the expenditure of a significant amount of time and effort. Such a document would have to be tailored to each vehicle, and the cost involved in preparing the document would not be spread over a large number of vehicles. Thus, the cost, per insert, could be high. Since the cost of such labors would likely be passed onto the individual paying for the modifications, we believe such a document, while possibly helpful, should not be required. This is particularly true when the final invoice already generally details what modifications were made to the vehicle,

as well as the name of the company performing the modifications. Because the nature of the modifications could be relevant to future purchasers or repair businesses, we urge owners of these vehicles to keep the invoice with the vehicle documentation.

Advocates strongly objected to our decision not to propose recordkeeping requirements. It stated that NHTSA must install a system of oversight that ensures appropriate and timely review of modifications performed pursuant to the proposed rule. Advocates maintains that if the agency does not require modifiers to maintain records of the vehicles they modify or to notify the agency of such modifications, it would not only eliminate any possibility of prospective oversight, the exemptions would compromise the legal position of members of the disabled community in their ability to rely on appropriate documentation of the modifications performed by these commercial operations. Advocates went on to charge that NHTSA is issuing a blanket exemption which will receive no prospective oversight by the agency of the extent to which vehicle modifications have undermined the safe travel of disabled persons. They maintained that the proposed exemption, in essence, substitutes the vagaries of the marketplace in lieu of a comprehensive regulatory approach. While this will promote mobility, Advocates is concerned it will not ensure that the disabled are accorded the safety protection required by the safety standard after a vehicle modification is performed.

NMEDA offered a counterinterview, stating that modifiers or owners should not have to perform any of the following tasks: fill out written requests, certify the need for modifications, certify having read the information concerning the safety consequences of modifications, or obtain prior agency approval of their requests. According to NMEDA, modifiers also should not have to inform the agency that they have made modifications or specify what those modifications are. NMEDA did not offer any reasons for its position, other than stating such requirements would be burdensome.

We disagree with Advocates' assertion that the rights of the disabled community will be compromised by the agency declining to establish detailed reporting requirements. As discussed above, nothing in today's rule prevents an individual with disabilities from requesting and securing documentation detailing both the modifications to be performed as well as the potential safety impact of those modifications.

Additionally, we are requiring modifiers who intend to avail themselves of the exemption to provide us with information that is similar to the type of information manufacturers are required to submit under 49 CFR 566. Under today's rule, these modifiers will be required to provide us with a document that provide their name, address, and a statement that they modify vehicles for individuals with disabilities and intend to avail themselves of the exemption created by this rule. Any changes in that information would have to be conveyed to the agency within 30 days of the change. This requirement, coupled with the requirement that the modifiers retain a document that specifies the standards with which the vehicle may no longer be in compliance that was discussed above, should guarantee a high degree of accountability without straining the resources of the agency or the modifiers.

#### IV. Regulatory Analyses and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action 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" and is not considered "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has determined that the impacts are so minimal that a full regulatory evaluation is not warranted.

The agency believes the safety disbenefits, if any, will be minimal. The modifications should not reduce the safety of individuals with disabilities since the types of permissible modifications are limited. Further, without the modifications, those individuals would not be able to operate or ride in motor vehicles, and thus could not benefit at all from the Federally-required safety equipment and features. Modifying a vehicle to allow disabled individuals to operate or ride in motor vehicles may result in some loss of safety for any individuals without disabilities who operate or ride in those motor vehicles. However, we believe any loss of safety will be minimal. We do not expect many individuals without disabilities to use seating positions specially modified for persons with disabilities. Further, as noted above, the number of affected standards is very small. Finally, the number of vehicles so modified will be relatively small.

The expected impact of this rule on vehicle modifiers is low. Their method and cost of doing business will only be changed to the extent that those who are now modifying vehicles in a manner that makes mandatory safety equipment inoperable now have clear guidance on which modifications are permissible. Some modifiers may have to depart from the way in which they have performed various modifications in the past to stay within the parameters of the agency's exemption. However, such a departure need not always cost more and will minimize any disbenefits associated with the fundamentally unsafe nature of the previous method of performing the modification. Only nominal costs related to the labeling requirements are imposed on vehicle modifiers.

#### *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 modifiers are considered small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, this action replaces the current requirement that vehicle modifiers write to NHTSA and request permission each time they need to modify a vehicle in a way that compromises a vehicle's compliance with any standard in order to accommodate an individual with a disability. While most modifiers are considered small entities, the rule does not impose any mandatory significant impact on them since: (1) For the vast majority of cases, we believe the rule codifies existing standard industry practices and procedures used to make vehicle modifications, (2) the rule assists vehicle modifiers in making appropriate design choices, and (3) the rule eliminates the costs associated with submitting a written request to NHTSA to modify each vehicle as well as the costs associated with waiting for the agency's response. Therefore, a Regulatory Flexibility Analysis is not required.

#### *C. National Environmental Policy Act*

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

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

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has

determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has 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.

#### *E. 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 rule will not have a significant expenditure of funds by State, local and tribal governments. Additionally, the cost of the Rule will not exceed the expenditure of over \$100 million by the private sector.

#### *F. Executive Order 12778 (Civil Justice Reform)*

This final rule does not have any retroactive effect. The rule does not repeal any existing federal law or regulation. Additionally, the rule does not preempt any causes of action in state or Federal court. The rule modifies existing law only to the extent that it replaces an agency procedure under which vehicle modifiers had to obtain our permission to modify a vehicle to accommodate a person with a disability in a way that compromised the vehicle's compliance with the Standard. This rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### *G. Paperwork Reduction Act*

This final rule includes the following "collections of information," as that term is defined in 5 CFR Part 1320 *Controlling Paperwork Burdens on the Public*:

*Labels*—New labels are specified in this final rule that specify that modifications have been made to a vehicle subject that take the vehicle out of conformance with certain safety standards. At present, OMB has approved NHTSA's collection of labeling requirements under OMB clearance no. 2127-0512, *Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number)*. This clearance

will expire on 6/30/2001, and is cleared for 71,095 burden hours on the public.

For the following reasons, NHTSA estimates that the new labels will have a negligible increase in the information collection burden on the public. There are approximately 2,295 vehicles modified for persons with disabilities per year. The label will be placed on each affected vehicle once. Since, in this final rule, NHTSA specifies the exact content of the labels, the manufacturers will not have to spend any hours in developing the labels. NHTSA estimates the technical burden time (time required for affixing labels) to be .0042 hours (15 sec) per label. NHTSA estimates that the total annual burden imposed on the public as a result of the vehicle modification labels will be 9.6 hours (2,295 vehicles multiplied by .0042 hours per label), even if every vehicle modified requires a label. The maximum annual cost of labels for all affected vehicles will be about \$1,150.

*Modifier identification*—Modifiers who take advantage of the exemption created by this rule will be required to furnish NHTSA with a written document providing the modifier's name, address, and telephone number, and a statement that the modifier is availing itself of the exemption. We are currently seeking OMB review of this collection of information, which would not be required until 180 days after the publication of this rule in the **Federal Register**.

*Identification of which portions of the exemption are being used*—Modifiers who avail themselves of the exemption created by today's rule will be required to keep a record for each applicable vehicle listing which standards, or portions thereof, no longer comply with the Federal motor vehicle safety standards. We are currently seeking OMB review of this collection of information.

#### *H. 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.

#### *I. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Because this rule codifies exceptions to certain

portions of specific Federal motor vehicle safety standards, it is written in such a way that cross-references to the affected portions of those standards are given. We believe that this is the most efficient way to reference the standards and that this method also provides the most clarity as to which safety requirements are exempted as a result of this rule.

#### J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

As noted earlier, this rule is not economically significant. Additionally, this rule will not have a disproportionate effect on children. This rulemaking directly involves decisions based on health risks that affect children only to the extent that a child is the intended benefactor of the vehicle modification. The majority of exemptions provided pursuant to this rule affect drivers who have a disability. Some of the exemptions accommodate the special needs of vehicle passengers. To the extent the passenger is a child, there may be some safety disbenefit for that child. However, this disbenefit is weighed against the benefit of allowing the child to leave the house in a family's personal conveyance. Absent modifications, the child might not be able to ride at all.

#### K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards<sup>17</sup> in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that

<sup>17</sup> Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This rule is procedural in nature and does not adopt any standards, consensus-based or otherwise. In the preamble to this rule, we have noted that SAE standards and industry guidelines do exist that may assist a modifier in determining how to perform a modification that minimizes any negative impact on safety.

#### List of Subjects in 49 CFR Part 595

Disability, Imports, Motor vehicle safety, Motor vehicles.

For the reasons set forth in the preamble, NHTSA is amending Part 595 of Title 49 of the Code of Federal Regulations as follows:

#### PART 595—EXEMPTIONS FROM THE MAKE INOPERATIVE PROHIBITION

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. Part 595 is amended by revising §§ 595.1 and 595.2, designating §§ 595.1 through 595.4 as Subpart A—"General", designating § 595.5 as Subpart B—"Retrofit On-Off Switches for Air Bags", and adding a Subpart C to read as follows:

##### § 595.1 Scope.

This part establishes conditions under which the compliance of motor vehicles and motor vehicle equipment with the Federal motor vehicle safety standards may be made inoperative.

##### § 595.2 Purpose.

The purpose of this part is to provide an exemption from the "make inoperative" provision of 49 U.S.C. 30122 that permits motor vehicle dealers and motor vehicle repair businesses to install retrofit air bag on-off switches and to otherwise modify motor vehicles to enable people with disabilities to operate or ride as a passenger in a motor vehicle.

\* \* \* \* \*

#### Subpart C—Vehicle Modifications To Accommodate People With Disabilities

##### § 595.6 Modifier identification.

(a) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall furnish the information specified in paragraphs (a)(1) through (3) of this section to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(1) Full individual, partnership, or corporate name of the motor vehicle repair business.

(2) Residence address of the motor vehicle repair business and State of incorporation if applicable.

(3) A statement that the motor vehicle repair business modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7.

(b) Each motor business repair business required to submit information under paragraph (a) of this section shall submit the information not later than August 27, 2001. After that date, each motor business repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle and intends to avail itself of the exemption provided in 49 CFR 595.7 shall submit the information required under paragraph (a) not later than 30 days after it first modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle. Each motor vehicle repair business who has submitted required information shall keep its entry current, accurate and complete by submitting revised information not later than 30 days after the relevant changes in the business occur.

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

(a) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle is exempted from the "make inoperative" prohibition of 49 U.S.C. 30122 to the extent that those modifications affect the motor vehicle's compliance with the Federal motor vehicle safety standards or portions thereof specified in paragraph (c) of this section. Modifications that would take a

vehicle out of compliance with any other Federal motor vehicle safety standards, or portions thereof, are not covered by this exemption.

(b) Any motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle in such a manner as to make inoperative any part of a device or element of design installed on or in the motor vehicle in compliance with a Federal motor vehicle safety standard or portion thereof specified in paragraph (c) of this section must affix to the motor vehicle a permanent label of the type and in the manner described in paragraph (d) of this section and must provide and retain a document of the type and in the manner described in paragraph (e) of this section.

(c)(1) 49 CFR 571.101, except for S5.2(a), S5.3.1, S5.3.2, and S5.3.5 of that section.

(2) S5.1.1.5 of 49 CFR 571.108, in the case of a motor vehicle that is modified to be driven without a steering wheel or for which it is not feasible to retain the turn signal canceling device installed by the vehicle manufacturer.

(3) S4.4 and S4.5 of 49 CFR 571.114, in any case in which the original key-locking system must be modified.

(4) S4(a) of 49 CFR 571.118, in any case in which the medical condition of the person for whom the vehicle is modified necessitates the installation of a remote ignition switch to start the vehicle.

(5) S5.1 and S5.2.1 of 49 CFR 571.123, in any case in which the modification necessitates the relocation of original equipment manufacturer's controls.

(6) S5.3.1 of 49 CFR 571.135, in any case in which the modification necessitates the removal of the original equipment manufacturer foot pedal.

(7) 49 CFR 571.201 with respect to:

(i) Targets located on the right side rail, 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 side rail, 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.

(8) 49 CFR 571.202, 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) S3(b)(1) and (b)(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.

(10) S5.1 of 49 CFR 571.203, in any case in which the modification necessitates a structural change to, or removal of, the original equipment manufacturer steering shaft.

(11) S5.2 of 49 CFR 571.203, in any case in which an item of adaptive equipment must be mounted on the steering wheel.

(12) 49 CFR 571.204, in any case in which the modification necessitates a structural change to, or removal of, the original equipment manufacturer steering shaft.

(13) S4.1 of 49 CFR 571.207, in any case in which a vehicle is modified to be driven by a person seated in a wheelchair and no other driver's seat is supplied with the vehicle, provided that a wheelchair securement device is installed at the driver's position.

(14) S4.1.5.1(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2 and S7.4 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or 2A seat belts meeting the requirements of 571.209 and 571.210 of this chapter are installed at that position.

(15) S5 of 49 CFR 571.214 for the designated seating position modified, in any cases in which the restraint system

and/or seat at that position must be changed to accommodate a person with a disability.

(d) The label required by paragraph (b) of this section shall:

(1) Be permanently affixed to the vehicle,

(2) Be located adjacent to the original certification label or the alterer's certification label, if applicable,

(3) Give the modifier's name and physical address,

(4) Contain the statement "This vehicle has been modified in accordance with 49 CFR 595.6 and may no longer comply with all Federal Motor Vehicle Safety Standards in effect at the time of its original manufacture."

(e) The document required by paragraph (b) of this section shall:

(1) Be provided, in original or photocopied form, to the owner of the vehicle at the time the vehicle is delivered to the owner,

(2) Be kept, in original or photocopied form, at the same address provided on the label described in paragraph (c) of this section for a period not less than five years after the vehicle, as modified, is delivered to the individual for whom the modifications were performed,

(3) Be clearly identifiable as to the vehicle that has been modified,

(4) Contain a list of the Federal motor vehicle safety standards or portions thereof specified in paragraph (c) of this section with which the vehicle may no longer be in compliance.

(5) Indicate any reduction in the load carrying capacity of the vehicle of more than 100 kg (220 lb) after the modifications are completed. In providing this information, the modifier must state whether the weight of a user's wheelchair is included in the available load capacity.

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**L. Robert Shelton,**

*Executive Director.*

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