

(h) *Accuracy of docket entry.* A person filing a document by electronic means, or, if the filer is an attorney designee, the designating attorney, is responsible for ensuring the accuracy of the official docket entry generated by the eCRB system, including proper identification of the proceeding, the filing party, and the description of the document. The Copyright Royalty Board will maintain on its website ([www.loc.gov/crb](http://www.loc.gov/crb)) appropriate guidance regarding naming protocols for eCRB filers.

(i) *Documents subject to a protective order.* A person filing a document by electronic means must ensure, at the time of filing, that any documents subject to a protective order are identified to the eCRB system as “restricted” documents. This requirement is in addition to any requirements detailed in the applicable protective order. Failure to identify documents as “restricted” to the eCRB system may result in inadvertent publication of sensitive, protected material.

(j) *Exceptions to requirement of electronic filing—(1) Certain exhibits or attachments.* Parties may file in paper form any exhibits or attachments that are not in a format that readily permits electronic filing, such as oversized documents; or are illegible when scanned into electronic format. Parties filing paper documents or things pursuant to this paragraph must deliver legible or usable copies of the documents or things in accordance with § 303.6(a)(2) and must file electronically a notice of filing that includes a certificate of delivery.

(2) *Pro se parties.* A pro se party may file documents in paper form and must deliver and accept delivery of documents in paper form, unless the pro se party has obtained an eCRB password.

(k) *Privacy requirements.* (1) Unless otherwise instructed by the Copyright Royalty Judges, parties must exclude or redact from all electronically filed documents, whether designated “restricted” or not:

(i) *Social Security numbers.* If an individual’s Social Security number must be included in a filed document for evidentiary reasons, the filer must use only the last four digits of that number.

(ii) *Names of minor children.* If a minor child must be mentioned in a document for evidentiary reasons, the filer must use only the initials of that child.

(iii) *Dates of birth.* If an individual’s date of birth must be included in a

pleading for evidentiary reasons, the filer must use only the year of birth.

(iv) *Financial account numbers.* If a financial account number must be included in a pleading for evidentiary reasons, the filer must use only the last four digits of the account identifier.

(2) Protection of personally identifiable information. If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. In addition, parties may treat as confidential, and subject to the applicable protective order, other personal information that is not material to the proceeding.

(l) *Incorrectly filed documents.* (1) The Copyright Royalty Board may direct an eCRB filer to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

(2) If an attorney or a pro se party who has been issued an eCRB password inadvertently presents a document for filing in paper form, the Copyright Royalty Board may direct that person to file the document electronically. The document will be deemed filed on the date it was first presented for filing if, no later than the next business day after being so directed by the Copyright Royalty Board, the attorney or pro se participant files the document electronically. If the filer fails to make the electronic filing on the next business day, the document will be deemed filed on the date of the electronic filing.

(m) *Technical difficulties.* (1) A filer encountering technical problems with an eCRB filing must immediately notify the Copyright Royalty Board of the problem either by email, or by telephone, followed promptly by written confirmation.

(2) If a filer is unable, due to technical problems, to make a filing with eCRB by an applicable deadline, and makes the notification required by paragraph (m)(1) of this section, the filer shall use electronic mail to make the filing with the Copyright Royalty Board and deliver the filing to the other parties to the proceeding. The filing shall be considered to have been made at the time it was filed by electronic mail. The Copyright Royalty Judges may direct the filer to refile the document through eCRB when the technical problem has been resolved, but the document shall retain its original filing date.

(3) The inability to complete an electronic filing because of technical problems arising in the eCRB system may constitute “good cause” (as used in § 303.6(b)(4)) for an order enlarging time or excusable neglect for the failure to act

within the specified time, provided the filer complies with paragraph (m)(1) of this section. This section does not provide authority to extend statutory time limits.

Dated: December 15, 2020.

**Jesse M. Feder,**

*Chief Copyright Royalty Judge.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 595

[Docket No. NHTSA–2016–0031]

RIN 2127–AL67

#### Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities

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

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** In 2016, NHTSA published a notice of proposed rulemaking (NPRM) to amend our regulations, “Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities,” to include a new exemption relating to the Federal motor vehicle safety standard (FMVSS) for roof crush resistance. The exemptions facilitate the mobility of drivers and passengers with physical disabilities. This SNPRM expands the scope of NHTSA’s 2016 NPRM in two ways. First, it grants a petition from Bruno Independent Living Aids, Inc., and proposes to include in part 595 an exemption relating to the rear visibility requirements in FMVSS No. 111. Second, in response to an inquiry from Enterprise Holdings Co. (Enterprise), this document proposes to permit rental car companies to make inoperative a knee bolster air bag, on a temporary basis, to permit the temporary installation of hand controls to accommodate persons with physical disabilities seeking to rent the vehicle.

**DATES:** Comments concerning this SNPRM should be submitted early enough to ensure that the Docket receives them not later than January 27, 2021. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a revised information collection. See the Paperwork Reduction Act section under Regulatory Analyses

and Notices below. Comments concerning the revised information collection requirements are due February 26, 2021 to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9332 before coming.
- *Fax:* 202-493-2251.

Comments on the proposed information collection requirements should be submitted to: Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk office for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified at the heading of this document.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*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 (65 FR 19477-78).

For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. To be sure someone is there to help you, please call

(202) 366-9332 before coming. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:**

Gunyoung Lee, NHTSA Office of Crash Avoidance Standards (phone: 202-366-6005; fax: 202-493-0073); Daniel Koblenz, NHTSA Office of Chief Counsel (phone: 202-366-5329; fax 202-366-3820); or David Jasinski (phone: 202-366-5552; fax 202-366-3820. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

This SNPRM supplements an NPRM<sup>1</sup> published on March 11, 2016, proposing to amend 49 CFR part 595, subpart C to include a new exemption relating to FMVSS No. 216, "Roof crush resistance." This SNPRM does not propose any substantive changes to that NPRM as it relates to the proposed exemption for FMVSS No. 216. This SNPRM simply proposes to expand the scope of the 2016 NPRM to include an additional make inoperative exemption from certain sections of FMVSS No. 111, "Rear visibility," and to create a new exemption for rental car companies having to temporarily disable a knee bolster air bag to install hand controls. The three rulemakings are related as they each propose to amend part 595. The Agency has decided to propose these changes as an SNPRM, rather than as separate individual NPRMs, for the sake of administrative simplicity and the convenience of the reader.

**II. Statutory Background**

The National Traffic and Motor Vehicle Safety Act (49 U.S.C. Chapter 301) ("Safety Act") and NHTSA's regulations require vehicle and equipment manufacturers to certify that their vehicles or vehicle equipment comply with all applicable FMVSS (see 49 U.S.C. 30112; 49 CFR part 567). A vehicle manufacturer, distributor, dealer, rental company, or repair business generally 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)), if the Agency finds that the exemption would be consistent with motor vehicle safety

and with 49 U.S.C. 30101.<sup>2</sup> The Agency has used that authority to promulgate 49 CFR part 595, subpart C, "Make Inoperative Exemptions, Vehicle Modifications to Accommodate People with Disabilities" (hereafter, "subpart C").

Subpart C sets forth exemptions to permit, under limited circumstances, vehicle modifications that make certain systems installed in compliance with an FMVSS inoperative 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.

Under the regulation, a motor vehicle repair business<sup>3</sup> that modifies a vehicle to enable a person with a disability to operate or ride as a passenger in the motor vehicle and that avails itself of the exemption provided by subpart C must register with NHTSA. The modifier is exempted from the make inoperative provision of the Safety Act, but only to the extent that the modifications affect compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in § 595.7(c).<sup>4</sup> The modifier must affix a permanent label to the vehicle identifying itself as the modifier and the vehicle as no longer complying with all FMVSS in effect at original manufacture, and must provide and retain a document listing the affected FMVSSs, and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (220 pounds).

<sup>2</sup> Section 30101, "Purpose and Policy," of the Safety Act states: "The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out needed safety research and development."

<sup>3</sup> Section 595.4 of subpart C states: "The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as 'a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.' This term includes businesses that receive compensation for servicing vehicles without malfunctioning or broken parts or systems by adding or removing features or components to or from those vehicles or otherwise customizing those vehicles."

<sup>4</sup> Modifications that would affect systems installed in compliance with any other FMVSS, or with an FMVSS listed in § 595.7(c) but in a manner not specified in that paragraph, are not covered under Part 595, Subpart C.

<sup>1</sup> 81 FR 12852, Docket No. NHTSA-2016-0031.

### III. New Make Inoperative Exemption in Subpart C for Portions of FMVSS No. 111, “Rear Visibility”

#### a. Background on the FMVSS No. 111 Requirements

To satisfy a statutory mandate in the Cameron Gulbransen Kids Transportation Safety Act of 2007 (the K.T. Safety Act), NHTSA published a final rule<sup>5</sup> on April 7, 2014 amending FMVSS No. 111, to require, effectively, that all light vehicles be equipped with a backup camera system that, among other things, displays a certain specified field of view to the driver. The K.T. Safety Act directed NHTSA to amend the FMVSS to expand the rearward field of view for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles with a gross vehicle weight rating (GVWR) of less than 4,536 kilograms (kg) (10,000 pounds). The rule, which became fully phased in on May 1, 2018, requires that vehicles be equipped with a system that provides the driver with an image of the area directly behind the vehicle. The purpose of this requirement is to reduce the number of back-over crashes involving pedestrians, particularly children and other high-risk persons.

The standard requires that each passenger car must display a rearview image to the driver that meets the requirements of FMVSS No. 111 S5.5.1 through S5.5.7, and that each multipurpose passenger vehicle, low-speed vehicle, truck, bus, and school bus with a GVWR of 4,536 kg or less must meet the requirements of S6.2.1 through S6.2.7. Both sets of requirements state that the rearview image must have a field of view that covers 5 feet from either side of the vehicle center line to 20 feet longitudinally from the vehicle’s rear bumper, and that the rearview image be large enough that the driver will see objects in the field of view. The standard also sets requirements for when the rearview image must be displayed. NHTSA assesses compliance with these requirements by placing cylindrical test objects along the perimeter of the minimum field of view requirement, and assessing whether the test cylinders are visible to the driver in the rearview image, and whether the rearview image is displayed under the required circumstances. Although the rear visibility requirements in FMVSS No. 111 are written in a technology-neutral way that states only that a vehicle must display a “rearview image” without reference to what technology is used to display the image,

it is NHTSA’s understanding that all manufacturers comply with the rearview image requirements using a backup camera system (*i.e.*, a rear-facing camera behind the vehicle that transmits a video image to a digital display in view of the driver).

During the rulemaking that established the FMVSS No. 111 rear visibility requirements, the issue of temporary equipment obstructing a backup camera system’s field of view was raised in a comment by the National Truck Equipment Association (NTEA) to the NPRM. In this comment, NTEA noted that, because it was expected that manufacturers would meet the new rear visibility requirements with a backup camera system, it would be possible for the camera’s field of view to be obstructed by the installation of certain types of temporarily-attached vehicle equipment, such as a salt or sand spreader, which can be temporarily mounted to the trailer hitch of a pickup truck. NHTSA responded to this comment in the final rule by stating that the rule was not intended to apply “to trailers and other temporary equipment that can be installed by the vehicle owner.” However, NHTSA did not address the question of whether the installation of such equipment would violate the make inoperative prohibition (49 U.S.C. 30122) if done by an entity subject to § 30122.

#### b. Bruno’s Petition for Rulemaking

On April 17, 2018, NHTSA received a petition for rulemaking from Bruno requesting NHTSA to amend subpart C so that it would include paragraphs S5.5 and S6.2 of FMVSS No. 111.

Bruno states it is a manufacturer of several products that allow a vehicle owner to transport unoccupied personal mobility devices (PMD) such as wheelchairs, powered wheelchairs, and powered scooters intended for use by vehicle occupants with mobility impairments. Bruno states that there are two types of PMD transport devices that it manufactures. The first type is what the petition describes as a platform lift that can be attached to the exterior of the vehicle by means of a trailer hitch. This first type of PMD transport device is fully supported by the trailer receiver hitch without ground contact. The second type of PMD transport device is supported in part by contact with the ground. As such it is a “trailer” under NHTSA’s definitions.<sup>6</sup>

Bruno states that most backup cameras that are installed pursuant to FMVSS No. 111 are mounted at a low

height along the horizontal centerline of the vehicle, often near the vehicle’s rear license plate mounting. The placement of the backup camera in this location means that it may be obstructed by a rear-mounted PMD transport device, or by a PMD that is mounted onto the transport device. Since the PMD transport devices may obstruct the rear view from the vehicle’s rearview video system, installation of the devices could arguably violate the “make inoperative” prohibition (49 U.S.C. 30122). Bruno argues in its petition that PMD transport devices are “temporary equipment,” to which NHTSA said the final rule was not intended to apply. However, the petitioner states that, to avoid potential uncertainty regarding the manufacture, sale or installation of both types of PMD transport device Bruno manufactures, Bruno requests that subpart C be amended to cover the backup camera requirements (S5.5 and S6.2) of FMVSS No. 111.

After filing the petition, Bruno submitted additional material in which the petitioner contends that the final rule of FMVSS No. 111 specifically excluded trailers such as the Bruno Chariot (*i.e.*, a “trailer” type of PMD transport device), even though the body of current FMVSS No. 111 does not include explicit language for the exclusion of trailers, and even though the preamble was referring to trailers attached by the vehicle owner.

#### Response to Petition

NHTSA recognizes that the petitioner’s request presents a trade-off between the benefits of a camera system for rear visibility balanced against enhanced mobility for people with disabilities. Comments are requested on the proposed exemption. To achieve the maximum safety benefit of the regulations, it is our desire to provide the narrowest exemption possible to accommodate the needs of persons with physical disabilities, while minimizing unintended safety consequences that could occur by creating a pathway for unforeseen and unintended uses.

NHTSA has decided to grant the petition. The modifications permitted under the proposed exemption would be temporary in that they do not permanently affect the vehicle’s design or structure, and would not be widely available beyond the population of persons with disabilities who wish to have a covered entity install a PMD transport device on their vehicle. It is important to note that statements in the preamble to the K.T. Act final rule cannot provide regulatory certainty that PMD transport devices are excluded from the make inoperative provision.

<sup>5</sup> 79 FR 19178, Docket No. NHTSA–2010–0162.

<sup>6</sup> 49 CFR 571.3.

Further, unlike with the examples of salt and sand spreaders referenced in the preamble, it is NHTSA's understanding that PMDs transport devices are generally installed by dealers and motor vehicle repair businesses that specialize in modifications to provide mobility solutions to people with physical disabilities, both of which are subject to the make inoperative prohibition.<sup>7</sup> Accordingly, we believe a regulatory exemption can provide the appropriate regulatory certainty to allow for installation of PMD transport devices, even if not necessary for other types of temporary equipment installed by the vehicle owner.

Based on the above analysis NHTSA proposes to amend subpart C to add a "make inoperative" exemption for S5.5.1, S5.5.2, S6.2.1, and S6.2.2 of FMVSS No. 111, to allow for the temporary installation of a PMD transport device that could obstruct the vehicle's backup camera system. NHTSA seeks comment on this proposal.

In particular, NHTSA seeks comment on its decision to limit the proposed exemption to the temporary installation of a PMD transport device on a vehicle, which precludes entities from permanently disabling the backup camera system, or from making the backup camera system inoperative in contexts other than when attaching a PMD transport device to the vehicle. NHTSA included these restrictions on the proposed exemption so that the exemption would be as narrow as possible while still addressing the mobility needs for persons with disabilities.

NHTSA also seeks comment on its tentative decision to limit the exemption to include only the "field of view" (S5.5.1 and S6.2.1) and "size" (S5.5.2 and S6.2.2) requirements, and not the other rearview image requirements in S5.5 and S6.2, such as "linger time." NHTSA did not include these other requirements in the proposed exemption because they would not be impacted by placing an object in front of the camera that blocks its view.

#### IV. Make Inoperative Exemptions for Rental Companies

##### a. FAST Act

The Fixing America's Surface Transportation Act (FAST Act), Public Law 114-94 (December 4, 2015), made

<sup>7</sup>Note that "dealer" is defined in the Safety Act as a seller of motor vehicles or motor vehicle equipment, which includes retail outlets that sell PMD transport devices.

rental companies subject to the "make inoperative" prohibition. The FAST Act also defined terms related to rental companies. For example, a "rental company" is defined as a person who is engaged in the business of renting covered rental vehicles and uses for rental purposes a motor vehicle fleet of 35 or more covered rental vehicles, on average, during the calendar year. A "covered rental vehicle" is defined as a vehicle that meets three requirements: (1) It has a GVWR of 10,000 pounds or less; (2) it is rented without a driver for an initial term of less than four months; and (3) it is part of a motor vehicle fleet of 35 or more motor vehicles that are used for rental purposes by a rental company.

Thus, beginning in December 2015, rental companies, as the term is defined in the FAST Act, were subject to the make inoperative prohibition for the first time. One effect of this FAST Act provision was to subject rental companies to § 30122 prohibitions for making inoperative systems installed to comply with the FMVSS—even if doing so to accommodate the installation of adaptive equipment for use by persons with disabilities, and even if the modification were only temporary.<sup>8</sup>

##### b. Enterprise Request for Interpretation

In a letter dated August 12, 2019, Enterprise, through its counsel, submitted a request for interpretation to NHTSA regarding the effect of the "make inoperative" prohibition on its obligations under the Americans with Disabilities Act of 1990 (ADA).<sup>9</sup> Specifically, Enterprise asked whether the "make inoperative" prohibition applies to modifications by rental companies to temporarily disable knee bolster air bags to accommodate the installation of hand controls for drivers with physical disabilities. Following receipt of the letter, NHTSA met with Enterprise to discuss its request further. Some of the information provided by Enterprise has formed the basis for this rulemaking.

In its letter, Enterprise stated that, to provide service to customers with disabilities and ensure compliance with

<sup>8</sup>Although the "make inoperative" prohibition does contain an exception for temporarily taking vehicles or equipment out of compliance, that limited exception only applies where the entity taking the vehicles out of compliance does not believe the vehicle or equipment will not be used when the device is inoperative. Obviously, a rental company would intend a rental vehicle that has a device or element temporarily "made inoperative" to accommodate a disability to be used while the device or element is inoperative.

<sup>9</sup>A copy of this letter has been included in the docket number identified at the beginning of this document.

the ADA, rental companies install adaptive equipment, such as hand controls, upon request. Enterprise stated that, when installing adaptive equipment in a motor vehicle, "equipment or features that were installed in compliance with NHTSA's safety standards may need to be modified. In these cases, the vehicle modification may render the affected equipment or features, as originally certified, 'inoperative.'"

Enterprise specifically addressed safety concerns with installing hand controls in rental vehicles equipped with knee bolster air bags.<sup>10</sup> Hand controls consist of a metal bar that connects to the accelerator and brake pedals of a vehicle to enable operation by a person unable to control the pedals with their feet. Knee bolster air bags are installed by manufacturers to prevent or reduce the severity of leg injuries in the event of a frontal collision. Since knee bolster air bags, like all air bags, deploy at high speeds with a great degree of force, installed hand controls could either break apart, creating and propelling dangerous metal fragments, or otherwise be propelled into the driver at great forces—either of which would create a serious safety risk.

Enterprise stated that manufacturers of hand controls owned by Enterprise specify that a driver's side knee bolster air bag must be disabled (including removal in some instances)<sup>11</sup> for safe operation of the hand controls, both because the presence of a knee bolster air bag may interfere with safe operation of the hand controls, and because the presence of hand controls would interfere with the air bag should it be deployed in the event of a crash.

Enterprise noted that 49 CFR part 595, subpart C, includes exemptions for certain entities from the "make inoperative" prohibition in certain circumstances to accommodate the modification of vehicles for persons with disabilities. However, the subpart does not include "rental companies" within the entities who could use those exemptions in subpart C.

Pertaining specifically to knee bolster air bags, Enterprise noted that they are not specifically required by FMVSS No. 208. However, Enterprise observed that vehicle manufacturers are increasingly

<sup>10</sup>Enterprise did not provide an example other than the situation posed by installation of hand controls and its effect on knee bolster air bags.

<sup>11</sup>This document generally refers to the act of "disabling" the knee bolster air bag. For the purposes of the applicability of the "make inoperative" prohibition and exemption discussed in this document, the act of "disabling" the knee bolster air bag may also include removing the air bag. In other words, removal is one means of disabling the air bag.

making knee bolster air bags standard equipment on all models such that it is becoming difficult for Enterprise to purchase new vehicles that do not include knee bolster air bags. Further, Enterprise stated that vehicles with knee bolster air bags are not crash tested with the knee bolster air bags removed or disabled, meaning Enterprise cannot know whether disabling knee bolster air bags affects compliance with FMVSS No. 208.

Enterprise concluded that, based upon its ADA obligations to provide hand controls for drivers requesting them and the increasing trend of knee bolster air bags being standard equipment, Enterprise expects to need to disable knee bolster air bags temporarily on rental vehicles to continue to make vehicles available to rent by drivers with physical disabilities. Enterprise requested NHTSA's opinion on the applicability of the "make inoperative" prohibition to these circumstances.

#### *c. Applicability of "Make Inoperative" Prohibition to Enterprise*

The question raised by Enterprise's letter is whether disabling the knee bolster air bag would constitute a violation of the "make inoperative" prohibition. NHTSA does not have sufficient information to determine whether the knee bolster air bag is a part or element of design installed "in compliance with an applicable motor vehicle safety standard," but notes that knee bolster air bags are installed to reduce femur loading, and FMVSS No. 208 does provide specific requirements for femur load.<sup>12</sup> While NHTSA has made general inquiries with vehicle manufacturers through their trade association about whether knee bolster air bags are installed as part of an element of design installed in compliance with the motor vehicle safety standards, their association has not yet provided information to resolve this question.

After considering the issue, NHTSA has determined that it cannot affirmatively state that § 30122 would not prohibit making inoperative knee bolster air bags to install hand controls to enable service to customers with physical disabilities. The Agency appreciates the difficulties this issue poses to Enterprise and other rental companies. As knee bolster air bags are already becoming standard equipment across much of the light duty fleet, this situation could result in rental companies facing the untenable position of being forced to either: (1) Retain a

number of older vehicles in its fleet (without knee bolster air bags) and on its premises to rent to drivers requesting hand controls; (2) cease the rental of vehicles to drivers requesting hand controls; (3) disable the air bag and potentially violate § 30122; or (4) install hand controls on vehicles with knee bolster air bags and create serious safety risks for their customers. None of these results is acceptable to NHTSA. The first action would prevent Enterprise from renting newer vehicles, which include newer safety innovations, to drivers requiring the use of hand controls, would be impracticable given the inability to guarantee availability of sufficient vehicles at all relevant rental facilities, and would eventually be impossible as those vehicle age out of their useful service lives. The second action would eliminate a critical service for people with disabilities and may have implications for compliance with the Americans with Disabilities Act. The third action would potentially violate the Safety Act. The fourth option would create an unreasonable risk to the safety of rental customers with physical disabilities. NHTSA is addressing the situation by proposing to use its statutory authority to exempt rental companies conditionally from the Safety Act's "make inoperative" prohibition to allow the temporary disabling of knee bolster air bags.

#### *d. Need for a "Make Inoperative" Exemption for Rental Companies*

NHTSA is issuing this SNPRM after considering the untenable situation faced by prospective vehicle renters with physical disabilities and rental car companies seeking to provide services to people with physical disabilities, and balancing NHTSA's strong interest in promoting motor vehicle safety with the interest (including the statutory interest implicit within the ADA) to provide access to mobility for persons with disabilities. NHTSA has tentatively concluded that it should exercise its statutory authority to exempt rental companies from the make inoperative prohibition in certain circumstances, and with certain conditions, so that rental companies may rent vehicles to drivers requesting hand controls. This action is consistent with NHTSA's decision to promulgate 49 CFR part 595, subpart C, to exempt motor vehicle repair businesses from the make inoperative prohibition to accommodate persons with disabilities. While the balance of safety and accessibility associated with granting an exemption to the make inoperative prohibition to rental companies is identical to the grant of exemption to motor vehicle

repair businesses, some aspects are quite different, as will be discussed next.

Therefore, NHTSA is proposing to add a new section to 49 CFR part 595 specifically for rental companies. While this section would be largely similar to 49 CFR 595.7, NHTSA believes that rental companies could not easily be added to section 595.7 for several reasons. First, section 595.7 contemplates permanent modifications and NHTSA expects that rental companies would modify vehicles only temporarily. Therefore, the proposal specifically limits the exemption to the duration of the rental agreement and a reasonable period before and after the rental agreement (a period to perform and reverse the necessary accommodations). Like in 49 CFR 595.7, NHTSA is proposing a requirement that the vehicle have a label affixed indicating that it has been modified such that a device or element of design installed pursuant to the FMVSS may have been made inoperative. However, given the expected temporary nature of the modifications, NHTSA is not proposing that vehicles be permanently labeled. NHTSA also has not proposed to require that rental companies register with NHTSA prior to performing modifications. At this time, NHTSA is only considering allowing rental companies to disable a knee bolster air bag and is not including all of the exemptions applicable to motor vehicle repair businesses in section 595.7(c). These issues are discussed in greater detail later in this document.

NHTSA requests public comment on this SNPRM, including the need of rental companies for relief from the make inoperative prohibition and how the exemption could be narrowly granted.

As part of this discussion, NHTSA requests comment on whether Enterprise's request may be mooted by the use of other models of hand controls or other innovations of adaptive driving equipment suitable for temporary installation. NHTSA has had discussions with the National Mobility Equipment Dealers Association regarding this question and has reached the tentative conclusion that, while there may be models of hand controls on the market that do not require disablement of the knee bolster air bag, those models require custom installations that would not be feasible for a rental company business model. These entities seek to make a temporary modification to their rental vehicles, so that after the rental they may remove the hand controls and revert the vehicle to its former state to rent to the next

<sup>12</sup> See 49 CFR 571.208 S15.3.5.

customer. Further, it is likely that necessitating the replacement by Enterprise and other rental companies of their adaptive equipment may unnecessarily result in costs and other impacts on rental companies in seeking to accommodate customers with physical disabilities.

*e. Scope of an Exemption for Rental Companies*

Although NHTSA is proposing a make inoperative exemption for rental companies, NHTSA has questions regarding the scope of an exemption to rental companies, and the logistics of granting those exemptions. Specifically, NHTSA requests public comment on the following questions in this preamble and on the discussion supporting them. In responding to a question, we would appreciate commenters numbering their answers in accordance with the following numbered questions:

1. Should rental companies be provided exemptions from the make inoperative prohibitions to make temporary vehicle modifications, permanent vehicle modifications, or both?

The wording of the proposed regulatory text would only allow temporary modifications by rental companies that would include the duration of the rental agreement and a reasonable period before and after modification, to allow the rental company to make and reverse the modification, respectively. If the vehicle would be rented to a second person requiring the same modification immediately after the termination of the first rental agreement, a rental company would not be required to reverse the modification and then immediately modify the vehicle again. (Based on information provided by Enterprise, rental companies require flexibility in their fleet usage and, therefore, it is unlikely that a vehicle would be rented to two people requiring the same modification consecutively.) In any event, in light of this information from Enterprise, is there a need to allow rental companies to make permanent modifications to vehicles in order to accommodate drivers with disabilities? Should they be permitted to permanently modify vehicles as repair businesses are under Subpart C, provided they meet all requirements of sections 595.6 and 595.7? NHTSA seeks comments as to whether permanent modification may be necessary or helpful, and may revisit this tentative conclusion in a final rule in response to comments received.

2. Although Enterprise only asked NHTSA about the application of the make inoperative prohibition to disabling knee bolster air bags to accommodate installation of hand controls, should NHTSA provide a make inoperative exemption for other installations of adaptive equipment by rental companies?

This question pertains to the standards and modifications that would be covered by a make inoperative exemption. Enterprise's letter refers only to the disablement of knee bolster air bags to accommodate installation of hand controls. To date, NHTSA has received no other inquiries or requests for relief from the make inoperative prohibition from any other rental company or related to any other accommodation. Accordingly, this proposed rule only addresses the disablement of knee bolster air bags to accommodate the installation of hand controls. If NHTSA receives comments that warrant the granting of exemptions to the make inoperative prohibition for additional accommodations, NHTSA will consider including an exemption from those accommodations in a final rule implementing this proposal.

3. If a temporary modification to install adaptive equipment causes a malfunction telltale to illuminate, should the rental company be allowed to disable the telltale?

This question pertains to the air bag malfunction telltale. One aspect not directly addressed in Enterprise's letter is what effect the modification would have on the air bag malfunction telltale, which is required by FMVSS No. 208. In its conversations with NHTSA, Enterprise stated that its procedure for disabling the knee bolster air bag would involve the installation of a shunt within the electrical circuitry of the air bag system. NHTSA believes that the installation of such a shunt would allow the air bag system, upon its diagnostic check at the time the vehicle is started, to conclude that there is no malfunction within the air bag system. Accordingly, after the diagnostic check, NHTSA believes that the air bag malfunction telltale would not illuminate as a result of disabling the knee bolster air bag.

NHTSA requests comment on whether the disabling of the air bag in this manner is desirable and should be permitted. There are competing safety interests at issue when considering this question. If a shunt were not installed, NHTSA believes that, for vehicles where the knee bolster air bag is disabled, the air bag malfunction telltale would illuminate after the diagnostic check.

This would correctly provide the operator of the vehicle with information that the air bag system is not operational, and would provide additional assurance that the disabling of the knee bolster air bag is reversed for later rentals. A subsequent renter of the exempted vehicle, where the modification was inadvertently not reversed, could see the telltale illuminated and inform the rental company of the malfunction.

However, the illumination of the air bag malfunction telltale where the knee bolster air bag is disabled may also have negative safety consequences. If the air bag malfunction telltale is illuminated for the duration of the rental to a driver with a disability, that driver would not have the benefit of the telltale illuminating the event of any other malfunction within the air bag system, including malfunctions affecting air bags that are clearly installed as part of compliance with FMVSS No. 208. NHTSA is also unaware of whether the activation of a malfunction indicator light will result in a suppression of other air bags that are not disabled by the rental company. The proposed regulatory text does not make allowances for making inoperative the telltale in the situation presented by Enterprise. However, NHTSA seeks comment on how this issue should be addressed in a final rule.

4. Would NHTSA need to provide a make inoperative exemption for installation of hand controls? Alternatively stated, would the mere installation of hand controls by a rental company potentially make inoperative systems installed in compliance with an FMVSS, even if no other modifications to the vehicle are made? For example, would a hand control (or any other adaptive equipment typically installed by rental companies) interfere with devices or elements of designs installed in compliance with any FMVSS? If the mere installation of adaptive equipment potentially violates the "make inoperative" prohibition, NHTSA would consider broadening the scope of the exemption granted in a final rule issued following this proposal.

*f. Procedural Requirements for an Exemption for Rental Companies*

NHTSA has questions related to procedural aspects of such an exemption. These questions include:

5. Should rental companies need to request an exemption from NHTSA or should the exemption be provided automatically within the regulation?

NHTSA has tentatively concluded, as with motor vehicle repair businesses,

rental companies should not have to seek an exemption from NHTSA in order to disable knee bolster air bags temporarily to install hand controls. Rather, NHTSA proposes to grant the exemption to rental companies conditionally on their compliance with the proposed amendments to 49 CFR part 595. Given that a rental company may be required to make modifications quickly to provide accommodations when a customer requests a vehicle with hand controls, NHTSA does not find that seeking permission to obtain an exemption would be beneficial to safety or to drivers requesting modifications, or practical to execute in actual situations. Moreover, NHTSA would be limited in its ability to evaluate the merits of a request for an exemption in an approval system, and so it seems obtaining NHTSA approval would serve no useful purpose.

6. If rental companies are granted exemption by the regulation alone rather than on request to NHTSA, should rental companies be required to notify NHTSA of modifications to vehicles? If so, how often and what information should rental companies be required to provide?

As provided in 49 CFR 595.6, a motor vehicle repair business that modifies a vehicle pursuant to part 595 must, not later than 30 days after it modifies a vehicle pursuant to the “make inoperative” exemption in part 595, identify itself to NHTSA. NHTSA has tentatively concluded that a similar requirement is not warranted for rental companies. First, there are far fewer rental companies than there are motor vehicle repair businesses, such that NHTSA is aware of the existence of large rental companies. Second, the modifier information furnished to NHTSA under 49 CFR 595.6 is used, in part, to populate a database available to the public of entities that perform modifications to motor vehicles to accommodate persons with disabilities.<sup>13</sup> In the instance of rental companies, they are modifying vehicles to accommodate customers with physical disabilities as part of its business operations, and as part of its efforts to comply with the ADA. Thus, a list of rental companies able to modify vehicles pursuant to 49 CFR part 595 would likely be a list of all rental companies. Such a list would be of limited utility to the public, but would impose a paperwork burden on all rental companies. NHTSA tentatively concludes that, consistent with the goals

of the Paperwork Reduction Act, it is not necessary for rental companies to identify themselves to NHTSA prior to modifying vehicles pursuant to a “make inoperative” exemption. However, NHTSA seeks comment on how many rental companies would be required to report themselves to NHTSA if such a reporting requirement is included in a final rule.

7. Should rental companies be required to notify customers that a vehicle modified to accommodate the installation of adaptive equipment may have had devices or designs installed in compliance with an applicable FMVSS made inoperative?

NHTSA tentatively concludes the answer is yes, renters of vehicles modified pursuant to this proposed make inoperative exemption would have to be notified that the vehicle’s safety device or element of design was made inoperative, similar to the requirements for motor vehicle repair businesses. NHTSA would require the name and address of the rental company modifying the vehicle to be disclosed to the renter. The notification would have to specifically identify that the knee bolster air bag has been temporarily affected by the modification. NHTSA believes, however, that this notification could be accomplished simply by annotating the invoice or rental agreement at the rental counter, which would take a minimum amount of time. The costs to meet this requirement would be insignificant.

This notice proposes to require that the rental company affix a temporary label, meant to remain affixed during the rental, indicating that the knee bolster air bag is disabled. This label would serve both to inform persons driving the vehicle of the status of the air bag and to remind the rental company to reactivate the air bag at the conclusion of the rental. Because this proposal does not apply to permanent modifications, it would not be logical to include a permanent label stating that the vehicle may not comply with all FMVSSs. Unlike a provision in subpart C, this proposal does not include a requirement that the physical location of the rental company modifying the vehicle be on the label affixed to the vehicle. NHTSA believes that this information is provided to renters in the rental agreement and is not necessary to include on the label itself.

8. Should rental companies be required to retain records of vehicles modified pursuant to this “make inoperative” exemption. If so, what information and for how long?

Motor vehicle repair businesses who modify vehicles pursuant to the “make

inoperative” exemption in 49 CFR part 595, subpart C, are required to retain, for five years, information provided to owners of vehicles that are modified. NHTSA tentatively concludes that this type of record retention should be required of rental companies as well. This would facilitate enforcement by NHTSA in the event of potential violations of the terms of the make inoperative exemption in this proposal, or if a safety problem arises in the vehicle at a later date that could possibly relate to the deactivation of the air bag. NHTSA believes the costs associated with this record retention would be minimal since the record could be the rental agreement or invoice itself, which can be stored as part of their general record retention process, electronically or in paper format at their discretion. NHTSA considers the costs of the proposed requirements in the section discussing the applicability of the Paperwork Reduction Act. As with the existing record retention requirement for motor vehicle repair businesses that permanently modify vehicles for people with disabilities, NHTSA is proposing a five-year recordkeeping requirement.

9. Should rental companies be required to notify subsequent renters and/or purchasers of rental vehicles that have been modified pursuant to this proposed “make inoperative” exemption that the vehicle was previously modified?

While NHTSA is not proposing such a requirement, the Agency seeks comment on whether such a requirement is warranted and if so, how such a notification would be made. NHTSA notes that it does not have authority over used vehicle sales transactions, and that State laws may be better equipped to handle any general or specific retail disclosure obligations. If the comments or other information available at the time of the issuance of final rule implementing this proposal indicate that such a requirement is warranted, it may be included in the final rule.

10. What procedures could or should NHTSA require of rental companies to ensure the knee bolster air bag will be reenabled when the rental vehicle is returned and the hand controls are disabled?

The make inoperative exemption that would be applicable to rental companies by this proposal would only apply for the period during which a covered rental vehicle is rented to a person with a disability and a reasonable period before and after the rental agreement in order to perform and subsequently reverse the modification to

<sup>13</sup> This list of entities is not intended as an endorsement of any entity, but is solely provided for informational purposes.

accommodate a driver with physical disabilities. However, the proposal does not include any specific requirements for rental companies for reversing modifications to rental vehicles. NHTSA requests comments on whether NHTSA should impose requirements related to reversing a vehicle modification and if so, what those requirements should be.

11. To the extent car sharing companies (e.g., Zipcar) qualify as a “rental company” under 49 U.S.C. 30102, would all aspects of this proposal be reasonably applied to ride sharing companies, or would procedural requirements need to be different for them?

NHTSA believes that all aspects of this proposal would be equally applicable to a car sharing company that qualifies as a “rental company” under the definition in 49 U.S.C. 30102. However, NHTSA has not conducted any outreach as to the application of this proposal to car sharing companies. Therefore, any comments pertinent to the application of this proposal would be helpful.

## V. Rulemaking Analyses and Notices

### *Executive Order 12866 and DOT Regulatory Requirements*

NHTSA has considered the impact of this rulemaking action under E.O. 12866, “Regulatory Planning and Review,” E.O. 13563, and the Department of Transportation’s regulatory requirements under 49 CFR part 5. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866. NHTSA has determined that the effects are so minor that a regulatory evaluation is not needed to support the rulemaking.

Modifying a vehicle in a way that reduces the rear visibility of a backup camera by installing a trailer or carrying device could reduce crash avoidance features of the vehicle when the vehicle is reversing. However, the number of vehicles potentially modified would be very few in number. The Agency believes it has made the exemption narrow to achieve the goal of increasing mobility of drivers and passengers with physical disabilities while maintaining vehicle safety to the extent possible. This rear visibility proposal does not contain new reporting requirements or requests for information beyond what is already required by 49 CFR part 595 subpart C. This rulemaking would impose minor labeling, and insignificant recordkeeping, costs on rental companies who choose to take advantage of the opportunity to install

temporary hand controls to accommodate the needs of customers with physical disabilities, which we expect may be transferred to consumers.

The label and recordkeeping requirements are necessary to ensure the modification that takes the vehicle out of compliance with the FMVSS is temporary and that the vehicle will be restored to full compliance when the rental is over. The proposed 5-year record retention requirement would facilitate enforcement by NHTSA in the event of potential violations of the terms of the make inoperative exemption in this proposal, and to facilitate the investigation and identification of vehicles in the event a subsequent safety problem arises that could relate to the manner in which air bags were deactivated. NHTSA believes that the costs associated with retaining this record would be insignificant since the record could be the rental invoice or agreement itself, which can be stored by rental companies in the same manner that they store their invoices, including electronically.

Rental companies choosing to deactivate knee bolster air bags to facilitate installation of hand controls would incur costs associated with the installation of a shunt and a pedal operating device for a person with disability. However, the proposed rule is an enabling rule and does not require a rental business to engage in this practice. Thus, any costs associated with the installation of these devices are solely related to a rental business that chooses to accommodate consumers with disabilities for business or other reasons. Although the proposed rule would not directly contribute to the potential costs, any such potential costs would likely be transferred to consumers. Modifying a vehicle to install a trailer or carrying device, or temporary hand controls would not only increase business for entities making these modifications, but also increase consumer choices resulting from the perceived usefulness of the installed hardware. The consumer demand for the equipment and service is evidence that the perceived usefulness would be greater than the sum of its cost and any perceived added safety risk (i.e., resulting from making the rearview camera and/or air bag inoperative).

### *E.O. 13771 (Regulatory Reform)*

NHTSA has reviewed this SNPRM for compliance with E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) which requires Federal Agencies to offset the number and cost of new regulations through the repeal, revocation, or revision of existing

regulations. As provided in OMB Memorandum M–17–21 (“Implementing E.O. 13771”), a “regulatory action” subject to E.O. 13771 is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. As discussed above, this action is not a significant rule under Executive Order 12866. Accordingly, it is not subject to the offset requirements of 13771.

This SNPRM is expected to be a deregulatory action under E.O. 13771. It provides an exemption to dealers and repair businesses that would permit them to facilitate transport of unoccupied personal mobility devices (PMD) such as wheelchairs, powered wheelchairs, and powered scooters intended for use by vehicle occupants with mobility impairments. The SNPRM would permit these entities the ability to attach platform lifts and trailers for carrying PMD and provide more consumer choices, which may result in increased interest in and sales of these devices. The second part of this SNPRM would benefit rental companies by enabling them to modify vehicles for customers with disabilities and allow for the rental of vehicles with hand controls. The rental companies would benefit by enabling a temporary modification that will allow them to satisfy demand for such vehicles. They would not have to turn away customers seeking to rent a vehicle with hand controls due to an absence of such a vehicle on their premises. However, NHTSA is unable at this time to quantify the cost impacts due to the lack of information about the demand for devices such as petitioner Bruno’s PMD transporters and, from rental companies, the demand for hand controls on rental vehicles whose installation necessitates deactivating the knee bolster air bag. NHTSA requests comments on estimating the cost savings of this proposed rule.

### *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.

I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The entities installing the trailers and PMD-carrying devices could be small entities, and a substantial number of rental companies might also be small entities as well. However, the impacts on them are not expected to be significant. The proposed exemption would be deregulatory and provide additional flexibility to these entities with minimal requirements (there are some labeling and recordkeeping requirements), but overall the Agency does not believe there would be a large number of PMD installed, or a large number of rental car transactions affected by this rulemaking. Therefore, the impacts on any small businesses affected by this rulemaking would not be significant.

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

NHTSA has examined today’s proposed 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 proposed 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 proposal 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 proposed rule would not impose any requirements on anyone. This proposal would lessen restrictions on modifiers and rental companies.

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 a State (or a political subdivision of a State) may prescribe or continue to enforce a standard that applies to an aspect of

performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the FMVSS governing the same aspect of performance. See 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. While NHTSA is unaware of any specific State law or action that would prohibit the actions that this proposed rule would permit, some States may have laws or enforcement postures relating to the disabling of air bags. While NHTSA is generally favors enforcement of such laws (indeed air bag disabling by manufacturers, dealers, motor vehicle repair businesses and rental companies is generally prohibited through NHTSA’s make inoperative prohibition), the proposed exemption from this provision for temporary disablement of knee bolster air bags could preempt State laws that include broad prohibitions against disabling air bags or air bag malfunction indicators. NHTSA requests comment from States as to whether such laws or enforcement postures exist.

#### *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 proposed 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 these proposed exemptions 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 proposed exemption would 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 would not have any significant impact on the quality of the human environment.

#### *Paperwork Reduction Act*

Under procedures established by 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 Office of Management and Budget (OMB) control number. The proposal adding the backup camera requirements (S5.5 and S6.2) of FMVSS No. 111 to 49 CFR part 595 subpart C does not contain new reporting requirements or requests for information beyond what is already required by subpart C. The proposal

addressing rental companies would be a new Information Collection Request (ICR), and has been forwarded to OMB for review. The ICR describes the nature of the information collection and its expected burden.

This SNPRM would make changes to an existing information collection for exemptions from the make inoperative prohibition for modifiers and related consumer disclosures under 49 CFR part 595, subpart C. In compliance with the requirements of the PRA, NHTSA asks for public comments on the following proposed revision of a currently approved collection of information:

*Title:* Exemption from Make Inoperative Prohibition Modifier Identification and Consumer Disclosure 49 CFR 595 Subpart C.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 2127–0635

*Affected Public:* Businesses that modify vehicles, after first retail sale, so that the vehicle may be used by persons with disabilities.

*Requested Expiration Date of Approval:* Three years from the date of approval.

*Form Number:* None.

*Summary of the Collection of Information:* Rental companies would be added to the group of entities who, if they avail themselves of the exemptions in 49 CFR subpart C, are required to keep a record, for each applicable vehicle, listing which standards, or portions thereof, are affected by the modification, and to provide a copy to the owner (renter) of the vehicle modified (see 49 CFR 595.7 (b) and (e) as published below). This SNPRM does not propose to extend the registration requirement for modifiers to rental companies, so that aspect of the collection is not proposed to be modified.

*Description of the Need for the Information and Use of the Information:* This SNPRM proposes to extend to rental companies the requirement that modifiers provide each customer whose vehicle modification involves the use of the make inoperative exemptions with a list of the exemptions used to modify that vehicle. (Practically speaking, there would only be the one exemption discussed in this SNPRM, for knee bolster air bags.) The simplest form of this document is an annotated invoice or rental agreement. No specific, separate, or special forms are required. A copy of this document must also be retained for five years. This document will be used by the consumer (or renter, in the case of rental vehicles) to understand the modifications made to his/her vehicle and their effect on

vehicle safety. It may be used by NHTSA in the event of an inquiry about the safety of the modified vehicles or compliance with the requirements that might be adopted.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):* NHTSA estimates that rental companies would temporarily modify approximately 4000 vehicles per year<sup>14</sup> for persons with disabilities under the exemption proposed in this SNPRM, all of which are proposed to be subject to the notification requirement.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:* The burden for the record required by proposed 49 CFR 595.8 for those vehicles will be an additional 1,333 hours per year nationwide. NHTSA anticipates that the least costly way for a rental company to comply with this portion of the new rule would be to annotate the vehicle modification invoice to describe the exemption, if any, involved with each item on the invoice. The cost of preparing the invoice is not a portion of our burden calculation, as that preparation would be done in the normal course of business. The time needed to annotate the invoice, we estimate, is 20 minutes. This burden does not include the gathering of the information required for the calculation. That information would be gathered in the normal course of the vehicle modification.

The labor costs associated with this additional burden are estimated to be \$25.29 per hour for “Automotive Service Technicians and Mechanics,” Occupation code 49–3023.<sup>15</sup> This is based on the assumption that the person making the modification to the vehicle will be annotating the invoice, rather than a rental clerk assisting a customer. Therefore, the estimated total labor costs associated with this additional burden are \$33,712 (\$25.29 per hour wage × 1,333 hours = \$33,711.57).

There will be no additional material cost associated with compliance with this requirement since no additional materials need be used above those used to prepare the invoice in the normal course of business. We are assuming it is normal and customary in the course

<sup>14</sup> This information is based upon an estimate provided by Enterprise regarding the number of vehicle modifications it anticipates making.

<sup>15</sup> See May 2019 National Occupational Employment and Wage Estimates by ownership, Federal, state, and local government including the U.S. Postal Service, available at <https://www.bls.gov/oes/current/999001.htm#49-0000> (accessed December 22, 2020).

of rental car business to prepare an invoice, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is rented.

*Comments Are Invited On:*

1. Will the document referenced in proposed 49 CFR 595.8 need to be prepared for approximately 4000 temporarily modified vehicles per year?

2. Will the annotation of each invoice as to which exemptions were used take an average of 20 minutes? If the exemption were only for the knee bolster air bag, would a time less than 20 minutes be needed?

3. Is it normal in the course of the car rental business, to provide a copy of the invoice to the vehicle owner, and to keep a copy of the invoice for five years after the vehicle is delivered to the owner in finished form?

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document to NHTSA and OMB.

#### *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 proposal.

#### *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.

## VI. Public Participation

### *How long do I have to submit comments?*

We are providing a 60-day comment period.

### *How do I prepare and submit comments?*

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the Agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at [http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

### *How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

### *How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

### *Will the Agency consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing the follow on final rule, we will consider that comment as an informal suggestion for future rulemaking action.

### *How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

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

Motor vehicle safety, Motor vehicles.

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

### **PART 595—MAKE INOPERATIVE EXEMPTIONS**

- 1. The authority citation for Part 595 would be 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. Revise § 595.3 to read as follows:

#### **§ 595.3 Applicability.**

This part applies to dealers, motor vehicle repair businesses, and rental companies.

- 3. Amend § 595.4 by adding in alphabetical order, the definitions “covered rental vehicle” and “rental company,” to read as follows:

#### **§ 595.4 Definitions.**

\* \* \* \* \*

The term *covered rental vehicle* is defined as it is in 49 U.S.C. 30102(a).

\* \* \* \* \*

The term *rental company* is defined as it is in 49 U.S.C. 30102(a).

- 4. Amend § 595.7 by adding paragraph (c)(19) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(19) S5.5.1, S5.5.2, S6.2.1, and S6.2.2 of 49 CFR 571.111, in any case in which a personal mobility device transporter is temporarily installed on a vehicle by way of a trailer hitch to carry a personal mobility device (e.g., a wheelchair, powered wheelchair, or powered scooter) used by the driver or a passenger with a disability.

\* \* \* \* \*

- 5. Add § 595.8 to read as follows:

#### **§ 595.8 Modifications by rental companies.**

(a) A rental company that modifies a motor vehicle temporarily in order to rent a covered rental vehicle to a person with a disability to operate, or ride as a passenger in, the motor vehicle is exempted from the “make inoperative” prohibition in 49 U.S.C. 30122 to the extent that those modifications make inoperative any part of a device or element of design installed on or in the motor vehicle in compliance with the Federal motor vehicle safety standards or portions thereof specified in paragraph (d) of this section. Modifications that would make inoperative devices or elements of design installed in compliance with any other Federal motor vehicle safety

standards, or portions thereof, are not covered by this exemption.

(b) The exemption described in paragraph (a) extends only for the period during which the covered rental vehicle is rented to a person with a disability and a reasonable period before and after the rental agreement in order to perform and reverse the modification described in paragraph (d) of this section.

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

manner described in paragraph (f) of this section.

(d)(1) 49 CFR 571.208, in the case of the disablement of a knee bolster air bag to allow the installation of hand controls.

(2) [Reserved]

(e) The label required by paragraph (c) of this section shall:

(1) Be affixed within the passenger compartment of the vehicle.;

(2) Be affixed in a location visible to the driver in a manner that does not obstruct the driver's view while operating the vehicle;

(3) Contain the statement "WARNING—To accommodate installation of hand controls, this rental vehicle has had its knee bolster air bags temporarily disabled," and,

(4) Be removed when the modifications described in paragraph (d) are reversed.

(f) The document required by paragraph (c) of this section shall:

(1) Be provided in original or photocopied paper form, or in electronic

form to the renter of the covered rental vehicle at the time of execution of the rental agreement;

(2) Contain the name and physical address of the rental company making the modifications;

(3) Be kept in original or photocopied paper form, or retained electronically, by the rental company for a period of not less than five years after the conclusion of the rental agreement for which the modification is made;

(4) Be clearly identifiable as to the vehicle that has been modified; and

(5) Identify the devices or elements of design installed on or in a motor vehicle in compliance with a Federal motor vehicle safety standard made inoperative by the rental company.

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**James C. Owens,**

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