revising paragraph (a)(3) to read as follows:

§ 240.305 Prohibited conduct.

(a) * * *

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

* * * * *

■ 24. Section 240.307 is amended by revising paragraphs (a) and (j) introductory text to read as follows:

§ 240.307 Revocation of certification.

(a) Except as provided for in § 240.119(e), a railroad that certifies or recertifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires information regarding violations of § 240.117(e) or § 240.119(c) of this chapter, which convinces the railroad that the person no longer meets the qualification requirements of this part, shall revoke the person's certificate as a qualified locomotive engineer.

* * * * *

(j) The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.215 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

* * * * *

■ 25. Section 240.309 is amended by revising paragraphs (a) and (e)(3) to read as follows:

§ 240.309 Railroad oversight responsibilities.

(a) No later than March 31 of each year, each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

* * * * *

(e) * * *

(3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the Class 1, Class 1A, Class II, or running brake test provisions of 49 CFR part 238;

* * * * *

Appendix A to Part 240 [Amended]

26. Appendix A to part 240–Schedule of Civil Penalties is amended by removing the entries for sections 240.203(a); redesignating the entries for sections 240.203(b) as 240.203(a); redesignating the entries for sections 240.203(c) as 240.203(b); and redesignating the entry for section 240.205(d) as 240.205(b).

27. Appendix B is amended by revising the 5th paragraph of *Section 4 of the Submission: Testing and Evaluating Persons Previously Certified* and the last paragraph of *Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers* to read as follows:

Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs

* * * * *

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

* * * * *

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). However, the railroad must describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. The section should also provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (*see* appendix E) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

* * * * *

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

* * * * *

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad must also describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

* * * * *

Appendix D to Part 240 [Amended]

28. Appendix D is amended by removing the last paragraph.

Issued in Washington, DC, on December 17, 2009.

Karen J. Rae,

Deputy Administrator.

[FR Doc. E9–30439 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2009–0189]

RIN 2127–AK65

Federal Motor Vehicle Safety Standards; Designated Seating Positions

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

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of an October 2008 final rule that amended

the definition of the term, ''designated seating position,'' as used in the Federal motor vehicle safety standards, to clarify which areas within the interior of a vehicle meet that definition.

The final rule made the new definition applicable to vehicles manufactured on and after September 1, 2010. The agency received petitions for reconsideration asking for additional time to comply with the new requirements. This final rule provides one additional year of lead time until the new definition is applicable.

In the regulatory text of that final rule, we included language declaring that any State requirement, including any determination under State tort law, premised on there being more designated seating positions than the number contemplated in our definition, would prevent, hinder or frustrate the accomplishment of the purposes of the Federal Motor Vehicle Safety Standards in Part 571 of this title, and thus would be preempted by this regulation. The petitions for reconsideration sought removal of this preemption language from the regulatory text. This final rule grants that request by removing the portion of the regulatory text stating that State tort law requirements are preempted.

This final rule also makes a technical correction to the regulatory text of the rule setting forth the formula for calculating the number of designated seating positions, the need for which was noted in several of the petitions for reconsideration.

The remaining issues raised in the petitions for reconsideration (clarification or change to the manner in which the number of designated seating positions in a vehicle are calculated, procedural issues regarding measuring seating surfaces, countermeasures, and other technical corrections) will be addressed in a separate notice.

DATES: The effective date of this final rule is February 22, 2010.

Petitions for reconsideration must be received not later than February 8, 2010.

ADDRESSES: Petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Chris Wiacek of the NHTSA Office of Crashworthiness Standards by telephone at (202) 366–4801, and by fax at (202) 493–2290.

For legal issues, you may contact David Jasinski of the NHTSA Office of Chief Counsel by telephone at (202) 366–2992, and by fax at (202) 366–3820.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On October 8, 2008, we published in the **Federal Register** a final rule (October 2008 final rule) revising the definition of ''designated seating position'' (DSP), as that term is used in the Federal motor vehicle safety standards (FMVSS), and providing a calculation procedure for determining the number of seating positions at a seat location.[1] The revised definition specifies more clearly the areas within the interior of a vehicle that are regarded as being designated seating positions. The rule also established a calculation procedure for determining the number of DSPs at a seat location for trucks and multipurpose passenger vehicles with a gross vehicle weight rating less than 10,000 pounds, passenger cars, and buses.

The designation of a seating position has important safety consequences. Under the FMVSSs, motor vehicle manufacturers must meet various performance requirements for each interior location designated as a seating position. For example, FMVSS No. 208, ''Occupant crash protection,'' requires that each DSP in a light vehicle be provided with the appropriate occupant crash protection system (*e.g.,* air bag, seat belts or both). Clarity in the definition of DSP is important for the purposes of that standard because if a vehicle has fewer DSPs than the number of individuals able to sit in it, one or more of those individuals would not be protected by seat belts and/or other crash protection systems.

In the final rule, the agency stated that the revised definition of ''designated seating position'' added clarity to the existing definition and was not expected to have a substantial impact on current vehicle design. The degree to which seat design exhibited the characteristics that gave rise to the agency's concerns had lessened in the fleet. Manufacturers had either reduced the width of the seating area to more accurately reflect the intended occupancy or had provided additional DSPs.

The October 2008 final rule noted that the inclusion of auxiliary seats in the definition of ''designated seating position'' and the newly established procedure for determining the number of DSPs would require minor redesign of a small number of vehicles. To allow manufacturers the opportunity to make such redesigns, the agency provided approximately two years of lead time, such that, on September 1, 2010, all vehicles would have to comply with the new requirements.

In the preamble to the final rule, we observed that, in *Geier* v. *American Honda Motor Company, Inc.,* the Supreme Court had recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, could stand as an obstacle to the accomplishment and execution of some FMVSSs, and that, where such conflict occurs, the Supremacy Clause of the Constitution could make the State tort law requirements unenforceable.[2] We stated our opinion that State tort law judgments premised on there being more DSPs in a motor vehicle than the number contemplated by the definition in 49 CFR Part 571 could have a negative effect on safety because it would induce manufacturers to equip motor vehicles with an excessive number of seat belts. Because seat belt comfort and convenience (*i.e.,* ease of use) significantly affect the seat belt usage rate, we opined that the installation of an excessive number of seat belts would decrease, not increase, safety, thereby hampering our efforts to promote high seat belt use rates. To make sure that this opinion would be readily available and clear to all, in the October 2008 final rule, we included in the regulatory text of the definition of ''designated seating position'' language stating that any State law requirement, including State tort law, premised on there being more DSPs in a motor vehicle than the number contemplated by the new definition, was preempted.

II. Petitions for Reconsideration

We received ten petitions for reconsideration of the October 2008 final rule. The petitioners are SAE International (SAE), BMW North America (BMW), the Alliance of Automobile Manufacturers (Alliance), Volkswagen of America (Volkswagen), the Association of International Automobile Manufacturers (AIAM), the

[1] 73 FR 58887 (Oct. 8, 2008) (Docket No. NHTSA–2008–0059).

[2] 529 U.S. 861, 870 (2000).

American Association for Justice (AAJ), Safety Research and Strategies, Toyota Motor North America (Toyota), Mitsubishi Motors R&D of America (Mitsubishi), and Public Citizen.[3] Toyota also expressed its support for the Alliance's petition. The petitions filed by SAE International and Toyota were styled both as requests for interpretation and as petitions for reconsideration.

In this notice, we are responding to petitions by the Alliance, AIAM, Mitsubishi, and Volkswagen that sought additional lead time for implementing the new definition of ''designated seating position'' via a phase-in. The October 2008 final rule requires manufacturers to comply with the new definition for all vehicles manufactured after September 1, 2010, without a phase-in; however, each of the petitioners request that the agency move the 100 percent compliance date to September 1, 2011.

We are also responding to the issues relating to preemption. The petitions from the AAJ and Public Citizen requested removal of the language that we incorporated in the text of the final rule stating that any State requirement, including any determination under State tort law, premised on there being more DSPs than the number contemplated in the definition, was preempted. The AAJ asserted that the preemption language contradicted Congressional intent, as discerned in a November 2005 letter signed by two Senators to NHTSA's Deputy Administrator, to allow lawsuits against automobile manufacturers based on State tort law. The AAJ and Public Citizen also objected to our reliance on *Geier* v. *American Honda Motor Co.* to support our statement about preemption of state tort law. The AAJ contends that the DSP definition rulemaking was unlike the passive restraint rulemaking at issue in *Geier* because the DSP rulemaking did not stress the need for vehicle manufacturers to have different compliance options available to them.

Public Citizen disagreed with our conclusion that State tort law could frustrate the accomplishment or purposes of the DSP definition. Public Citizen argued that vehicle manufacturers are unlikely to equip a vehicle with more seat belts than are necessary. Instead, that organization contended, citing statements in our June 22, 2005 Notice of Proposed Rulemaking[4] (June 2005 NPRM) and our October 2008 final rule, that vehicle manufacturers are more likely to respond to a State tort law decision having the effect of requiring more DSPs than the number required by our October 2008 final rule by introducing void spaces or impediments between DSPs rather than designating additional seating positions and installing additional seat belts. Public Citizen also argued that, under the new DSP definition, vehicle manufacturers cannot leave an ambiguous seating surface in the middle of a bench seat, and, if these design features (voids or impediments) are sufficient to discourage excessive occupancy, then State courts would be unlikely to issue tort law judgments premised on there being more DSPs than the number contemplated in the definition. Thus, as a practical matter, no conflict with our regulations would arise.

We are also correcting a technical error. The petitions from SAE International, the Alliance, and AIAM also pointed out a technical error in the regulation setting forth the formula for calculating the number of designated seating positions. These petitions point out that 49 CFR § 571.10(b)(1) and (b)(2) each refer to ''paragraph (d),'' which does not exist, and that the reference was probably intended to refer to § 571.10(c).

Our responses to the other issues raised by the petitioners will be provided in a later notice. The petitions from SAE International, BMW, Volkswagen, AIAM, and Toyota sought clarification of or changes to the formula for determining the number of DSPs at a seat location, procedural concerns regarding measuring seating surfaces, countermeasures, and other technical corrections. The petitions from AIAM and Public Citizen challenged the adequacy of data to support the amendment of the definition of ''designated seating position.''

III. Agency Response to Petitions for Additional Lead Time

The Alliance, AIAM, Mitsubishi, and Volkswagen petitioned the agency to phase-in the requirements to provide additional lead time for some vehicles. The Alliance agreed with the agency's assessment that only a small number of vehicles in the fleet will require a redesign to comply. However, it noted that additional time is needed for non-compliant vehicles to be redesigned to the new DSP definition. Mitsubishi supported the Alliance petition and provided a suggested phase-in schedule. Volkswagen added that a number of its carlines are affected by the new requirements and a phase-in will permit a cost-effective implementation of any required changes.

The AIAM also identified that changes will need to be made in vehicles that have auxiliary seats *(i.e.,* temporary or folding seats) to comply with the FMVSSs because under the new definition, these types of seats are now considered DSPs. For example, it noted that such seats would have to be redesigned to meet the requirements of FMVSS No. 225, ''Child restraint anchorage systems,'' which it suggested would necessitate allocation of significant engineering resources and testing. The AIAM stated that these modifications would be difficult and costly to implement within two years, particularly for existing models.

In response to the petitions, the agency has decided to provide an additional year of lead time. We believe granting an extra year of lead time will address the petitioners' concerns and allow manufacturers more flexibility to allocate their resources better. We agree with the petitioners that some vehicles will need significant redesign to comply with other FMVSSs such as pickup trucks with auxiliary seats that will now have to meet FMVSS Nos. 210, ''Seat belt assembly anchorages'' and 225, ''Child restraint anchorage systems,'' requirements. For some vehicles, structural reinforcement to the vehicle's body may be needed at the attachment location for the seat belt and child restraint anchorage hardware to assure compliance with the respective standards.

We are not persuaded by the petitioners' request for a phase-in of the requirements. Based upon our prior fleet assessment, we continue to believe only a small percentage of vehicles do not comply with the new requirements. Hence, a phase-in based on a manufacturer's complying production volume would add little safety benefit. However, because some vehicles would require considerable redesign to comply with the new definition, we believe that providing an additional year of lead time is a more practical approach.

IV. How NHTSA's Regulations May Give Rise to a Judicial Finding of Preemption

Before addressing the merits of the petitions related to preemption, we review the state of the law concerning the circumstances in which our regulations may give rise to a judicial finding of preemption of State

[3] The AAJ petition was jointly filed by the AAJ, the Association of Trial Lawyers of America—New Jersey, Consumer Attorneys of California, Consumers for Auto Reliability and Safety, the New York State Trial Lawyers Association, the Pennsylvania Association for Justice, and the Washington State Trial Lawyers Association. Public Citizen's petition was filed jointly by Public Citizen and the Consumer Federation of America.

[4] See 70 FR 36094 (June 22, 2005).

requirements. First, the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) contains a clause expressly preempting non-identical state statutes and regulations, now codified at 49 U.S.C. 30103(b)(1). This express preemption clause prevents States from enacting safety statutes or administratively issuing safety regulations that address the same aspect of performance as Federal motor vehicle safety standards issued by NHTSA, but are not identical to those Federal standards.

Second, Federal laws and regulations may be found to impliedly preempt State law in two ways. Federal law preempts State law if compliance with both the State and Federal standards are impossible. In addition, Federal law preempts State law if, for example, State tort actions create an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

In *Geier* v. *American Honda Motor Co.,* the Supreme Court specifically addressed the possible preemptive effect of the Safety Act in combination with one of the FMVSSs issued under that Act, on common law tort claims. The issue before the court was whether the Safety Act, in light of FMVSS No. 208, preempted a lawsuit claiming a 1987 car was defective for lacking a driver air bag. When the car was manufactured, FMVSS No. 208 had required manufacturers to equip some, but not all, of their vehicles with passive (i.e., automatic) restraints.

The conclusions in *Geier* can be summarized as follows:

- The Safety Act's provision expressly preempting state ''standards'' does not preempt common law tort claims. The issue of whether the term ''standards'' includes tort law actions is resolved (in the negative) by another provision in the Safety Act—the ''savings'' clause. That provision states that ''[c]ompliance with'' a Federal safety standard ''does not exempt any person from any liability under common law.'' There would not be any common law tort claims for the provision to save if the ''standards'' in the express preemption provision were read to include those claims.
- The savings clause preserves those tort actions that seek to establish greater safety than the minimum safety achieved by a FMVSS intended to provide a floor.
- The savings clause does not bar the working of conflict preemption principles. Further, neither the express preemption provision nor the saving provision, whether read singly or together, create some kind of ''special burden'' beyond that inherent in ordinary preemption principles that would specially favor or disfavor preemption. The two provisions, read together, reflect a neutral policy, not a specially favorable or unfavorable policy, toward the application of ordinary conflict preemption principles.
- The preemption provision and the savings clause are countervailing provisions. The preemption provision reflects a desire to subject the industry to a single, uniform set of FMVSSs. On the other hand, the savings clause reflects a congressional determination that occasional nonuniformity is a small price to pay for a system in which juries not only create, but also enforce, safety standards, while simultaneously providing necessary compensation to victims. Nothing in any natural reading of the two provisions favors one set of policies over the other where a jury-imposed safety standard actually conflicts with a FMVSS.
- A court should not find preemption too readily in the absence of clear evidence of a conflict.
- The Court provided limited guidance, beyond dealing with ''no airbag'' cases, on what types of circumstances could create a conflict under the Safety Act, and how concrete a conflict must be.
- The common-law ''no airbag'' action before the Court was found to be preempted because it actually conflicted with FMVSS No. 208. In reaching that conclusion, the Court devoted considerable attention to the Department of Transportation's detailed explanation of the ''significant considerations'' underlying FMVSS No. 208's regulatory approach, and observed how the standard reflected these considerations. The standard sought a gradually developing variety of passive restraint devices for statutorily relevant reasons including safety and public acceptability. The rule of state tort law sought by the petitioner would have constrained the variety of passive restraint devices by requiring manufacturers of all similar cars to install a single type of device, an air bag, instead of other types of passive restraint systems, thereby presenting an obstacle to the variety and mix of devices that the FMVSS sought.

V. Agency Response to Petitions Regarding Preemption

We find merit in Public Citizen's argument that an actual conflict may never arise with respect to pronouncements in state tort law decisions regarding the appropriate number of designated seating positions. We stated in our October 2008 final rule that a tort law judgment premised on a view that a motor vehicle needed to have more DSPs than the number contemplated by our definition could have a negative safety effect. Such an effect would occur if, in response to such a tort law judgment, manufacturers installed an excessive number of seat belts. We said further that such installation could decrease comfort or make use of seat belts difficult, making it less likely that an occupant would use his or her respective seat belt, thereby reducing overall safety.

However, as Public Citizen noted, in estimating compliance costs in our October 2008 final rule, we opined that, because adding seat belts would be more expensive, manufacturers would be more likely to implement the revised DSP definition by reducing seat width or installing an impediment in affected vehicles to discourage people from sitting between seats.[5] Public Citizen argued that if the manufacturers took either of those two steps, the resulting vehicle designs would not contain ambiguous seating space and thus would be unlikely to give rise to State tort law decisions premised on a view that a motor vehicle was equipped with an insufficient number of seat belts.

We agree. Even if there were State tort law decisions requiring more DSPs than the number contemplated by our definition, we believe that the manufacturers would likely respond in the same way that they will respond to the changes mandated by our October 2008 final rule. That is, because of the higher cost of adding lap/shoulder seat belts, we believe that it is unlikely that a manufacturer will increase the number of DSPs in a vehicle and install an excessive number of seat belts. Instead, we believe the most likely responses by manufacturers will be to either install an impediment or void in vehicles or decrease seating surface width.[6] Because manufacturers' most likely response to an adverse State tort law decision would not be to increase the number of DSPs and install an excessive number of seat belts in vehicles, we believe it is very unlikely that a tort law judgment would actually conflict with our DSP definition.

Moreover, we have no knowledge of any State tort law decision that might conflict with the October 2008 final rule. In the final rule, we noted that no State or local governmental entities submitted comments on our proposed rule. We also contacted organizations representing interests of State and local governments and officials about the

[5] See 73 FR 58887, at 58893.

[6] See 73 FR 58887, at 58893.

rulemaking. We received a response from the National Conference of State Legislatures indicating that they had no comments. We have no knowledge of any pending State tort litigation that could potentially conflict with the October 2008 final rule.

We also observe that that the procedures for measuring seats and calculating the appropriate number of DSPs make it unlikely that a State law or determination could conflict with the new DSP definition. The calculation of the number of DSPs on a bench seat with a seating surface width of less than 1400 mm is generally based upon the number of 5th percentile adult females that could occupy a seat. Thus, for a seat surface width of 1050 mm or more, there would be three DSPs. We believe it unlikely that any State law or determination would require three DSPs in a seating space of less than 1050 mm because it would be difficult for three adults to sit in such a small space.

Thus, we have no reason to believe that any existing State tort law determination conflicts with our manner of calculating the appropriate number of DSPs set forth in the October 2008 final rule, nor do we have any reason to anticipate that a future State tort law decision will create such a conflict. In the absence of such a conflict, there can be no preemption of State tort law. Accordingly, we have removed the regulatory text preempting State law, including State tort law determinations, premised on there being more DSPs than the number contemplated by the new definition.

Petitioner AAJ also sought removal of the regulatory text preempting State law, contending that NHTSA lacks the statutory authority to issue regulations that preempt State tort law. In view of the forgoing discussion, we need not address this contention in the context of this rulemaking.

VI. Technical Correction

The petitions for reconsideration filed by SAE International, the Alliance, and AIAM pointed out a technical error in the regulation setting forth the formula for calculating the number of designated seating positions. These petitions noted that 49 CFR 571.10(b)(1) and (b)(2) each refer to ''paragraph (d),'' which does not exist, and that the reference was probably intended to refer to § 571.10(c). The petitioners are correct. Accordingly, we are amending § 571.10(b)(1) and (b)(2) to correct this error.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The changes made by this final rule do not affect the costs and benefits estimated for our October 2008 final rule.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The changes made by this final rule do not affect the costs and benefits estimated for our October 2008 final rule. For these reasons, the agency has not prepared a new or revised regulatory flexibility analysis.

C. Executive Order No. 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government.'' Further, no consultation is needed to discuss the issue of preemption in connection with today's rule. For a discussion of that issue, see the main portion of this preamble.

D. Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit or petition for review of this regulation in court.

E. National Environmental Policy Act

NHTSA has analyzed this final rule 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.

F. Paperwork Reduction Act

This amendment does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This final rule does not establish or amend a technical standard.

H. 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 rulemaking will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

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.

K. Privacy Act

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

List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

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

■ 2. Amend section 571.3 as follows:

■ a. In paragraphs (1) and (2) of the definition of ''Designated seating position'' in paragraph (b), remove the date ''September 1, 2010'' and add in its place the date ''September 1, 2011''; and

■ b. Remove paragraph (c).

■ 3. Amend section 571.10 by removing from paragraphs (b)(1) and (b)(2) the phrase ''paragraph (d)'' and adding in its place the phrase ''paragraph (c)''.

Issued on: December 11, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–30440 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130102–91386–02]

RIN 0648–XT01

Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Longline Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2009 catch limit.

DATES: Effective December 29, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Region, 808–944–2219.

SUPPLEMENTARY INFORMATION: This rule is also accessible at *www.gpoaccess.gov/fr.*

Pelagic longline fishing in the western and central Pacific Ocean is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act (Act). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart O.

NMFS established a limit for calendar year 2009 of 3,763 metric tons (mt) of bigeye tuna (Thunnus obesus) that may be caught and retained in the U.S. pelagic longline fishery in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area), codified at 50 CFR 300.224 (74 FR 63999, December 7, 2009). NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 2009 catch limit is expected to be reached by December 29, 2009. In accordance with § 300.224(d), this rule serves as advance notification to fishermen, the fishing industry, and the general public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed from December 29, 2009, through the end of the calendar year. The 2010 fishing year is scheduled to open on January 1, 2010; the 2010 bigeye tuna catch limit will be 3,763 mt. This rule does not apply to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI), as described below.

During the closure, a U.S. fishing vessel may not retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except that any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and landed, provided that they are landed within 14 days of the start of the closure (i.e., January 12, 2010). This 14–day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to 50 CFR 665.23(a), that the current trip type is shallow-setting.

Furthermore, bigeye tuna caught by longline gear may be retained on board, transshipped, and landed if the fish are caught by a vessel registered for use under a valid NMFS-issued American Samoa Longline Limited Access Permit or if they are landed in American Samoa, Guam, or the CNMI, under the following conditions:

(1) The bigeye tuna must not have been caught in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago;

(2) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(3) The bigeye tuna must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

During the closure, a U.S. vessel is also prohibited from transshipping bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated with a valid permit issued under 50 CFR 660.707 or 665.21.

The catch limit and this closure do not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. To ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, however, the following requirements apply:

(1) A U.S. fishing vessel may not be used to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress on December 29, 2009. In that case, the catch of bigeye tuna must be landed by January 12, 2010; and

(2) If a U.S. vessel is used to fish using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a