* * * * *

[FR Doc. 2014–15886 Filed 7–8–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2014–0069]

RIN 2127–AL17

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities; Ejection Mitigation; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule, technical correction.

SUMMARY: This final rule amends NHTSA regulations to include a new exemption relating to the Federal motor vehicle safety standard for ejection mitigation, and to correct a reference regarding the standard for lamps, reflective devices and associated equipment. The exemptions facilitate the mobility of physically disabled drivers and passengers.

DATES: *Effective date:* The date on which this final rule amends the CFR is September 8, 2014.

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be received at the address below by August 25, 2014.

ADDRESSES: If you wish to petition for reconsideration of this rule, submit your petition to the following address so that it is received by NHTSA by the date above: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. You should refer in your petition to the docket number of this document. The petition will be placed in the docket. Note that all submissions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

FOR FURTHER INFORMATION CONTACT: Christopher J. Wiacek, NHTSA Office of Crash Avoidance Standards, NVS–123 (telephone 202–366–4801), or Deirdre Fujita, NHTSA Office of Chief Counsel, NCC–112 (telephone 202–366–2992). The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In response to a petition for rulemaking from Bruno Independent Living Aids (Bruno), this final rule amends 49 CFR Part 595, Subpart C, ''Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities,'' to include a new exemption relating to FMVSS No. 226, ''Ejection mitigation.'' This document also corrects a reference in the part to FMVSS No. 108, ''Lamps, reflective devices and associated equipment.'' The notice of proposed rulemaking (NPRM) preceding this final rule was published on October 26, 2012 (77 FR 65352).

Background

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) (''Safety Act'') and NHTSA's regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112; 49 CFR part 567) at the time of manufacture. A vehicle manufacturer, distributor, dealer, or repair business, except as indicated below, may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS (*see* 49 U.S.C. 30122). NHTSA has the authority to issue regulations that exempt regulated entities from the ''make inoperative'' provision (49 U.S.C. 30122(c)). The agency has used that authority to promulgate 49 CFR part 595, ''Make Inoperative Exemptions.''

49 CFR part 595, subpart C, sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale. The regulation was promulgated to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. The regulation involves information and disclosure requirements and limits the extent of modifications that may be made. Details of the regulation are described in the October 26, 2012 NPRM.

FMVSS No. 226, ''Ejection Mitigation''

On January 19, 2011,[1] the agency published a final rule establishing FMVSS No. 226, ''Ejection Mitigation,'' to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. The standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less.[2]

To assess compliance with FMVSS No. 226, an impactor is propelled from inside a test vehicle toward the windows. The ejection mitigation safety system is required to prevent the impactor from moving more than a specified distance beyond the plane of a window. In the test, the countermeasure must retain the linear travel of the impactor such that the impactor must not travel 100 millimeters beyond the location of the inside surface of the vehicle glazing. This displacement limit serves to control the size of any gaps forming between the countermeasure (e.g., the ejection mitigation side curtain air bag) and the window opening, thus reducing the potential for both partial and complete ejection of an occupant.

The agency believes that vehicle manufacturers will meet the standard by means of side curtain air bag technology, and possibly supplement the technology with advanced glazing. Existing side impact air bag curtains (installed pursuant to FMVSS No. 214, ''Side impact protection'') will be made larger so that they cover more of the window opening, made more robust to remain inflated longer, and made to deploy in both side impacts and in rollovers using sensor technology.[3]

FMVSS No. 226 is a new regulation and currently, 49 CFR Part 595 does not provide for an exemption for vehicles that are modified to accommodate people with disabilities.

NPRM

On October 26, 2012, NHTSA published an NPRM[4] in the **Federal Register** responding to a petition for rulemaking from Bruno requesting NHTSA to amend § 595.7 to include an exemption from the requirements of FMVSS No. 226. The NPRM granted the petition and proposed to amend the regulation.

Bruno manufactures a product line it calls ''Turning Automotive Seating (TAS),'' which replaces the seat installed by the original equipment manufacturer (OEM). In its petition, Bruno states that the purpose of TAS is

[1] 76 FR 3212; response to petitions for reconsideration, 78 FR 55138 (September 9, 2013).

[2] Certain vehicles are excluded from the standard.

[3] NHTSA estimates the new FMVSS No. 226 requirements will save 373 lives and prevent 476 serious injuries per year. The final rule adopted a phase-in of the new requirements, which started September 1, 2013.

[4] 77 FR 65352, October 26, 2012.

''to provide safe access to private motor vehicles for mobility-impaired drivers or passengers, semi-ambulatory or transferring from a wheelchair. The Bruno TAS replaces the OEM seat in a sedan, minivan, van, pickup, or SUV.'' A detailed description of the TAS system can be found in the NPRM.

In its petition, Bruno referred to another NHTSA rulemaking (that has since resulted in a final rule [5]) amending the part 595 regulation, pertaining to the moving deformable barrier (MDB) and pole tests of FMVSS No. 214 (§ 595.7(c)(15)). The final rule provided an exemption from the MDB and pole test requirements as applied to a designated seating position that is modified by changing the restraint system and/or seat at that position to accommodate a person with a disability. Bruno states in its current petition that FMVSS No. 226 will enhance the side air bag technology of FMVSS No. 214, and that these enhanced side air bags present much of the same difficulties when accommodating the transportation needs of mobility impaired persons as the difficulties discussed in the rulemaking for FMVSS No. 214.

In the October 26, 2012 NPRM, NHTSA proposed to amend § 595.7(c) to add an exemption for FMVSS No. 226.[6] However, we indicated in the preamble that the agency did not fully agree with Bruno's statements about the need for an exemption from ejection mitigation requirements when the vehicle's OEM seat was replaced by a TAS seat. In NHTSA's view, FMVSS No. 226 is not affected by torso air bags or seat components, so the fact that the OEM seat would be replaced did not seem germane. NHTSA did not understand why removing the original seat and replacing it with a TAS seat would negatively impact the performance of the curtain air bags certified as meeting FMVSS No. 226.

Nonetheless, the agency did acknowledge in the NPRM that the side impact sensing and electronic architecture system could be integrated with that of the ejection mitigation rollover protection system. Thus, NHTSA acknowledged the possibility that, in the process of modifying or replacing a seat to accommodate a person with a disability, the FMVSS No. 214 side impact air bag system could be deactivated, which could tangentially deactivate the FMVSS No. 226 rollover ejection mitigation system. Thus, NHTSA stated, for vehicles in which the seat is modified or replaced, it may not be practical to exempt them from the side impact requirements and not from ejection mitigation requirements. In the NPRM, NHTSA sought comment on the need for the requested exemption, and asked questions as to whether deactivating the side impact protection system would also deactivate the ejection mitigation system, and whether an exemption could only be for the ejection mitigation countermeasure (curtains) on the side of the vehicle affected by the modification, rather than for both sides.

Response to the NPRM

The agency received one comment on the NPRM. The comment was from the National Mobility Equipment Dealers Association (NMEDA),[7] which supports the proposed FMVSS No. 226 exemption. NMEDA states that aftermarket seats differ in dimension/geometry from the original equipment seat and may be positioned differently in the vehicle. The commenter states that a wider or higher aftermarket seat, or seat placement, could hinder the deployment of the ejection mitigation side curtain air bags. NMEDA also states that some modifiers move the vehicle seat outward to provide more center row space for a wheelchair. The commenter states that since relocating the seat in this way may affect the proper deployment of the curtain air bag, some modifiers deactivate the air bag on the affected side of the vehicle. NMEDA states: ''Deactivation of side curtain airbags is often done by removing the airbag and installing a Shunt that provides the proper feedback to the 214 control module.'' (A shunt is a device that allows electric current to pass around another point in the circuit by creating a low resistance path.)

NMEDA also states that some modifications involve modifying the occupant restraint system (seat belt) for a seating position, such as when the original restraint system is integrated into the OEM seat and the OEM seat is removed. The commenter states that modifiers have to mount a new restraint system to the upper side roof rail of the vehicle, which ''could affect the deployment of a 226 airbag [sic].''

Additionally, NMEDA states: ''Since the technical specifications of the OEM 226 control modules are not available to modifiers, a modifier would not know whether the deactivation of one side of the vehicle's curtain airbags also deactivates the other side.''

Agency Decision

The agency has determined that there is merit to Bruno's request to amend § 595.7 to add an exemption from the ejection mitigation requirements and thus has decided to adopt the proposed amendment. NMEDA's comment indicates that it is common for modifiers to deactivate or remove the side curtain air bag that is packaged in the headliner roof rail to make modifications to the seat belt to accommodate a disabled driver or passenger or to install a new seating system. To date, the side curtain air bag is the primary OEM countermeasure installed to meet FMVSS No. 226. Since the countermeasure would be deactivated or removed, an exemption from FMVSS No. 226 is warranted to facilitate transportation of people with disabilities. Further, modifiers are permitted by § 595.7 (see § 595.7(c)(15)) to deactivate or remove the OEM side curtain air bag installed in compliance with FMVSS No. 214. If the side curtain air bag were deactivated or removed from the vehicle, maintaining compliance with FMVSS No. 226 would not be possible.

That said, we recognize that the requested amendment presents a trade-off of substantial ejection mitigation protection in exchange for continued mobility for people with disabilities. The agency is concerned about the negative effect an exemption may have on the safety benefits afforded to occupants.

In an effort to balance the mobility needs of people who need vehicle modifications to accommodate a disability with the performance requirements of FMVSS No. 226, the exemption we have adopted is limited. Vehicle manufacturing designs generally utilize one ejection mitigation curtain air bag per side to protect the front and the rear rows. If the side curtain air bag must be made inoperative on one side of the vehicle to accommodate a disabled person, we are not convinced that the side curtain air bag on the other side of the vehicle needs to be made inoperative as well.

NHTSA believes it is necessary to maintain as much as possible the integrity of the ejection mitigation safety system for the side of the vehicle that is not altered. From NMEDA's comments, it appears possible to isolate and only deactivate the altered side of the vehicle using a shunt. Several major

[5] 76 FR 37025, June 24, 2011.

[6] NHTSA proposed that the exemption would only be for the side of the vehicle where a seat must be changed to accommodate a person with a disability.

[7] NMEDA is an association representing vehicle repair businesses (modifiers) and vehicle manufacturers that provide mobility to consumers with disabilities.

manufacturers [8] provide, on the internet, information related to modifying vehicles for mobility purposes. We encourage modifiers to contact the respective manufacturer or seek other information to obtain the technical know-how to deactivate one side of the vehicle's curtain air bags without deactivating the other side.

Thus, we amend § 595.7(c) to add § 595.7(c)(17), and only exempt from S4.2 and S5 of 49 CFR 571.226 the side of the vehicle where a seat on that side of the vehicle must be changed to accommodate a person with a disability. A modifier may not knowingly make inoperative the side curtain air bag on the opposite side of the vehicle.

Technical Amendment

On December 4, 2007, the agency published a final rule (72 FR 68234) amending FMVSS No. 108, ''Lamps, reflective devices, and associated equipment'' (49 CFR 571.108), by reorganizing the regulatory text so that the standard provides a more straightforward and logical presentation of the applicable regulatory requirements. The final rule did not impose any new substantive requirements on manufacturers. The effective date of the rule was December 1, 2012.

FMVSS No. 108 includes a requirement that a turn signal operating unit installed on vehicles must be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control. The requirement used to be in S5.1.1.5 of FMVSS No. 108, but after the 2007 final rule it is now in S9.1.1 of the standard.

Following the 2007 final rule, the agency did not revise § 595.7 to reflect the reorganized text of the lighting standard in the make inoperative exemption relating to FMVSS No. 108. Currently, § 595.7(c)(2) references S5.1.1.5 of FMVSS No. 108, when the correct paragraph reference is S9.1.1. Today's final rule corrects § 595.7(c)(2) to reference S9.1.1 of FMVSS No. 108.

Effective Date

As this final rule relieves the regulatory burdens on certain entities and involves FMVSS requirements that have already become effective, the agency believes that a 60-day effective date is appropriate.

[8] *http://www.fordmobilitymotoring.com, http://www.gmmobility.com, http://www.chryslerautomobility.com*, and *http://toyotamobility.com.*

Rulemaking Analyses and Notices

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

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has determined that the effects are so minor that a regulatory evaluation is not needed to support the subject rulemaking. This rulemaking imposes no costs on the vehicle modification industry. If anything, there could be a cost savings due to the exemption.

Modifying a vehicle in a way that makes inoperative the performance of ejection mitigation air bags will reduce the protections offered occupants in a rollover. However, the number of vehicles potentially modified is very small. This is essentially the trade-off that NHTSA is faced with when increasing mobility for persons with disabilities: When necessary vehicle modifications are made, some safety may unavoidably be lost to gain personal mobility. The agency has made the exemption adopted today as narrow as reasonably possible, to preserve ejection mitigation protection as much as possible.

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 rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

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

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 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 final 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 responsibilities among the various levels of government.'' This rule will not impose any requirements on anyone and instead lessens a requirement for modifiers.

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that when a motor vehicle safety standard is in effect under 49 U.S.C. chap. 301, 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 Chapter 301. 49 U.S.C. 30103(b)(1). This provision is not relevant to this rulemaking as it does not involve the establishing, amending or revoking of a Federal motor vehicle safety standard.

Second, the Supreme Court has recognized the possibility, in some

instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. We are unaware of any State law or action that would prohibit the actions that this final rule permits.

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 rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This exemption does not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR Part 595, Subpart C. An entity taking advantage of the exemption will simply list FMVSS No. 226 in the document described in 49 CFR 595.7(b).

Plain Language

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

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

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

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.

Privacy Act

Anyone is able to search the electronic form of all submissions to 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).

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 595 to read as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

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

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 595.7 by revising paragraph (c)(2) and adding paragraph (c)(17) to read as follows:

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

* * * * *

(c) * * *

(2) S9.1.1 of 49 CFR 571.108, in the case of a motor vehicle that is modified to be driven without a steering wheel or for which it is not feasible to retain the turn signal canceling device installed by the vehicle manufacturer.

* * * * *

(17) S4.2 and S5 of 49 CFR 571.226, on the side of the vehicle where a seat on that side of the vehicle must be changed to accommodate a person with a disability.

* * * * *

Dated: June 19, 2014.

David J. Friedman,

Acting Administrator.

[FR Doc. 2014–15901 Filed 7–8–14; 8:45 am]

BILLING CODE 4910–59–P