year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

K. National Environmental Policy Act

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

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising the definition of Seat belt mounting structure in S3, adding the definition of Interior rear quarter panel to S3 in alphabetical order, and revising S6.3(e) to read as follows:

§ 571.201 Standard No. 201; Occupant protection in interior impact.

* * * * *

S3. *Definitions.* * * *

Interior rear quarter panel means a vehicle interior component located between the rear edge of the side door frame, the front edge of the rearmost seat back, and the daylight opening.

* * * * *

Seat belt mounting structure means:

(a) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located rearward of the rearmost outboard designated seating position, and that extends above a horizontal plane 660 mm above the seating reference point (SgRP) of that seating position; and

(b) A vehicle body or frame component, including trim, that incorporates an upper seat belt anchorage conforming to the requirements of S4.2.1 and S4.3.2 of 49 CFR 571.210, that is located forward of the rearmost outboard designated seating position, and that extends above a horizontal plane 460 mm above the SgRP of that seating position located rearward of the anchorage.

(c) The seat belt mounting structure is not a pillar, roll bar, brace or stiffener, side rail, seat, interior rear quarter panel, or part of the roof.

* * * * *

S6.3 * * *

(e) Any target located on the seat belt mounting structures, door frames and other door frames before December 1, 2005.

* * * * *

Dated: August 25, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–17294 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2004–19092]

RIN 2127–AJ07

Make Inoperative Provisions; Vehicle Modifications To Accommodate People With Disabilities

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

ACTION: Final rule.

SUMMARY: To facilitate further the modification of vehicles to accommodate individuals with disabilities, this final rule expands the existing exemptions from the ''make inoperative'' provision of the Vehicle Safety Act. Responding to petitions for rulemaking from members of the mobility industry, this document expands the exemption to include exemptions from provisions of the advanced air bag requirements, the child restraint anchorage system requirements, and the upper interior head protection requirements.

DATES: The effective date for this final rule is October 31, 2005.

Petitions for reconsideration. Petitions for reconsideration of this final rule must received not later than October 17, 2005.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Gayle Dalrymple, Office of Crash Avoidance Standards at (202) 366–5559. Her fax number is (202) 366–7002. For legal issues, you may call Ms. Dorothy Nakama, Office of Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820. You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The National Traffic and Motor Vehicle Safety Act requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (49 U.S.C. 30112 *et seq.*). The Act further prohibits manufacturers, distributors, dealers, and repair businesses from knowingly making inoperative any part or device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard (49 U.S.C. 30122; ''make inoperative'' provision). Any action that removes or disables safety equipment or features installed to comply with an applicable standard, or that degrades the performance of such equipment or features could lead to the assessment of civil penalties. Section 30122 authorizes regulations to exempt a person from the make inoperative provision if the agency decides the exemption is consistent with motor vehicle safety and the purpose and policy of the Safety Act.

To facilitate the modification of motor vehicles for persons with disabilities, NHTSA provides a limited exception from the make inoperative provision. While a vast majority of Americans can drive and ride in a motor vehicle as produced and certified by manufacturers, individuals with disabilities often require special modifications to accommodate their particular needs. Some of these modifications may require removal of

federally required safety equipment. In these instances, if individuals with disabilities are to drive and ride in a motor vehicle in these instances, federally required safety features must be made inoperative.

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

When establishing the exemption from the make inoperative provision, the agency considered that, as of 1997, approximately 383,000 vehicles had some type of adaptive equipment installed in them to accommodate a driver or passenger with a disability.[1] We also recognized that the modification of vehicles to accommodate persons with disabilities would increase in frequency as the population ages and as a greater number of individuals with physical disabilities take advantage of opportunities presented by the Americans With Disabilities Act.[2] Using 2002 data from the Bureau of Transportation Statistics, we estimate the number of personal motor vehicles modified for use by persons with disabilities existing in the U.S. in 2002 was about 1,123,000, with a 95 percent confidence interval from 743,000 to 1,504,000. An estimated 75 percent of modified vehicles were modified for the driver (including vehicles modified for both driver and passenger). The estimated proportion of the U.S. personal motor vehicle fleet that are modified for use by people with disabilities is 0.0051 (0.51 percent) with a confidence interval from 0.0034 to 0.0067. We estimate that in 2002, 814,000 households had one modified vehicle and another 155,000 households had two modified vehicles.[3]

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

II. Notice of Proposed Rulemaking

In response to petitions for rulemaking from Bruno Independent Living Aids (Bruno), the Adaptive Driving Alliance (ADA)[6] and the National Mobility Equipment Dealers Association (NMEDA), NHTSA published a notice of proposed rulemaking on September 17, 2004 (69 FR 56018) (DOT Docket No. NHTSA–2004–19092). The agency proposed to amend the exemption from the make inoperative provision under 49 CFR Part 595, by adding the FMVSS No. 208 advanced air bag requirements, a limited exemption for the FMVSS No. 225 LATCH requirements, and a limited exemption for the FMVSS No. 201 upper interior head protection requirements. Each of the proposed changes is summarized below.

Advanced Air Bag Requirements

After the exemption from the make inoperative provision was published on February 27, 2001, the agency published a final rule that added requirements to FMVSS No. 208 to reduce the risk of serious air bag-induced injuries, especially to small women and young children, and to improve the safety for all occupants by means that include advanced air bag technology. (65 FR 30680; May 12, 2002.) The advanced air bag technology requirements are being phased in beginning September 1, 2003, with full compliance required September 1, 2006. Motor vehicles subject to the phase-in will be required to minimize air bag risks by automatically turning off the air bag in the presence of an occupant who is a young child or deploy the air bag in a manner less likely to cause serious or fatal injury to an out of position occupant. Among the technologies used to comply with these requirements are a variety of seat position, occupant weight, and pattern sensors incorporated into the seat structure.

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

ADA's August 8, 2002 petition provided additional support for Bruno's request. The ADA argued that it is no more feasible for modifiers to comply with the advanced air bag requirements than the ''*existing* air bag requirements,'' which are currently exempted. Petitioners argued that maintaining compliance with the advanced air bag requirements would require modifiers to reinstall, modify, or design complex components of the air bag system. Petitioners further argued that the advanced air bag requirements are just as incompatible with the one-of-a kind, custom-fitted nature of vehicle modifications to accommodate a specific individual's disability as the current FMVSS No. 208 requirements in Part 595.

In response to the petitions for rulemaking, NHTSA proposed to expand the make inoperative exemptions established at 49 CFR 595.7(c)(14) by adding to it the following sections of FMVSS No. 208:

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

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

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

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

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

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

In many instances, a vehicle modification requiring an exemption for the advanced air bag requirements would also rely on the current

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

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

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

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

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

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

exemption from the occupant crash protection requirements of S5, *Occupant crash protection requirements for the 50th percentile adult male dummy*, of FMVSS No. 208. NHTSA stated that it expected that modifications requiring an exemption from the advanced air bag requirements in conjunction with the exemption from S5, as well as those requiring only an exemption from the advanced air bag regulations, would affect a very small number of motor vehicles each year in comparison to the overall number of motor vehicles in the country.

In the NPRM, the agency tentatively concluded that these modifications would be essential to enable individuals with a disability to use a motor vehicle. Additionally, seating positions modified under the proposed exemption would accommodate specific, individual needs making it less likely that these seating positions would be used by other occupants who would benefit either from the air bag itself, or from those features designed to minimize air bag risk. We recognize that in most cases, the decision to deactivate the air bag, or not, will be a product of the equipment, the vehicle and the method of installation. We strongly urge the vehicle manufacturers, equipment manufacturers, and modifiers to work together to determine whether the air bag actually needs to be deactivated for these different combinations. There may be seating, equipment and vehicle combinations in which air bag deactivation is not necessary. However, these situations should be studied carefully so that modification does not result in inadvertent air bag suppression or overly forceful deployment.

LATCH Requirements

Prior to establishing the exemption from the make inoperative provision (published on February 27, 2001), the agency established FMVSS No. 225, which requires motor vehicles to be equipped with a lower anchorage and tether anchorage (LATCH [7]) system designed exclusively to secure child restraint systems. (64 FR 10786; March 5, 1999; ''LATCH rule''.)

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

In its petition for rulemaking, the ADA stated that compliance with LATCH requirements would possibly not be feasible for businesses modifying motor vehicles to accommodate disabled drivers and passengers. The ADA explained that:

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

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

Since the agency could not anticipate all of these potential combinations and provide modifiers specific instructions for each situation, NHTSA proposed in the NPRM an amendment that would establish flexibility in the modification configurations and still allow a child seat to be restrained safely. NHTSA proposed an exemption be added to 49 CFR 595.7, to read as follows:

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

A child seat could still be installed in a modified vehicle through the use of the vehicle's seat belt system and still have the advantage of the tether.

The proposed exemption was based on the approach suggested by the ADA. The ADA suggested that if a vehicle complies with FMVSS No. 225 by having two LATCH systems and a tether anchorage in the second row of seating and no LATCH anchorages in the third row of seating, any modification resulting in the removal of the second row of seating would require the modifier to install complete LATCH systems in the third row of seating. Under the agency's proposal, the modifier was only required to install a tether anchorage. NHTSA noted that if the proposal were made final, the tether anchorage(s) attached to any relocated seat would be required to remain compliant with 49 CFR 571.225 S6, S7 and S8 upon relocation. NHTSA tentatively concluded that this requirement was within the capabilities of modifiers.

FMVSS No. 225 requires that vehicles manufactured on or after September 1, 2002, that do not have any forward-facing rear designated seating positions must have a compliant tether anchorage at each front passenger designated seating position (S4.4(c)). In the September 17, 2004 NPRM, NHTSA stated that if a vehicle were to be modified such that only front designated seating positions remained, the agency expected that modifiers would be able to install conforming tether anchorages at the front forward-facing passenger designated seating positions (if not already provided by the original vehicle manufacturer).

NHTSA sought comment on whether modifiers should be required to add tether anchorages to designated seating positions that were not so equipped by the original vehicle manufacturer.

[7] ''LATCH'' stands for ''Lower Anchors and Tethers for Children,'' a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required by Federal Motor Vehicle Safety Standards No. 225, *Child Restraint Anchorage Systems* (49 CFR 571.225). This system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be loated at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a fixture to which the tether of a child restraint system can be hooked.

Upper Interior Head Protection Requirements

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

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

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

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

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

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

The ADA and NMEDA each submitted a separate petition for rulemaking requesting that NHTSA expand the exemption of FMVSS No. 201 to include the provisions pertaining to upper interior head protection. The ADA requested that 49 CFR 595.7 be amended to include exemptions for requirements related to: (1) Targets located on any hand grip or vertical stanchion bar; and (2) all of S6 of 571.201 in any case in which accommodating a person's disability necessitates raising the roof or door, or lowering the floor of the vehicle.

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

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

Part 595 Title

The agency also proposed to amend the title of Part 595 from ''Retrofit On-Off Switches for Air Bags,'' to ''Make Inoperative Provisions.'' In the NPRM, NHTSA stated that this amendment would reflect the fact that 49 CFR Part 595 addresses more matters than the retrofit of motor vehicles with on-off switches for air bags.

III. Public Comments and Final Rule

In response to the NPRM, NHTSA received comments from: the Adaptive Driving Alliance (ADA); the California Department of Vocational Rehabilitation (CDVR), the National Automobile Dealers Association (NADA); and the National Mobility Equipment Dealers Association (NMEDA). The commenters supported the proposed changes, as discussed below.

Overview

In supporting the NPRM, the NADA stated that the proposed exemptions ''would facilitate vehicle alterations and modifications designed to satisfy the needs of disabled customers.'' The NMEDA provided specific comments regarding the proposed changes regarding the LATCH requirements. NMEDA stated that requiring a tether anchorage in the second row will provide a means to secure a child seat in the vehicle, and that NMEDA will be able to provide guidance to the modifiers for installation of a tether anchorage in the event that the existing seat does not have one installed at the original equipment manufacturer's level. NMEDA further stated that considering the allowable area in which the tether anchorage may be installed, it did not foresee difficulty in locating or safely installing such an anchor. Since most of the ''concerned vehicles'' have a second row seat, NMEDA stated that it did not anticipate that the front row seat would have to be equipped with a tether anchorage.

Specific Questions

Although it supported the rulemaking, the ADA commented on the proposed changes affecting FMVSS No. 208 and No. 225. Regarding FMVSS No. 208, the ADA stated its belief that since S14 of FMVSS No. 208 ''mandates compliance with the advanced air bag requirements,'' S14 should be added to the list of sections set forth in 49 CFR 595.7(c)(14). NHTSA agrees. We note that S14.5 of FMVSS No. 208 specifies differing requirements for meeting barrier test requirements using 50th percentile adult male dummies, depending on which S14 provision a vehicle is certified as meeting. Since some provisions mandate compliance, this final rule amends 49 CFR 595.7(c)(14) to include S14 of FMVSS No. 208.

The ADA also addressed the proposed inclusion in Part 595 of FMVSS No. 225 requirements, questioning whether the final sentence proposed for 49 CFR 595.7(c)(16): ''Any tether anchorage attached to a seat that is relocated shall continue to comply with the requirements of 49 CFR 571.225 S6, S7 and S8'' is appropriate. The ADA commented that:

> Proposed (c)(16) would require that ''* * * the vehicle contain at least one tether anchorage which complies with 49 CFR 571.225 S6, S7 and S8 in one of the rear passenger designated seating positions. If no rear designated seating position exists after the vehicle modification, a tether anchorage complying with the requirements described above must be located at a front passenger seat.'' It is thus not clear why the proposed final sentence of (c)(16) is necessary, given that relocating a seat could cause issues as regards maintaining the tether.

NHTSA's response is that the ADA's comment appears to assume that after modification, only one tether anchorage will remain in the rear. Therefore, if a vehicle must have a compliant tether anchorage and there is only one tether

anchorage present, the last sentence of the proposed regulatory language would be redundant. However, there may be other tether anchorages in the vehicle, in addition to the tether anchorage in the relocated seat, that comply with S6, S7, and S8 at rear seating positions. Without the last sentence, if there are other tether anchorages, the relocated tether(s) would not have to comply with the applicable provisions of FMVSS No. 225. It is NHTSA's position, (with which NMEDA agreed in its comments) that vehicle modifiers should have the technical capability to relocate a tether anchorage such that the relocated tether anchorage complies with S6, S7, and S8 of FMVSS No. 225. Further, all tether anchorages should meet the requirements of FMVSS No. 225, since they will likely be used with the child restraint. For these reasons, in the final rule, the last sentence of 595.7(c)(16) is retained.

Upper Interior Head Protection Requirements

NHTSA received no public comments in response to the proposed exemption from the make inoperative provision by adding limited exemptions from the upper interior head protection requirements of FMVSS No. 201. Therefore, NHTSA adopts as final the language proposed at 595.7(c)(7)(iv) and (v).

Other Issues

The California Department of Vocational Rehabilitation (CDVR) sought to bring attention to issues involving side air bags and ''transfer seat bases.'' The CDVR explained that these seat bases move the original equipment manufacturers' (OEM) seat back to allow a wheelchair user to move more easily from the wheelchair into the OEM seat. The OEM seat is then powered back into the driver's position. The CDVR noted that some of the OEM seats have side air bags in the seat backs, but there appeared to be nothing in the NPRM requiring the OEM wiring to the seat backs to be retained to maintain the functioning of the airbag.

Agency response: The ''make inoperative'' exemptions proposed in the NPRM did not include exemptions for the side air bags in the seat backs. Provisions relating to side air bags in seat backs is outside the scope of the rulemaking.

Conclusion

The comments supported the changes to Part 595. This final rule makes final the language (with the exception of adding an exception for S14 to S595.7(c)(14)) proposed in the NPRM of September 17, 2004. Further, since we received no comments on the proposed change to the title of Part 595, in this final rule, we are changing the title of Part 595 to: ''Make Inoperative Provisions.''

IV. Effective Date

In the NPRM, NHTSA proposed an effective date of 60 days after the final rule is published. None of the public comments addressed the effective date issue. NHTSA notes that this final rule removes a restriction on the modification of vehicles for persons with disabilities. To further the interest of providing vehicle modifiers the flexibility required to accommodate these individuals, since good cause has been shown to do so, and since NHTSA has determined it would be in the public interest to do so, the changes in this final rule becomes effective 60 days after the publication in the **Federal Register**.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

Furthermore, NHTSA does not expect many individuals without a disability to use seating positions specially modified for individuals with a disability. As previously noted above, the number of affected standards remains small and the number of vehicles that modified in accordance with this final rule is relatively small.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Most motor vehicle modifiers affected by this final rule are considered small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for this certification is that, as explained above, this final rule adds several occupant crash protection requirements, vehicle LATCH requirements, and upper interior head protection requirements to the current list of requirements exempted from the Make Inoperative Provision. While most modifiers are considered small entities, the final rule results in no significant economic impact on small entities since the final rule permits greater flexibility when modifying a vehicle to accommodate an individual with a disability. There may be slight economically beneficial effects of this final rule, because the affected small manufacturers would not have to ensure that they ''make inoperative'' compliance of a vehicle with provisions of the occupant crash protection requirements, vehicle LATCH requirements, and upper interior head protection requirements, when the vehicles are modified to accommodate an individual with a disability.

C. Paperwork Reduction Act

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

D. National Environmental Policy Act

NHTSA has analyzed this final rule 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.

E. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and

timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

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

F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' we have considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

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

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This final rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Plain Language

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

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

If you have any responses to these questions, please address them to the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section at the beginning of this document.

J. 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.

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 595 as follows:

■ 1. The heading to Part 595 is revised to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

■ 2. 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.

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

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

* * * * *

(c) * * *

* * * * *

(7) * * *

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

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

* * * * *

(14) S4.1.5(a)(1), S4.1.5.1(a)(3), S4.2.6.2, S5, S7.1, S7.2, S7.4, S14, S15, S16, S17, S18, S19, S20, S21, S22, S23, S24, S25, S26 and S27 of 49 CFR 571.208 for the designated seating position modified, provided Type 2 or Type 2A seat belts meeting the requirements of 49 CFR 571.209 and 571.210 are installed at that position.

* * * * *

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

* * * * *

Issued on: August 25, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–17244 Filed 8–30–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

RIN 1652–ZA05

Prohibited Items; Allowing Scissors for Ostomates

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interpretive rule.

SUMMARY: This document amends the Transportation Security Administration's (TSA) interpretive rule that provides guidance to the public on the types of property that TSA considers weapons, explosives, and incendiaries prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document also amends TSA's guidance on the types of items permitted in sterile areas, the cabins of aircraft, and in passengers' checked baggage. This document adds as permitted items certain small scissors that persons with ostomies need.

DATES: Effective August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra Cammoroto, Office of the Chief Operating Officer, TSA–18, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1823.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Law and Policy Web page at *http://www.tsa.gov* and accessing the link for ''Law and Policy'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Statutory and Regulatory Background

TSA is an agency in the Department of Homeland Security (DHS), operating under the direction of the Assistant Secretary for Homeland Security (Transportation Security Administration). TSA is responsible for security in all modes of transportation, including aviation. See 49 U.S.C. 114(d). Under TSA's regulation on acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual)—

''* * * may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter.''

On February 14, 2003, TSA published an interpretive rule that provided guidance to the public on the types of property TSA considers to be weapons, explosives, and incendiaries prohibited on an individual's person or accessible property, items permitted on an individual's person or accessible property, and items prohibited in checked baggage (68 FR 7444). On March 3, 2003, TSA subsequently published technical corrections to the interpretive rule at 68 FR 9902.

On December 17, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458). Section 4025 of IRTPA in part requires TSA to add butane lighters to its list of prohibited items and to make any other modifications to the prohibited items list that TSA considers appropriate. Accordingly, on March 1, 2005, TSA published an amendment to the interpretive rule (70 FR 9877) adding all lighters to the list of prohibited items. TSA now is modifying the interpretive rule to provide an exception for certain scissors used by ostomates.

Small Ostomy Scissors Are Now Permitted

Under the interpretive rule, TSA presently considers all metal scissors with pointed tips to be weapons. Therefore, individuals are prohibited from carrying these types of scissors in an airport sterile area or in the cabin of an aircraft. Metal scissors with blunt tips and plastic scissors are permitted.

TSA is modifying the interpretive rule to exempt from the prohibited items list ostomy scissors. An ostomate is a person who has undergone a surgical procedure known as ostomy, which involves creating an opening in the person's abdomen. The opening is called a stoma. Human waste passes through the stoma into a collection pouch. An ostomy appliance consists of a positioning plate (or wafer or flange) that attaches to the collection pouch surrounding the stoma. Because no two stomas are alike, few ostomates can use manufactured pre-cut wafers. The ostomate, by using a chart provided with the collection pouch, must use pointed scissors to cut out the appropriate size of the cut-to-fit positioning plate. Round or dull scissors will not easily penetrate or cut through the positioning plate's heavy rubber or neoprene material. The adhesive backing that attaches the plate to the skin around the stoma increases the solidity of the material.

The collection pouch must be changed, and the stoma cleaned, each time the pouch fills up. The schedule