(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

* * * * *

[FR Doc. 2012–21314 Filed 8–29–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2012–0078]

RIN 2127–AL19

Make Inoperative Exemptions; Retrofit On-Off Switches for Air Bags

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

ACTION: Final rule.

SUMMARY: NHTSA has a regulation that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. This regulation is only available for motor vehicles manufactured before September 1, 2012. This document extends the availability of this regulation for three additional years, so that it applies to motor vehicles manufactured before September 1, 2015.

DATES: *Effective Date:* This rule is effective August 30, 2012. *Petitions:* Petitions for reconsideration must be received by October 15, 2012.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Ms. Carla Rush, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–1740, fax 202–493–2739).

For legal issues: Mr. William Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–2992, fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

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I. Background [1]

To prevent or mitigate the risk of injuries or fatalities in frontal crashes, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection'' (49 CFR 571.208), requires that vehicles be equipped with seat belts and frontal air bags.

In the 1990s, while air bags proved to be highly effective in reducing fatalities from frontal crashes, they were found to cause a small number of fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes.[2] To address this problem, NHTSA developed a plan that included an array of immediate, interim and long-term measures. As one of the interim measures, on November 21, 1997, NHTSA published in the **Federal Register** (62 FR 62406) a final rule permitting motor vehicle dealers and repair businesses to install retrofit on-off switches for frontal air bags in vehicles owned by or used by persons whose request for a switch had been approved by the agency (subpart B of 49 CFR Part 595). This rule provided a limited exemption from a statutory provision that generally prohibits motor vehicle dealers and repair businesses from making inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable FMVSS.[3]

Under the procedures set forth in the 1997 rule, vehicle owners can request a retrofit air bag on-off switch by completing an agency request form (Appendix B of Part 595) and submitting the form to the agency. Owners must certify that they have read the information brochure, in Appendix A of Part 595, discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The agency developed the brochure to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch.[4] Owners also must certify that they or another user of their vehicle is a member of one of the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on the request form for each frontal air bag to be equipped with a retrofit air bag on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to a dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The retrofit air bag on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair

[1] For a more detailed discussion, see the June 8, 2012 Notice of Proposed Rulemaking (77 FR 33998).

[2] See preamble to agency final rule on advanced air bags, 65 FR 30680, 30682–83, May 12, 2000.

[3] The ''make inoperative'' provision is at 49 U.S.C. 30122.

[4] At NHTSA's request, an expert panel of physicians convened to formulate recommendations on specific medical indications for air bag deactivation. The panel concluded that air bags are effective lifesavers and that a medical condition does not warrant turning off an air bag unless the condition makes it impossible for a person to maintain an adequate distance from the air bag. Specifically, the panel recommended disconnecting an air bag if a safe sitting distance or position cannot be maintained by a: driver or front passenger because of scoliosis, osteoporosis/arthritis; driver because of achondroplasia; or passenger because of Down syndrome and atlantoaxial instability. The panel also warranted the disconnection of air bags if the need for wheelchair related modifications made it necessary or if there is a medical condition that requires an infant or child to be placed in the front passenger seat for monitoring purposes. (The Ronald Reagan Institute of Emergency Medicine Department of Emergency Medicine and The National Crash Analysis Center, ''National Conference on Medical Indications for Air Bag Disconnection,'' July 16–18, 1997.)

business must then fill in information about itself and its installation in a form in the letter and return the form to the agency.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30680) its final rule to require advanced frontal air bags. The rule required that future air bags be designed to reduce the risk of serious air bag-induced injuries compared to then-current air bags, particularly for small-statured women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

In the preamble to the May 2000 advanced air bag final rule, the agency decided to continue the exemption procedures for retrofit air bag on-off switches for vehicles manufactured through August 31, 2012. This provided time to allow manufacturers to perfect the suppression and low-risk deployment systems for air bags in all of their vehicles. It also provided a number of years to verify the reliability of advanced air bags based on real-world experience.

NHTSA also indicated in the advanced air bag final rule that there would be a need for deactivation of some sort (via on-off switch or permanently) for at-risk individuals who cannot be accommodated through sensors or other suppression technology (such as individuals with disabilities or certain medical conditions). The agency stated at that time that it believed such needs could be best accommodated through the authorization system for deactivation of air bags in current use by NHTSA (65 FR at 30722).

In addition to the exemption provided by subpart B of Part 595, on February 27, 2001, NHTSA published a final rule in the **Federal Register** (66 FR 12638) providing a limited exemption from the make inoperative prohibition covering various provisions in a number of safety standards, to facilitate the mobility of persons with disabilities. This disability exemption, which is in subpart C of Part 595, permits the installation of air bag on-off switches or the permanent disconnection of air bags in certain, significantly more limited circumstances than provided for in subpart B of that part. However, unlike subpart B, prior agency approval is not required for an exemption under subpart C.

II. NPRM Summary

On June 8, 2012, the agency published a Notice of Proposed Rulemaking (NPRM) to extend the availability of the existing regulation (Subpart B of 49 CFR part 595) that permits motor vehicle dealers and repair businesses to install retrofit on-off switches for air bags in vehicles owned by or used by persons whose request for a switch has been approved by the agency. The proposed extension was for three additional years, so that it would apply to motor vehicles manufactured before September 1, 2015 (77 FR 33998; Docket No. NHTSA–2012–0078).

The NPRM stated that the agency plans to use the three-year extension to evaluate several aspects of the regulation. Specifically, the agency would evaluate the criteria for granting the retrofit on-off switches (at-risk groups) in light of the existence of advanced air bag technology and the retrofit switch brochures and forms that were included in Part 595. The agency would also consider other topics that have arisen over the years such as our continued use of prosecutorial discretion for circumstances not covered by Part 595 (e.g., the application of retrofit switches for emergency and law enforcement vehicles).

The NPRM also explained that given the imminence of the September 1, 2012 date, it would not be possible for the agency to complete the necessary evaluation and possible rulemaking before that time, and the extension would avoid any gap in the availability of the retrofit on-off air bag switches while the agency considers further rulemaking that could permanently allow such switches in specified circumstances. The agency expects to be able to fully analyze the issues surrounding such a rulemaking within these three additional years.

III. Discussion of Comments and Agency Decision

The comment period for the NPRM closed on July 9, 2012. The agency received two comments. Advocates for Highway and Auto Safety (Advocates) supported the proposed extension.[5] Advocates stated that although advances in air bag design and other vehicle safety systems have minimized the need for air bag on-off switches, the organization recognized a continuing need for on-off switches to accommodate certain at-risk individuals who could not be accommodated by current technologies, including individuals with disabilities or certain medical conditions, as well as younger passengers in child restraint systems in vehicles without rear seats. Advocates asserted that a three-year extension of the exemption procedures to allow timely review of the regulation by the agency will pose minimal risk and permit the regulation to be updated to reflect state-of-the-art safety technology.

The National Automobile Dealer Association (NADA), an organization representing automobile and truck dealers, urged NHTSA to conduct a more expeditious evaluation of the air bag on-off exemption regulation than the three-year period proposed in the NPRM.[6] NADA asserted that it should not take NHTSA long to conduct an analysis of the number and nature of switch installation and air bag deactivation requests received since the regulation was promulgated. NADA cited anecdotal evidence that information requests submitted to NADA by dealerships regarding the air bag on-off exemption have dropped to near zero. NADA asserted that this evidence indicated a drop in demand for retrofit on-off switches and air bag deactivations consistent with the rate at which advanced air bags and switch-equipped two-passenger vehicles have penetrated the market.

The agency has considered NADA's comments urging a more expeditious evaluation period than the three year period proposed in the NPRM. However, the agency declines to adopt NADA's suggestion. NADA's reasoning is that a review of the number and nature of requests for exemptions should not take long, asserting that the organization's anecdotal evidence indicates a drop in demand for such exemptions.

First, the agency would like to emphasize that the demand for retrofit switches is certainly a factor that the agency will consider as we evaluate subpart B of part 595, but it is not the only factor the agency will be examining. We will also reexamine the at-risk groups in light of advanced air bag technology, the brochures and forms included in Part 595, and the need for the continued use of prosecutorial discretion for circumstances not covered by Part 595, among other things. Accordingly, the time needed to examine the demand for retrofit on-off switches does not reflect the total time needed to evaluate the issue.

Additionally, as explained in the NPRM, the three-year extension period is intended not only to provide the agency time to evaluate this issue, but to potentially conduct rulemaking to update subpart B. Finally, NADA did not describe any benefits that would result from a shorter extension period or any consequences associated with the three-year period proposed in the

[5] Advocates Comment, Docket No. NHTSA–2012–0078–0002.

[6] NADA Comment, Docket No. NHTSA–2012–0078–0003.

NPRM. Therefore, for the reasons expressed in the NPRM, this final rule adopts the three-year extension period proposed in the NPRM and amends Subpart B of 49 CFR Part 595 to extend the availability of retrofit on-off switches for air bags so that it will apply to motor vehicles manufactured before September 1, 2015.

IV. Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866, E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563, and the Department of Transportation's regulatory policies and procedures (44 FR 11034 (Feb. 26, 1979)). This action was not reviewed by the Office of Management and Budget under these executive orders. It is not considered to be significant under the Department's regulatory policies and procedures.

This document delays the sunset date of an existing exemption for retrofit on-off switches for frontal air bags. They are currently available, under specified circumstances, for vehicles manufactured before September 1, 2012. We are extending that date so that they will be available for vehicles manufactured before September 1, 2015.

This final rule does not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agrees to install an on-off switch for an air bag. For consumers, the purchasing and installation of on-off switches is permissive, not prescriptive.

When an eligible consumer obtains the agency's authorization for the installation of a retrofit on-off switch and a dealer or repair business agrees to install the switch, there will be costs associated with that action. The agency estimates that the installation of an on-off switch would typically require less than one hour of shop time, at the average national labor rate of approximately $80 per hour. NHTSA estimates that the cost of an air bag on-off switch for one seating position is $51 to $84 and the cost of an on-off switch for two seating positions is $68 to $101. The agency estimates that approximately 500 air bag on-off switch requests are received and authorized annually. However, we are uncertain about how many people actually pay to get them installed after we authorize it. Given the relatively low number of vehicle owners who will ultimately get the retrofit air bag on-off switches installed and the above estimated costs, the annual net economic impact of the actions taken under this final rule will not exceed $100 million per year.

Moreover, given the above, the fact that this has been a longstanding exemption available for consumers and since the agency is merely extending the availability of this exemption for an additional three years of vehicle production, the impacts are so minimal that a full regulatory evaluation is not needed.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule would merely extend the sunset provision in Subpart B of Part 595. No other changes are being made in this document. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this action will be insignificant.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's 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 rulemaking 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 does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Today's final rule does not impose any additional requirements. Instead, it delays the sunset date of an existing exemption for retrofit on-off switches for frontal air bags, thereby lessening burdens on the exempted entities.

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: when a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance. This provision is not relevant to this final rule as this final rule does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard. However, general principles of preemption law could apply so as to displace any conflicting state law or regulations. We are unaware of any State law or action that would prohibit the actions that this exemption would permit.

This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between a NHTSA regulation and the higher standard that would effectively be imposed on regulated entities if someone obtained a State common law tort judgment against a regulated entity, notwithstanding the regulated entity's compliance with the NHTSA regulation. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on regulated entities will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Although this final rule does not establish, amend, or revoke an FMVSS,

NHTSA has considered, pursuant to Executive Orders 13132 and 12988, whether this final rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's final rule and finds that this final rule would increase flexibility for certain exempted entities. As such, NHTSA does not intend that this final rule would preempt state tort law that would effectively impose a higher standard on regulated entities than that would be established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the exemption. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. Unfunded Mandates Reform Act

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 annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing a final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.'' This final rule will not result in a Federal mandate that will likely 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 annually for inflation, with base year of 1995).

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. Executive Order 12778 (Civil Justice Reform)

When promulgating a regulation, agencies are required under Executive Order 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

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

G. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Several of the conditions placed by this exemption from the make inoperative prohibition are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320. Specifically, this exemption from the make inoperative prohibition for motor vehicle dealers and repair businesses is conditioned upon vehicle owners filling out and submitting a request form to the agency, obtaining an authorization letter from the agency and then presenting the letter to a dealer or repair business. The exemption is also conditioned upon the dealer or repair business filling in information about itself and the installation of the retrofit on-off switch in the form provided for that purpose in the authorization letter and then returning the form to NHTSA. These information collection requirements in Part 595 have been approved by OMB (OMB Control No. 2127–0588) through June 30, 2013, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). NHTSA will request an extension of this approval in a timely manner.

H. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and 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. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this rule.

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 isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in promulgating this final rule.

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

Petitions for reconsideration will be placed in the docket. Anyone is able to search the electronic form of all petitions received into any of our dockets by the name of the individual submitting the petition (or signing the

petition, 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).

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

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

PART 595—MAKE INOPERATIVE EXEMPTIONS

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

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

■ 2. Amend § 595.5 by revising paragraph (a) to read as follows:

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2015, by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section.

* * * * *

Issued on: August 24, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–21468 Filed 8–29–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XC196

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit for the commercial sector of king mackerel in the eastern zone of the Gulf of Mexico (Gulf) in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, August 30, 2012, through June 30, 2013, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the king mackerel Gulf migratory group's Florida west coast subzone of the Gulf eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 197,064 lb (89,397 kg) (50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

The regulations at 50 CFR 622.44(a)(2)(ii)(B)(*2*), provide that when 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has projected that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone will be reached by August 30, 2012. Accordingly, a 500-lb (227-kg) trip limit applies to vessels in the commercial sector for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, August 30, 2012. The 500-lb (227-kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2013), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31.1′ W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment could result in a harvest well in excess of the established quota. Immediate implementation of this action is needed to protect the fishery.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–21426 Filed 8–27–12; 4:15 pm]

BILLING CODE 3510–22–P