

US EPA ARCHIVE DOCUMENT

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)—Continued

Contaminant	Methodology	EPA method	ASTM ⁴	SM 21st edition ¹	SM online ³
	Inductively Coupled Plasma			3120 B.	
	* * *	* *		*	*
Iron	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2. ²			
	Atomic Absorption; Direct			3111 B.	
	Atomic Absorption; Furnace			3113 B	3113 B-04
	Inductively Coupled Plasma			3120 B.	
Manganese	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2. ²			
	Atomic Absorption; Direct			3111 B.	
	Atomic Absorption; Furnace			3113 B	3113 B-04
	Inductively Coupled Plasma			3120 B.	
	* * *	* *		*	*
Silver	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP-AES).	200.5, Revision 4.2. ²			
	Atomic Absorption; Direct			3111 B.	
	Atomic Absorption; Furnace			3113 B	3113 B-04
	Inductively Coupled Plasma			3120 B.	
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¹ Standard Methods for the Examination of Water and Wastewater, 21st edition (2005). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001-3710.

² EPA Method 200.5, Revision 4.2. "Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry." 2003. EPA/600/R-06/115. (Available at <http://www.epa.gov/nerlcwww/ordmeth.htm>.)

³ Standard Methods Online are available at <http://www.standardmethods.org>. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

⁴ Available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or <http://astm.org>. The methods listed are the only alternative versions that may be used.

⁸ Syssta Easy (1-Reagent). "Syssta Easy (1-Reagent) Nitrate Method," February 4, 2009. Available at <https://www.nemi.gov/apex/f?p=237:1:1150314317898177> or from Syssta Scientific, LLC., 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523.

¹⁴ EPA Method 557. "Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS)," September 2009. EPA 815-B-09-012. Available at http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_expedited.cfm.

²² Hach Company Method, "Hach Company SPADNS 2 (Arsenic-free) Fluoride Method 10225—Spectrophotometric Measurement of Fluoride in Water and Wastewater," January 2011. 5600 Lindbergh Drive, P.O. Box 389, Loveland, Colorado 80539. (Available at <http://www.hach.com>.)

²³ Hach Company Method, "Hach Company TNTplus™ 835/836 Nitrate Method 10206—Spectrophotometric Measurement of Nitrate in Water and Wastewater," January 2011. 5600 Lindbergh Drive, P.O. Box 389, Loveland, Colorado 80539. (Available at <http://www.hach.com>.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2010-0307; FRL-9323-9]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Louisiana has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all

requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Louisiana's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on August 23, 2011

unless the EPA receives adverse written comment by July 25, 2011. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* patterson.alima@epa.gov.

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight

Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884-2178, phone number (225) 219-3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733, (214) 665-8533 and E-mail address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program

changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Louisiana including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the

regulations for which Louisiana is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Louisiana previously been authorized?

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995; October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR

13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000; January 2, 2001 (66 FR 23) effective March 5, 2001; December 9, 2003 (68 FR 68526) effective February 9, 2004, June 10, 2005 (70 FR 33852) effective August 9, 2005; November 13, 2006 (71 FR 66116) effective January 12, 2007, August 16, 2007 (72 FR 45905) effective October 15, 2007 and May 20, 2009 (74 FR 23645) effective July 20, 2009. On January 29, 2010, Louisiana applied for approval of its program revisions for RCRA Cluster XVIII including Checklist 209 (Universal Waste Rule: Specific Provisions for Mercury-Containing Equipment).

In this application, Louisiana is seeking approval for RCRA Checklists 209 and 216 through 218 in accordance with 40 CFR 271.21(b)(3).

Since 1979 through the Environmental Affairs Act, Act 449 enabled the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission to conduct an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which

amended and reenacted La. R. S. 30:1051 *et seq.* as the Environmental Quality Act, renaming the Environmental Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ has lead agency jurisdictional authority for administering the Resource Recovery and Conservation Act (RCRA) Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the La.R.S.30:2011 *et seq.* allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the Federal statutory tests, which are outlined in the United States Environmental Protection Agency regulatory requirements under 40 CFR 271, Subpart A, for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final authorization to operate all aspects of their hazardous waste management

programs in lieu of the Federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes. With this application Louisiana is applying for authorization for specific areas of the State regulations identified as requiring authorization and the listed Checklists are: 209, 216, 217 and 218 will allow the State to implement the equivalent RCRA Subtitle C portion of the program. Louisiana has demonstrated to EPA that its program was substantially equivalent in its management of hazardous waste to the Federal program developed pursuant to RCRA.

G. What changes are we authorizing with today's action?

On January 29, 2010 Louisiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes: The State of Louisiana's program revisions consist of regulations which specifically govern RCRA Cluster XVIII including Cluster XVI Checklist 209 as documented in this **Federal Register**:

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. (Checklist 209).	70 FR 45508–45522 August 5, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, 33 Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 3813, 105.D.7.c 1501.C.11.c, 4301.C.13.c, 2201.I.5.c, 305.C.11.c, 3801.A, 3807.A–B, 3807.B.1–2, 3807.C.1–2, 3813, 3821.C, 3821.C.1–2, 3821.C.2, 3821.C.2.a–c, 3821.C.2.d–g, 3821.C.2.h, 3821.C.4, 3821.C.4.a–b, 3821.C.3, 3821.C.3.a–b, 3823.A.4, 3823.A.5, 3841.B.4–5, 3843.C, 3843.C.1–2, 3843.C.2.a–c, 3843.C.2.d–g, 3843.C.2.h, 3843.C.4, 3843.C.4.a–b, 3843.C.3, 3843.C.3.a–b, and 3845.A.4–5, as amended December 20, 2005, effective September 20, 2009.
2. Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas. (Checklist 216).	73 FR 57–72 January 2, 2008.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, 33 Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 109, 109, see definition for Gasification, and 105.D.1.I.i, as amended December 20, 2005, effective June 20, 2009.
3. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments. (Checklist 217).	73 FR 18970–18984 April 8, 2008.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, 33 Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 3105.B.1 and 3001.B.3, as amended December 20, 2005, effective June 20, 2009.

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
4. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes. (Checklist 218).	73 FR 31756–31769 June 4, 2008.	Louisiana Revised Statutes (LRS) 30: Section 2001 <i>et seq.</i> , with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, 33 Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections Chapter 49 Table 1, 4901.B.Table.1, 4901.B.2.d and 4901.B.2.d.i–ii, as amended December 20, 2005, effective June 20, 2009.

H. Where are the revised State rules different from the Federal rules?

In this authorization of the State of Louisiana program revisions for Cluster XVIII rules, there are no provisions that are more stringent or broader in scope.

I. Who handles permits after the authorization takes effect?

Louisiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Louisiana is not yet authorized.

J. How does today's action affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

K. What is codification and is the EPA codifying Louisiana's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993),

and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the

use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective August 23, 2011.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 8, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011-15876 Filed 6-23-11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA-2011-0079]

RIN 2127-AK77

Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, Side Impact Protection

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

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning vehicle modifications which accommodate people with disabilities to update and expand a reference in an exemption relating to the Federal motor vehicle safety standard for side impact protection. The expanded exemption facilitates the mobility of drivers and passengers with disabilities.

DATES: *Effective Date:* August 23, 2011. As this final rule relieves the regulatory burdens on certain entities and involves Federal Motor Vehicle Safety Standard (FMVSS) requirements that have recently become effective, the agency believes that the above effective date is appropriate.

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be received by the agency by August 8, 2011.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590. The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual

submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. You may also visit DOT's Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001 for access to the docket.

FOR FURTHER INFORMATION CONTACT:

Gayle Dalrymple, NHTSA Office of Crash Avoidance Standards, NVS-123, telephone (202-366-5559), fax (202-493-2739), or Jesse Chang, NHTSA Office of Chief Counsel, NCC-112, telephone (202-366-2992), 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: This final rule amends 49 CFR Part 595, Subpart C, "Make Inoperative Exemptions, Vehicle Modifications to Accommodate People With Disabilities," to update and expand a reference in an exemption relating to FMVSS No. 214. The notice of proposed rulemaking (NPRM) on which this final rule is based was published on September 28, 2010 (75 FR 59674) (Docket No. NHTSA-2010-0133).

Regulatory 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). A vehicle manufacturer, distributor, dealer, 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)). The agency has used that authority to promulgate 49 CFR Part 595 Subpart C, "Make Inoperative Exemptions, Vehicle

Modifications to Accommodate People with Disabilities."

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.

Under the regulation, a motor vehicle repair business 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 49 CFR Part 595 Subpart C must register itself with NHTSA. The modifier is exempted from the make inoperative provision of the Safety Act, but only to the extent that the modifications affect the vehicle's compliance with the FMVSSs specified in 49 CFR 595.7(c) and only to the extent specified in 595.7(c). Modifications that would take the vehicle out of 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 exempted by the regulation. 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 FMVSSs with which the vehicle no longer complies and indicating any reduction in the load carrying capacity of the vehicle of more than 100 kilograms (220 pounds).

2007 Amendments to FMVSS 214 and Effects on Exemption in Part 595 Subpart C

Before today's final rule, 49 CFR Part 595 Subpart C set forth an exemption from "S5 of 49 CFR 571.214 [FMVSS No. 214] for the designated seating position modified, in any cases in which the restraint system and/or seat at that position must be changed to accommodate a person with a disability." 49 CFR 595.7(c)(15). However, the reference to S5 of FMVSS No. 214 became outdated as a result of a 2007 amendment to Standard 214. Prior to 2007, S5 had referred to the dynamic performance requirements that vehicles must meet when subjected to a