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SUPPLEMENTARY INFORMATION: OPM published a proposed rule to remove the designation of the ASBCA from the LIFAR on April 7, 2008, at 73 FR 18730. No comments were received. Accordingly, OPM is adopting the proposed rule without change. The rule implements the provisions of the National Defense Authorization Act of 2006, which created the Civilian Board of Contract Appeals (CBCA) with authority extending to most civilian agencies, including OPM. The CBCA has now replaced the ASBCA as the venue for claims brought under the Act for the Federal Employees Group Life Insurance (FEGLI) Program. OPM is updating the LIFAR to eliminate reference to the ASBCA to reflect this change in the law.

Collection of Information Requirement

This rulemaking makes a minor clarifying amendment to the Federal Employees Group Life Insurance Acquisition Regulations. The rule does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term "collection of information," which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of \$11.5 million or less in any one year. This rulemaking affects the FEGLI Program carrier and its contractual arrangements that exceed the dollar threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the RFA (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, (Pub. L. 104-4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). This rule is not considered a major rule, as defined in title 5, United States Code, section 804(2), because we estimate it will affect only the FEGLI carrier. Any resulting economic impact would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Part 2133

Government employees, Government procurement, life insurance.

Office of Personnel Management.

Howard Weizmann,
Deputy Director.

■ Accordingly, under the authority of 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301. OPM is amending chapter 21 of title 48 of the Code of Federal Regulations by removing and reserving part 2133.

PART 2133—[RESERVED]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2008-0059]

RIN 2127-AI94

Federal Motor Vehicle Safety Standards; Designated Seating Positions and Seat Belt Assembly Anchorages

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

ACTION: Final rule.

SUMMARY: Today's final rule amends the definition of the term, "designated seating position," as used in the Federal motor vehicle safety standards (FMVSS), to indicate more clearly which areas within the interior of a vehicle meet that definition. Today's final rule also establishes a calculation procedure for determining the number of designated seating positions at a seat location for trucks and multipurpose passenger vehicles with a gross vehicle weight rating less than 10,000 lbs, passenger cars, and buses. Further, this document eliminates the existing exclusion of auxiliary seats (i.e., temporary or folding jump seats) from the definition of "designated seating position." Today's final rule encourages manufacturers to use a variety of visual cues in the design of the vehicle interior to help improve occupant awareness as to which areas of a vehicle are not intended to be used as seating positions. This will help to ensure that occupants sit in locations where they are afforded the crash protection required by the FMVSSs.

DATES: The effective date of this final rule is December 8, 2008. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 8, 2008.

Petitions for reconsideration must be received not later than November 24, 2008.

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

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

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

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

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I. Notice of Proposed Rulemaking

On June 22, 2005, the agency published a notice of proposed rulemaking (NPRM) in which we proposed a revised definition of "designated seating position" (DSP) and a calculation procedure for determining the number of seating positions at a seat location (70 Fed. Reg. 36094; Docket No. NHTSA 2005-21600). The NPRM focused on two main objectives:

- (1) To provide a more objective definition of DSP and a more objective method for determining the number of DSPs at a seating location; and
- (2) To eliminate the existing exclusion of auxiliary seats from the DSP definition so that all seating locations intended to be used while a vehicle is in motion provide the appropriate levels of crash protection.

The designation of a seating position is important for a variety of reasons. Under the Federal motor vehicle safety standards (FMVSSs), motor vehicle manufacturers must meet various performance requirements for each position designated as a seating position. For example, FMVSS No. 208, "Occupant crash protection," requires that each designated seating position, as defined in § 49 CFR 571.3, in a light vehicle¹ be provided with the appropriate occupant crash protection system (e.g., air bag, safety belts or both). If a vehicle has fewer designated seating positions than the number of seated individuals actually occupying it, one or more occupants would not be

protected by safety belts and/or other crash protection systems.

The Preliminary Regulatory Evaluation (PRE) that accompanied the NPRM indicated that, in some vehicles, the number of DSPs did not reflect real world occupancy. Crash data revealed instances in which three passengers were occupying seats designated as having only two seating positions (2-DSP seats). As a result, one of the occupants was not afforded the crash protection required at a DSP, namely, a safety belt system. Further, data indicated a drop in seat belt usage rate for these cases from 53.3 percent to 27.7 percent due to a third occupant seated at a location without a restraint.

In addition to the crash data, the agency received numerous complaints from vehicle purchasers that the number of DSPs at some rear bench seats was not readily obvious. These bench seats were designated as having fewer seating positions than purchasers recognized, i.e., at the time of sale, purchasers believed these bench seats were large enough to seat three people and assumed that there were seat belts for all of them when in fact the seats had only 2-DSPs and thus seat belts for only two people. Based on the crash data and complaints, we proposed revisions to the "designated seating position" definition intending to aid manufacturers and vehicle purchasers in judging whether a location is or should be a DSP and in determining the number of DSPs at a given location.

The agency proposed to remove the language in the definition that defined a DSP as a location that is "likely to be used" as a seat while a vehicle is in motion and that meets a hip room metric, based on the hip dimensions of a 5th percentile adult female. We also proposed that the number of DSPs at a location would be calculated using a hip room measurement. Under the proposal, the measured width of a location and thus the number of DSPs could be limited by the installation of specified features, i.e., voids or impediments, to indicate that a portion of a location was not intended to be used as a seating surface. The characteristics of these voids and impediments were based on those features that appeared to have the practical effect of limiting occupancy to the intended number of DSPs in a surveyed fleet. As explained in the NPRM, the agency's intent was not to require manufacturers to increase the number of DSPs in vehicles, but to provide a clearer physical indication of the actual number of locations at which crash protection features are provided.

To further ensure that vehicle occupants are provided with

appropriate crash protection, the agency also proposed to eliminate the exclusion of auxiliary seats from the definition of DSP. Since these seats are generally designed to be used when the vehicle is in motion, their occupants need crash protection just as those in other seats do. However, because these types of seats are not currently regarded as DSPs, manufacturers are not required to provide crash protection such as safety belts or lower anchorages and tethers for child seats (LATCH systems) at those locations.

II. Public Comments on Proposal

In response to the NPRM, the agency received comments from a variety of organizations. Comment were submitted by the Alliance of Automobile Manufacturers (Alliance); General Motors; Subaru; Hyundai; Nissan; the Truck Manufacturers Association (TMA); Recreation Vehicle Industry Association (RVIA); Fire Apparatus Manufacturers Association (FAMA); Fleetwood Enterprises, a motor home manufacturer; Flexsteel Industries, Inc., a seat manufacturer; Insurance Institute for Highway Safety (IIHS); Safety Research and Strategies (SRS), a research organization; and Public Citizen, a public interest organization.

The commenters generally supported the establishment of a "designated seating position" definition that provided greater specificity. However, all but IIHS raised concern over the definition and calculation procedure for determining the number of designated seating positions proposed in the NPRM.

The motor vehicle manufacturers and the Alliance expressed concern that the proposed revisions to the DSP definition, particularly the calculation procedure, would have unintended consequences. General Motors stated that several front row bucket seats would be classified as having 2-DSPs, instead of 1-DSP, under the proposal. The Alliance stated that the void and impediment countermeasures could force passengers to sit farther outboard, potentially affecting their protection in a side impact. Hyundai and Nissan stated that the proposed revisions would require redesign of vehicles, which would necessitate at least three years of lead time.

TMA and FAMA both commented that the proposal, if made final, would impede the unique functions of many commercial and emergency vehicles. RVIA, Flexsteel, and Fleetwood stated that the proposed procedure for calculating the number of DSPs would limit the functionality of the seating positions in their vehicles by requiring

¹ NHTSA uses the term "light vehicle" to refer to passenger cars, multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of not greater than 10,000 lb.

either the designation of additional DSPs and the addition of an equal number of seat belts or the addition of a countermeasure. These commenters stated that such design changes would interfere with the functional nature of motor home seats and furnishings. RVIA also expressed concern that the elimination of the language “likely to be used as a seating position while the vehicle is in motion” would have the effect of eliminating the option under FMVSS No. 207, “Seating systems,” of placing a label on a seating location stating that it is not to be used while the vehicle is in motion, instead of designating the location as a DSP and installing a seat belt.

Safety Research and Strategies and Public Citizen questioned the benefits of the proposed revisions. Safety Research and Strategies stated that the void and impediment countermeasures were not supported by human factors analysis, and were based on vehicles with low numbers of registrations. They also said that the agency did not perform a statistical analysis of the degree of confidence of the number of incidents of the vehicles.² Public Citizen questioned the proposal’s use of countermeasures in the measurement for determining the number of DSPs, and stated that unless seat belts were required, as opposed to design elements that would reduce seating space, there would be no benefits associated with the proposal. Both Safety Research and Strategies and Public Citizen commented that the agency did not provide a basis for asserting that the proposed definition of DSP and the associated procedure would preempt State law, including State tort law.

Additional issues raised by commenters are discussed below in the discussion of the final rule.

III. Final Rule

A. Changes Since the NPRM

When the agency issued the NPRM in mid-2005, we raised concern that some motor vehicle seat designs were not indicative of their intended occupancy. Data from 1997 through 2001 indicated that real world occupancy rates were exceeding the number of designated seating positions, particularly on bench

and split bench seats. Since 2001, vehicle seat designs have changed.

As discussed above, the agency received complaints from vehicle purchasers regarding the actual number of DSPs at rear bench seats. At the time of the agency investigation in 2001, NHTSA received a complaint from a safety research consultant concerning the rear seat of the 2-door Ford Explorer. Ford submitted information indicating that 35 consumers had complained that they had thought that vehicle had rear seating for three people and were surprised to learn that there were only 2 DSPs.

The most notable change since 2001 has been a decrease in the size of 2-DSP seat locations. The width of the average seating surface for a 2-DSP seating location in MY 2001 sports utility vehicles surveyed by the agency was 1,118 mm (44 inches). The width of the average seating surface for a 2-DSP seating location in comparable MY 2006 vehicles surveyed by the agency was 979 mm (38.5 inches). Both values reflect the measurement method in this final rule. The reduced seat size more clearly indicates to occupants the capacity for which crash protection is provided.

Based on changes to current seat design and the comments received in response to the NPRM, today’s document adopts the agency’s proposal, but with several changes.

B. “Designated Seating Position”

Consistent with the proposal, the agency is adopting a definition of “designated seating position” that is based on the hip measurement of a 5th percentile adult female. However, instead of relying on a hip room measurement, today’s final rule incorporates a measurement of seating surface (e.g., surface width) that corresponds to a 5th percentile adult female.

As explained in the NPRM, “designated seating position” is currently defined, in part, as:

[Any] plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion [.]

(49 CFR 571.3(b).)

The NPRM proposed to rely expressly on the hip room dimensions for a 5th percentile adult female, instead of the somewhat less precise criteria of being large enough to accommodate such a person. The proposed definition measured available hip room according

to procedures established by the Society of Automotive Engineers (SAE), with qualifications to provide for measurement of the largest hip room dimension and the incorporation of H-point in the measurement procedure.

We also proposed to eliminate the “likely to be used” qualification in the definition. We believe that this language was insufficiently precise to provide a completely useful guide as to which positions must be considered DSPs. In proposing to eliminate that qualification, we recognized that it is not practicable to design a vehicle to prevent all potential occupant misuse of interior positions. However, as we stated in the NPRM, there is abundant notice to drivers and occupants of light vehicles that the use of safety belts is essential, and therefore, that sitting in a location in a vehicle that is not equipped with a safety belt is inappropriate and dangerous. Vehicle literature and advertising, as well as numerous public outreach programs, inform and remind the public of the need to wear safety belts while riding in a vehicle. Vehicle owners’ manuals are replete with exhortations about the importance of always wearing a safety belt. Further, the warning label required to be on the sun visor in every light vehicle expressly tells vehicle occupants to wear safety belts always. The public’s awareness of these messages is evidenced by the fact that the national safety belt use rate increased from 71 percent in 2001 to 82 percent in 2005, an all time high. Nevertheless, the agency was aware that some vehicles had certain locations that were not equipped with crash protection and that might have given the appearance of being seating positions, thereby encouraging their use by passengers. The “likely to be used” language did not provide a sufficiently objective method of resolving these difficult cases.

Commenters generally focused on the calculation procedure for determining the number of DSPs at a location, and did not provide much comment on the proposed revision to the “designated seating position” definition in 49 CFR 571.3(b). Commenters raised issue with the procedure for measuring hip room specified in the proposed 49 CFR 571.10, which was referenced in the proposed “designated seating position” definition. As explained in greater detail below, the final definition in § 571.3(b) and procedure in § 571.10 adopted in this document rely on the width of the seating surface, as opposed to the proposed hip room measurement.

Under the definition adopted today, a seat location is regarded as having at

² Safety Research and Strategies also stated that its analysis of the data indicated that the incident rate of three occupants seated at the 2-DSP rear seat of the Acura Integra 2-Door was twice as high as presented in the PRE. The incident rates of the Acura were relied upon by the agency in developing the impediment countermeasure. However, it is unclear whether Safety Research and Strategies evaluated data from the same period as in the agency’s analysis.

least one DSP if it has a seat surface width of at least 330 mm (13 inches). Three hundred and thirty millimeters is consistent with the hip dimensions of a 5th percentile adult female.³ We believe that the actual seat surface width is more reflective of a location's ability to accommodate an occupant than the proposed hip room measurement. The proposed hip room measurement potentially included voids between a seat and interior vehicle trim (e.g., the space between a seat and the inside of a door), or locations underneath trim (e.g., an arm rest) that would be unlikely to accommodate a seated occupant. The method for measuring the width of a seat surface is specified in § 571.10, as well as the procedure for determining the number of DSPs at a seat location.

C. Measuring Seating Surface

Today's final rule establishes a procedure for measuring seating surface width and places it in new section, § 571.10, *Designation of Seating Positions*. The seating surface measurement is used, in part, to determine if a seat location is large enough for a least one designated seating position. Once a seat location is identified as a "designated seating position," the seat surface measurement is then used in light vehicles to determine the number of DSPs at that location.

The NPRM relied on hip room in determining whether a location is a DSP, and the number of DSPs at that location. The proposed § 571.10 set out, with several modifications, the procedure in SAE Recommended Practice J1100 rev. February 2001 "Motor Vehicle Dimensions." The proposed procedure in § 571.10 differed from the SAE procedure in that the agency's method would use the H-point as a reference as opposed to the seating reference point. Additionally, while the SAE procedure uses the minimum dimension measured laterally between the interior trim of a vehicle on the "X" plane through the seating reference point, we proposed using a maximum dimension.

Under the proposal, hip room was to be considered continuous unless there was a separation greater than 150 mm (5.9 inches) between adjacent seat cushions, or between a seat cushion and the vehicle interior, and the separation contained either:

(1) A fixed, unpadded impediment that is at least 5 mm (0.2 inches) higher

than the highest point on the upper surface of the seat cushion when viewed in profile, and that extends more than two-thirds of the horizontal depth of the seat cushion;

(2) A void that can accommodate a rectangular box 150 mm (5.9 inches) wide, 150 mm (5.9 inches) high, and two thirds the horizontal depth of the seat cushion in length, such that the box is sitting 2 mm (0.08 inches) below each point on the top profile of the seat cushion; or

(3) A parking brake or gear shift handle, that, when placed in the lowest possible position, is not less than 25 mm (1.0 inches) higher than the highest point of the seat cushion.

Commenters raised a number of issues with the proposed procedure for measuring a seat location. Manufacturers commented that the proposed measuring procedure would result in a variety of unintended consequences. Manufacturers, Safety Research and Strategies, and Public Citizen questioned whether the countermeasures for terminating a measurement, i.e., a void or specified impediment, would in fact have the effect of limiting the number of occupants to the number of DSPs.

Manufacturers stated that use of the maximum hip room measurement under the revised SAE procedure would result in an increase in the number of DSPs at seat locations. The Alliance and General Motors commented that front row bucket seats in several vehicles are not separated by any of the proposed countermeasures, and accordingly would become considered as having 3 DSPs. These commenters stated that the crash data focused on bench and split bench seats and that the agency did not demonstrate any problem with bucket seats. Further, the Alliance, General Motors, and Flexsteel Industries stated that the measurement at many locations would include the void between two seats and the void between the seat and interior trim. These commenters stated that additional space cannot accommodate an occupant, but would nevertheless be included in the calculation for determining the number of DSPs at a location. Subaru noted that the measurement as specified may in some instances measure the area underneath an arm rest, which provides an obvious impediment to seating.

Safety Research and Strategies and Public Citizen stated that the agency did not have any human factors data to demonstrate that the proposed countermeasures would influence the seating behavior of occupants. Safety Research and Strategies stated that the agency based the countermeasures on

interior designs of low volume vehicles, which did not provide a sufficient vehicle population for determining the effectiveness of the countermeasures.

1. Measuring Procedure

The agency is adopting a procedure for measuring a seat surface for the purpose of determining the presence of a DSP location and the number of DSPs at that location. Seating surface width is reflective of the actual area available to accommodate an occupant. For example, the procedure adopted today would not include a void between a seating surface and the door trim as part of the seating area. Under the final rule adopted today, seating surface width is the maximum width of a seating surface measured in a zone extending from a transverse vertical plane 150 mm (5.9 inches) behind the front leading surface of that seating surface to a transverse vertical plane 250 mm (9.8 inches) behind that front leading surface, measured horizontally and longitudinally.⁴ Using the seating surface avoids the unintended consequences of the proposal, i.e., increasing the calculated vehicle seating capacity. Those consequences would have occurred under the proposal because the maximum H-point measurement included aspects or areas of the vehicle such as arm rests molded into the side trim that cannot be used as part of a seating surface.

Noting that the proposed H-point measurement may vary depending on seat adjustment, Subaru requested that the agency specify an adjustment procedure prior to measuring hip room. The use of a seating surface measurement will be less affected by seat position than the proposed H-point measurement. In addition, today's final rule specifies that folding, removable, and adjustable seats are measured in the configuration which results in the single largest maximum seating surface width.

In addition to providing a measurement more reflective of a vehicle's seating area, reliance on seating surface width will, in part, avoid the unintended consequences of the proposed hip-room measurement. Based on an agency survey of vehicles, the agency determined that reliance on seating surface width will result in bucket seats, which are readily identifiable as one DSP, being

³ The 5th percentile female hip width specified in S7.1.4 of FMVSS No. 208 is of 325 mm (12.8 inches). We rounded the measurement to 330 mm (13 inches) for purposes of the formula proposed below.

⁴ The dimensions of this zone are based on the definition in S16.3.1.12 of FMVSS No. 208 of the term "seat cushion reference point" (SCRCP). The term is defined as meaning a point placed on the outboard side of the seat cushion at a horizontal distance between 150 mm (5.9 in) and 250 mm (9.8 in) from the front edge of the seat used as a guide in positioning the seat.

designated as having only a single seating position.

2. Countermeasures

Today's final rule revises the countermeasures specified in the NPRM. Under today's final rule, adjacent seat surfaces are considered continuous, unless:

(i) The seating surfaces are separated by:

(A) A fixed trimmed surface whose top surface is unpadding and that has a width not less than 140 mm (5.5 inches), as measured in each transverse vertical plane within that measurement zone, or

(B) A void whose cross section in each transverse vertical plane within that measurement zone is a rectangle that is not less than 140 mm (5.5 inches) wide and not less than 140 mm (5.5 inches) deep. The top edge of the cross section in any such plane is congruent with the transverse horizontal line that intersects the lowest point on the portion of the top profile of the seating surfaces that lie within that plane.

or

(ii) Interior trim interrupts the measurement of the nominal hip room of the seating surfaces, measured laterally along the "X" plane through the H-point. For purposes of this paragraph, the H-point is located using the SAE three-dimensional H-point machine per SAE Recommended Practice J826, rev. July 1995, with the legs and leg weights removed,

or

(iii) The seating surfaces are adjacent outboard seats, and the lateral distance between any point on the seat cushion of one seat and any point on the seat cushion of the other seat is not less than 140 mm (5.5 inches).

As we stated in the NPRM, we recognize that it is not practical to design a vehicle to prevent all potential misuse of interior positions that could be used for seating (70 FR 36096). However, the countermeasures incorporated in the new definition will provide visual cues to indicate the number of DSPs at a seat location and thus the number of people who should sit there. As discussed above, the agency received a number of complaints from consumers who said that, at time of purchase, the actual number of manufacturer designated seating positions at some bench seats was not readily apparent to them. Today's final rule is intended to eliminate complaints, result in seat designs that better convey the number of occupants that are intended to occupy a seat, and ensure that all occupants can be properly restrained.

Today's final rule provides manufacturers with flexibility in designing seats. A manufacturer may install an impediment or void as described above in order to maintain the

current number of DSPs. If a fixed trim surface is appropriately configured, a convenience function, such as a cup holder, tray or storage, also can serve as an impediment. A manufacturer is also given the option of preventing two adjacent seats being treated as a single continuous seating surface by designing the vehicle interior so that a transverse horizontal line through the H-points of the two seats intersects surfaces of the vehicle interior. The model year 2006 Ford Mustang and BMW 3 Series convertible are examples of vehicles that would qualify under this criterion.

For purpose of the countermeasures, the H-point is located using the SAE three-dimensional H-point machine per SAE Recommended Practice J826, rev. July 1995, with the legs and leg weights removed. In response to the Alliance's comment that measurements with the legs removed have not been demonstrated to be repeatable, the agency notes that its decision not to include the legs for the 3-dimensional tool when determining the H-point was based on three factors. First, based on the regulatory text adopted in the final rule, the need to perform this measurement would occur primarily in the rear seats of sports cars. The room available for installing the 3-D mannequin is limited in these vehicles, resulting in greater difficulty and potentially greater measurement error if the legs were used. Second, the agency eliminated the measurement box around the H-point and hence the need to determine either a minimum or maximum hip width. Third, the Alliance did not provide any documentation supporting its claim.

D. Calculating the Number of Designated Seating Positions

1. Procedure for Determining Number of DSPs

The agency is adopting a procedure for determining the number of seating positions at a location once it is determined that a location has at least one DSP. The procedure for determining the number of DSPs at a seat location adopted today applies to passenger cars; buses, except school buses; and trucks and multipurpose passenger vehicles with a GVWR less than 10,000 lbs. It does not, however, apply to motor homes, police vehicles, school buses, ambulances, fire fighting vehicles, and trucks and multipurpose passenger vehicles with a GVWR of 10,000 lbs or greater.⁵

⁵ The DSP definition itself will be applicable to all vehicles including motor homes, police vehicles, school buses, ambulances, fire fighting vehicles,

The agency recognizes that the usage needs and patterns for seat locations in motor homes, police vehicles, ambulances, fire fighting vehicles, and trucks and multipurpose passenger vehicles with a GVWR of 10,000 lbs or greater are different than the usage needs and patterns for typical light duty vehicles. Further, the crash data did not demonstrate a problem of the number of occupants exceeding the number of DSPs in such vehicles.

Therefore, in order to provide manufacturers the flexibility to design these vehicles for their more specialized functions, the calculation procedure will not be used to determine the number of DSPs in those vehicles. Since the final rule does not reduce the current requirements for those vehicles, the agency does not anticipate any departures from the current industry practices for designating seating positions in these vehicles. For these vehicles, except school buses, the rule expressly permits the manufacturer of these vehicles to continue to designate, using a label in compliance with S4.4 of FMVSS No. 207, locations that are not to be used for seating while the vehicle is in motion. The rule excludes those locations from the DSP definition. For school buses, the existing method for determining the number of passenger seating positions, set forth in S4.1 of FMVSS No. 222, "School bus passenger seating and crash protection," will continue to apply.

With regard to the vehicles for which the procedure will apply, we are specifying the application of one of two calculations, dependent upon the overall value of the seating surface width. For adjacent seats with a continuous seating surface width less than 1400 mm (55 inches), the measured surface would be divided by 350 mm and rounded down to the nearest whole number to produce the number of DSPs. For adjacent seats with 1400 mm (55 inches) or more of continuous seating surface, the measured surface would be divided by 450 mm and rounded down to the nearest whole number. Also, a compliance test procedure is being published on the NHTSA Web site concurrently with this final rule.

A survey of the MY 2006 vehicle fleet indicated that application of the 350 and 450 divisor values resulted in a DSP number consistent with the manufacturers' designation. As noted above, the large 2-DSP seats seen in earlier fleets are not nearly so prevalent in more recent fleets. Today's final rule encourages manufacturers to continue

and trucks and multipurpose passenger vehicles with a GVWR of 10,000 lbs or greater.

this trend. Additionally, the larger divisor for larger seats prevents larger 3–DSP seats from having to be designated as 4–DSP seats. The data do not demonstrate a problem with 3–DSP seats being occupied by four passengers, and do not demonstrate the potential for any benefit from such a requirement. In addition, for larger vehicles with longer bench seats (e.g., shuttle buses and limousines), the 450 divisor results in a designated seating position width that aligns with the width typically used by seating manufacturers.

Public Citizen and Safety Research and Strategies questioned the use of a larger divisor for larger seats. Safety Research and Strategies suggested that the lack of a problem with larger seats may be the result of a limited data, and suggested that the agency consider usage patterns of these larger vehicles after second retail sale. Both of these commenters also suggested that use patterns may change in the future that would necessitate 3–DSPs being designated as 4–DSPs.

The data relied upon by the agency did not indicate a problem of four occupants seated at 3–DSP locations. The vehicle population surveyed did not exclude used vehicles (i.e., vehicles after second retail sale). Commenters did not provide any data to indicate that the usage pattern in larger vehicles was changing in a manner as they discussed. Therefore, today's final rule maintains the two separate calculations based on seating surface width.

The calculation procedures adopted today specify that the seat measurement is divided by the appropriate factor, and that the resulting value is rounded down to produce the number of DSPs. Again, as already noted, the procedure adopted today relies on seating surface width as opposed to hip room. Rounding down results in the determination of the number of DSPs that is consistent with the vehicle designs of the current fleet, which as discussed above, provide a better indication of the number of DSPs.

2. Motor Homes

As stated above, the calculation procedure adopted today does not apply to motor homes, police vehicles, ambulances, fire fighting vehicles, and trucks and multipurpose passenger vehicles with a GVWR of 10,000 lbs or greater. This limitation was adopted largely in response to RVIA, which expressed concern that the agency's proposal was inconsistent with past agency policy regarding the number of DSPs required in motor homes and with the practice of the motor home industry.

RVIA noted that in the preamble to a final rule dated April 19, 1979, the agency stated:

It is the agency's position that a manufacturer must provide designated seating positions for the number of persons it advertises its vehicle will accommodate. In the case of a motor home, this means that if such a vehicle is advertised to "sleep six," the manufacturer must assume that the six persons will ride in the vehicle to their sleeping destination and thus must designate six seating positions.

(44 FR 23229, 23234). RVIA said further that the agency confirmed this position in an April 24, 1995 letter to Four Winds International Corporation, in which the agency stated:

This will confirm that it continues to be NHTSA's position that, as a minimum, there must be as many designated seating positions as there are sleeping accommodations.

RVIA appears to have misinterpreted these statements to mean that a motor home manufacturer is only required to designate a number of DSPs equal to the number of sleeping accommodations. However, this has not been the agency's historic interpretation.

In the 1979 final rule, the agency was discussing a non-compliance investigation in which a manufacturer advertised a motor home as "sleeping six," but only designated four seating positions (44 FR at 23234). In the preamble to that final rule, the agency also stated,

Motor home manufacturers are currently required to designate as a seating position any location intended by the manufacturer to provide seating accommodation while the vehicle is in motion.

(Id.) In the letter to Four Winds, the agency stressed that "as a minimum," there must be as many designated seating positions as there are sleeping accommodations.

At the same time, NHTSA notes that it does not regard its amendment of the definition of "designated seating position" as having any effect on the ability of manufacturers to use the option under FMVSS No. 207 of placing a label on a seating location stating that it is not to be used while the vehicle is in motion, instead of designating the location as a DSP and installing a seat belt. RVIA had expressed concern that the elimination of the language "likely to be used as a seating position while the vehicle is in motion" would have the effect of eliminating that option. In response to RVIA's concerns, and in order to make the agency's intention clearer, the final rule includes in the new DSP definition a specific cross-reference to the provision of FMVSS No. 207 that permits labeling of a location

as one not to be occupied while the vehicle is in motion. The rule expressly provides that a seating location so labeled in the listed types of vehicles is not a DSP.

E. Auxiliary Seating and Seat Belt Anchorages

Today's final rule eliminates the exclusion of auxiliary seats from the definition of "designated seating position." Including these seats in the definition of "designated seating position" has the effect of subjecting these seats to the occupant crash protection requirements applicable to designated seating positions (e.g., seat belt requirements).

When the agency originally adopted the DSP definition, safety belt use rates were well below 20 percent. The installation of seat belts for auxiliary seats, i.e., temporary and jump seats, was not then a high priority for the agency since the risk to occupants of those seats was a very small part of the problem. Now that safety belt use rates are much higher, the agency is focusing on occupants who remain unrestrained. This includes occupants of auxiliary seats, many of whom are children.

Under today's final rule, seats formerly considered to be auxiliary seats are required to meet all requirements in FMVSSs applicable to designated seating positions, including the requirements of FMVSS No. 210, "Seat belt assembly anchorages."

Traditionally, manufacturers have classified some side-facing seats in light vehicles as auxiliary or jump seats. The current test procedures for the anchorage strength requirements as specified in S5.2 of FMVSS No. 210 were designed for forward and rear facing seats only. Under S5.2, a force must be applied in the direction in which the seat faces in a plane *parallel* to the longitudinal centerline of the vehicle. For side-facing seats, including auxiliary seats, the direction that the seat faces is *perpendicular* to the longitudinal centerline of the vehicle. Consequently, a force cannot be applied simultaneously in the direction that a side-facing seat faces and in a plane parallel to the longitudinal centerline of the vehicle. To permit strength testing of seat belt anchorages at side-facing designated seating positions, we are amending S5 of FMVSS No. 210 to specify that for side-facing seats, the specified force would be applied in the direction that the seat faces in a vertical plane perpendicular to the longitudinal centerline of the vehicle.

RVIA stated that subjecting side facing seats to the requirements of FMVSS No. 210 would not be

practicable and that the load application for Type 1 (lap-only) and Type 2 (lap and shoulder) belts should be reduced. RVIA stated that side impacts occur with less frequency and that side impacts generally occur at lower speeds. However, RVIA did not provide any data to support its assertion. In addition to side impacts, we are also concerned about the safety of occupants in these seats when they are involved in rollover crashes or even frontal crashes where the forces experienced by the seat belt anchorages can be considerable. Therefore, we are maintaining the loading requirements under FMVSS No. 210.

IV. Benefits and Costs

In the NPRM, we tentatively determined that there were three ways in which manufacturers could respond to the adoption of the proposed amendments to DSP: (1) Add a lap and shoulder belt; (2) create a space between the seats to restrict the number of seating positions; and (3) design an impediment to reduce the likelihood of people sitting in between the outboard seats. The purpose of today's final rule is not to require manufacturers to increase the number of DSPs in vehicles, but is instead to provide a simpler determination, both for manufacturers and for vehicle occupants, of what constitutes a DSP and of the number of DSPs at a given seating location. The costs and benefits estimated for the NPRM were based on the manufacturers' responding to the proposed DSP definition through one of the three identified options.

An agency survey of the MY 2006 sport utility vehicle fleet revealed that manufacturers have substantially addressed the problems with wide 2-DSP seats by reducing the size of such seats. Reduced seat size provides a clearer indication to occupants of the number of DSPs at those locations. Because manufacturers are currently addressing the issues that were of concern in the NPRM, the costs and benefits of today's final rule are less than those estimated for the NPRM.

The vehicles that will need a redesign in response to today's final rule are primarily sport coupes and convertibles with a 2-DSP second row, a limited number of multipurpose passenger vehicles with 2-DSP third row seats, and a truck that was identified as having an auxiliary seat. The total number of vehicles affected is approximately 386,434.⁶

The cost to comply with today's final rule ranges from \$426,000 to \$17,833,000. The lower end of this range is the cost if manufacturers were to install an impediment in affected passenger cars as specified in § 571.10 and decrease seat surface width in affected light trucks. We expect that this will be the most likely response from manufacturers. The upper end of this range is the cost if manufacturers were to redesign in order to increase the number of DSPs, which would require the installation of a lap/shoulder belt for the additional position. Increasing the number of DSPs is a very unlikely response. The number of DSPs in a vehicle is closely tied to vehicle packaging and marketing. Increasing the number of DSPs would likely have implications beyond the cost of providing crash protection at the new DSP location.

The main benefit of this final rule is the increased clarity and certainty provided by the revised definition and the newly established procedure for determining the number of DSPs at a seat location. Today's final rule reinforces vehicle consumer awareness as to the number of DSPs in a vehicle. Again, the intent of today's final rule is not to require manufacturers to increase the number of DSPs in their vehicles. However, if manufacturers were to increase the number of DSPs in the affected vehicle population, we estimate that one life would be saved. Further discussion on the costs and benefits of today's final rule are provided in the regulatory impact analysis, which is in the docket for this rulemaking.

V. Incorporation by Reference

Under 1 CFR part 51, *Incorporation by Reference*, the agency must declare that the Director of the Federal Register has approved incorporation by reference of a publication into a regulation. In the NPRM, the agency proposed to amend the general incorporation by reference provision at § 571.5, *Matters incorporated by reference*, to include a centralized index of all of the publications incorporated into § 571. This was not intended to update such references, but merely to centralize all of the incorporation by references contained in § 571. However, due to delays in this rulemaking, we are delaying the creation of a complete centralized index. Instead, we are updating the existing information in § 571.5 to include updated language in regard to incorporation of materials by reference, including new procedures for

retrieving materials from the National Archives and Records Administration and a new format indicating the sections and paragraphs where incorporated materials are referenced. Additionally, we are including in that section all of the materials referenced in this rulemaking. Some portions of 571.3 and 571.210 were also amended to include references to the centralized incorporation by reference table. At a future date, we intend to complete the centralized incorporation by reference as envisioned in the notice of proposed rulemaking.

VI. Effective Date

The definition of "designated seating position" adopted in this document clarifies the existing definition and is not expected to have a substantial impact on current vehicle design. The degree to which seat designs exhibit the characteristics that gave rise to the agency's concerns has lessened in the current fleet. The average width of a 2-DSP seat in station wagons, and multipurpose passenger vehicles (including sport utility vehicles) has decreased from 1,118 mm for MY 2001 vehicles to 979 mm for MY 2006 vehicles. Manufacturers are either providing 3-DSPs or reducing the width of the seating area in order to more accurately reflect the intended occupancy.

However, the inclusion of auxiliary seats and the established procedure for determining the number of DSPs will require minor redesign of a small population of vehicles. To provide manufacturers the opportunity to make such redesigns, the agency is providing a lead time of two years prior to the application of the revised definition and newly established procedure.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

⁶ Specifically, the affected vehicle population is comprised of 156,974 coupes and convertibles,

193,100 multipurpose passenger vehicles, 36,360 light trucks.

State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This document was determined to be significant under E.O. 12866 and was reviewed by the Office of Management and Budget under E.O. 12866. Further, the agency has prepared a regulatory evaluation as required by the DOT policies and procedures. A copy of that evaluation has been placed in the docket for this rulemaking. The impacts of this final rule are summarized above in the section entitled "Benefits and costs."

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule directly affects motor vehicle manufacturers and motor vehicle seat manufacturers. According to the size standards of the Small Business Association (at 13 CFR part 121.601), the size standard for manufacturers of "Automobile Manufacturing" (NAICS Code 336111) is 1,000 employees or fewer. Manufacturers of vehicle seats are considered manufacturers of "Motor Vehicle Seating and Interior Trim Manufacturing" (NAICS Code 336360). The size standard for NAICS Code 336360 is 500 employees or fewer.

The majority of motor vehicle manufacturers do not qualify as a small business. These manufacturers, along with manufacturers that do qualify as a small business, would be able to maintain the current number of DSPs through the design changes outlined in the definition. The definition does not require vehicles to have a certain number of designated seating positions, but provides an objective metric to define the number of DSPs for a given seat.

Most of the seat manufacturers have 500 or fewer employees. But again, if design changes are required to maintain a seat's 2-DSP designation, this can be done by designing seats in accordance

with the above listed specifications at a minimal cost per seat. Accordingly, there will be no significant economic impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a regulatory flexibility analysis.

C. Executive Order No. 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be unnecessary.

We note that the definition and identification of a "designated seating position" is integral to several FMVSSs, including FMVSS No. 208 and FMVSS No. 110, "Tire and rim selection." As such, a State definition of "designated seating position" would be subject to the express preemption clause in § 30103(b). However, the agency is not aware of any State definition for that term, as it applies to the performance of vehicles regulated under the FMVSSs.

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements

unenforceable. *See Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

NHTSA discussed the issue of preemption and sought comment from all stakeholders through publication of the proposed rule in the **Federal Register**. No State or local governmental entities submitted any comments to the docket for the proposed rule.

Additionally, officials at NHTSA contacted organizations representing the interests of State and local governments and officials about this rulemaking and the issue of preemption. The National Conference of State Legislatures responded, indicating that it did not have any comments.

Public Citizen argued in its comment that the agency lacks the authority to preempt State tort law actions. This final rule does not foreclose all such actions. It does identify circumstances in which the agency believes State tort actions would conflict with the agency's definition of "designated seating position" and hinder or frustrate the accomplishment of the purposes of the FMVSSs, so that specific claims would be preempted. Public Citizen also suggested that there is no reason to believe that there would be a conflict. We differ because NHTSA believes that comfort and convenience significantly affect the rate of seat belt use and in that belief have in the past adopted requirements to increase comfort and convenience. One of the oldest such requirements is the requirement for integral lap and shoulder belts. It was adopted in part to reduce the tangle of belts then confronting vehicle occupants.

Our views regarding the preemptive effect of the amended definition remain largely as we stated them in the proposal. As noted above, the definition of "designated seating position" in section 571.3 identifies circumstances, i.e., conflicting determinations in State tort law as to whether a location in a motor vehicle is or ought to be a designated seating position, that would prevent, hinder or frustrate the accomplishment of the purposes of the Federal Motor Vehicle Safety Standards in Part 571 of this title. A tort law judgment premised on there being more designated seating positions in a motor vehicle than the number contemplated in that definition could have a negative safety impact. Such a judgment would tend to induce manufacturers to equip a seating location with an excessive number of safety belts since the Federal motor vehicle safety standards require that each designated seating position be equipped with one or more safety belts. Given that seat belt comfort and convenience continue to be important

factors affecting the level of safety belt use, as evidenced by the agency's adoption of requirements to improve comfort and convenience and by its 2003 report on improving seat belt use,⁷ NHTSA believes the installation of an excessive number of safety belts would decrease, not increase, safety. We expect that occupants would be less likely to use safety belts because limited space would make such use difficult or uncomfortable. For example, four safety belts could be installed on a seat that NHTSA believes is appropriate for three occupants. Where the seat is actually occupied by three occupants, in order to use the safety belts in the location where they are installed, some of the occupants may sit uncomfortably close to another occupant and/or the side of the vehicle. If the occupants attempt to sit in locations where there is more space between them, the belts will not be properly aligned with the occupants' bodies, and they might end up sitting on buckles. This could have the effect of making it less likely that an occupant will use his or her respective belt because the belt would be located in an uncomfortable and/or inconvenient location. The potential for such a scenario would frustrate the efforts of this agency to base the number of designated seating positions, and thus the number of safety belts, on reasonably anticipated occupancy levels. This would hamper our efforts to promote high safety belt use rates.

To ensure that there is no ambiguity or doubt about this, the agency has included such a provision in the text of this final rule, so that its position regarding preemptive effect is clear.

While NHTSA has outlined some potential State requirements that may be preempted, it is conceivable that additional such conflicts may become clear through subsequent experience with today's regulation. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.

D. Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal

standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

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

E. National Environmental Policy Act

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

F. Paperwork Reduction Act

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

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

Unlike the proposed definition of "designated seating position," today's final rule is not based on voluntary consensus standards. As noted above, the final rule avoids the unintended consequences of the proposal, i.e., increasing the calculated vehicle seating capacity. In developing the final rule, the agency reviewed various voluntary consensus standards for determining seating positions. The measurement procedure adopted today incorporates SAE J826 "Devices for use in Defining and Measuring Vehicle Seating Accommodations," revised July 1995.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate

likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This rulemaking will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children. The final rule amends the definition of "designated seating position."

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

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

List of Subjects in 49 CFR Parts 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

⁷ NHTSA (2003), *Initiatives to Address Safety Belt Use*. Washington, DC: National Highway Traffic Safety Administration. http://www.nhtsa.dot.gov/people/injury/SafetyBelt/OIPT_FinalRpt_07-17-03.html.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

■ 2. Section 571.3 is amended by revising the definitions of “designated seating position,” “5th percentile adult female,” “H-point,” “Seating reference point,” “Torso line,” and “95th percentile adult male” in paragraph (b) and adding a new paragraph (c) to read as follows:

§ 571.3 Definitions.

(b) * * *
Designated seating position means:
 (1) For vehicles manufactured prior to September 1, 2010, any plan view location capable of accommodating a person at least as large as a 5th percentile adult female, if the overall seat configuration and design and vehicle design is such that the position is likely to be used as a seating position while the vehicle is in motion, except for auxiliary seating accommodations such as temporary or folding jump seats. Any bench or split-bench seat in a passenger car, truck or multipurpose passenger vehicle with a GVWR less than 4,536 kilograms (10,000 pounds), having greater than 127 centimeters (50 inches) of hip room (measured in accordance with Society of Automotive Engineers (SAE) Recommended Practice J1100a, revised September 1975, “Motor Vehicle Dimensions” (incorporated by reference, see § 571.5), shall have not less than three designated seating positions, unless the seat design or vehicle design is such that the center position cannot be used for seating. For the sole purpose of determining the classification of any vehicle sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events, any location in such vehicle intended for securement of an occupied wheelchair during vehicle operation shall be regarded as four designated seating positions.

(2) For vehicles manufactured on and after September 1, 2010, *designated seating position* means a seat location that has a seating surface width, as described in § 571.10(c) of this part, of at least 330 mm (13 inches). The number of designated seating positions at a seat location is determined

according to the procedure set forth in § 571.10(b) of this part. However, for trucks and multipurpose passenger vehicles with a gross vehicle weight rating greater than 10,000 lbs, police vehicles as defined in S7 of FMVSS No. 208, firefighting vehicles, ambulances, and motor homes, a seating location that is labeled in accordance with S4.4 of FMVSS No. 207 will not be considered a designated seating position. For the sole purpose of determining the classification of any vehicle sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events, any location in such a vehicle intended for securement of an occupied wheelchair during vehicle operation is regarded as four designated seating positions.

* * *
5th percentile adult female means a person possessing the dimensions and weight of the 5th percentile adult female specified for the total age group in “Weight, Height, and Selected Body Dimensions of Adults: United States—1960–1962,” first published as Public Health Service Publication No. 1000 Series 11–No. 8, June 1965 and republished as DHEW Publication No. (HRA) 76–1074 (incorporated by reference, see § 571.5).

* * *
H-Point means the pivot center of the torso and thigh on the three-dimensional device used in defining and measuring vehicle seating accommodation, as defined in Society of Automotive Engineers (SAE) Recommended Practice J1100, revised February 2001, “Motor Vehicle Dimensions” (incorporated by reference, see § 571.5).

* * *
Seating reference point (SgRP) means the unique design H-point, as defined in Society of Automotive Engineers (SAE) Recommended Practice J1100, revised June 1984, “Motor Vehicle Dimensions” (incorporated by reference, see § 571.5), which:

(1) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(2) Has X, Y, and Z coordinates, as defined in Society of Automotive Engineers (SAE) Recommended Practice J1100, revised June 1984, “Motor Vehicle Dimensions” (incorporated by reference, see § 571.5), established relative to the designed vehicle structure;

(3) Simulates the position of the pivot center of the human torso and thigh; and

(4) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in Society of Automotive Engineers (SAE) Standard J826, revised May 1987, “Devices for Use in Defining and Measuring Vehicle Seating Accommodation” (incorporated by reference, see § 571.5), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

* * *
Torso line means the line connecting the “H” point and the shoulder reference point as defined in Society of Automotive Engineers (SAE) Standard J787b, revised September 1966, “Motor Vehicle Seat Belt Anchorage” (incorporated by reference, see § 571.5).

* * *
95th percentile adult male means a person possessing the dimensions and weight of the 95th percentile adult male specified “Weight, Height, and Selected Body Dimensions of Adults: United States—1960–1962,” first published as Public Health Service Publication No. 1000 Series 11–No. 8, June 1965 and republished as DHEW Publication No. (HRA) 76–1074 (incorporated by reference, see § 571.5).

* * *
 (c) Any State requirement, including any determination under State tort law premised on there being more designated seating positions in a motor vehicle than the number contemplated in the definition of “designated seating position” in paragraph (b) of this section would prevent, hinder or frustrate the accomplishment of the purposes of the Federal Motor Vehicle Safety Standards in Part 571 of this title, and is thus preempted by this regulation.

* * *

■ 3. Section 571.5 is revised to read as follows:

§ 571.5 Matter incorporated by reference

(a) Documents listed in this section and additional documents referred to in subpart B of this part have been incorporated by reference into this part. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in this section or in subpart B of this part are incorporated. A notice of any change in these materials will be published in the

Federal Register. Anyone may inspect copies at the NHTSA Reading Room, 1200 New Jersey Avenue, Washington, DC 20590 and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-

6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Approved materials are available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this part and the sections and paragraphs (if applicable) affected include, but are not limited to, as follows:

American Association of Textile Chemists and Colorists (AATCC), 1 Davis Dr., P.O. Box 12215, Research Triangle Park, NC 27709	
American National Standards Institute (ANSI), 1700 North Moore St., Suite 1540, Arlington, VA 22209-1903	
American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959	
General Services Administration (GSA), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402	
Illuminating Engineering Society of North America (IES), 120 Wall St., 7th Floor, New York, NY 10005	
Department of Defense, DODSSP Standardization Document Order Desk, 700 Robbins Ave., Philadelphia, PA 19111-5098 ..	
National Center for Health Statistics, Centers for Disease Control (CDC), National Division for Health Statistics, Division of Data Services, Hyattsville, MD 20782. Phone: 1-800-232-4636; Web: http://www.cdc.gov/nchs	
"Weight, Height, and Selected Body Dimensions of Adults: United States—1960–1962," first published as Public Health Service Publication No. 1000 Series 11-No. 8, June 1965 and republished as DHEW Publication No. (HRA) 76-1074	571.3
National Highway Traffic Safety Administration (NHTSA), Office of Vehicle Safety Standards, DOT-NHTSA, 1200 New Jersey Ave, SE., Washington, DC 20590.	
Society of Automotive Engineers, Inc. (SAE), 400 Commonwealth Drive, Warrendale, Pennsylvania 15096. Phone: 1-724-776-4841; Web: http://www.sae.org	
Society of Automotive Engineers (SAE) Standard J787b, revised September 1966, "Motor Vehicle Seat Belt Anchorage"	571.3
Society of Automotive Engineers (SAE) Standard J826, revised May 1987, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation"	571.3; 571.210
Society of Automotive Engineers (SAE) Recommended Practice J1100a, revised September 1975, "Motor Vehicle Dimensions"	571.3
Society of Automotive Engineers (SAE) Recommended Practice J1100, revised June 1984, "Motor Vehicle Dimensions"	571.3; 571.210
Society of Automotive Engineers (SAE) Recommended Practice J1100, revised February 2001, "Motor Vehicle Dimensions"	571.3
Society of Automotive Engineers (SAE) Surface Vehicle Standard J826, revised July 1995, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation"	571.10
United Nations, Conference Services Division, Distribution and Sales Section, Office C.115-1, Palais des Nations, CH-1211, Geneva 10, Switzerland. Copies of Regulations also are available on the ECE internet Web site: www.unece.org/trans/main/wp29/wp29regs.html .	

■ 4. Section 571.10 is added to read as follows:

§ 571.10 Designation of Seating Positions.

(a) *Application.* This section applies to passenger cars, trucks, multipurpose passenger vehicles, and buses manufactured on or after September 1, 2010. However, paragraph (b) of this section does not apply to trucks and multipurpose passenger vehicles with a gross vehicle weight rating greater than 10,000 lbs, school buses, police vehicles as defined in S7 of Standard No. 208 (49 CFR 571.208), firefighting vehicles, ambulances, or motor homes. To determine the number of passenger seating positions in school buses, see S4.1 of Standard No. 222 (49 CFR 571.222).

(b) *Number of designated seating positions.* The formula for calculating the number of designated seating positions (N) for any seat location with a seating surface width greater than 330 mm (13 inches) is as follows:

(1) For seat locations with a seating surface width, as described in paragraph (d), of less than 1400 mm (55.2 inches): $N = [\text{Seating surface width (in mm)} / 350]$ round down to the nearest whole number;

(2) For seat locations with a seating surface width, as described in paragraph (d), greater than or equal to 1400 mm (55.2 inches): $N = [\text{Seating surface width (in mm)} / 450]$ round down to the nearest whole number.

(c) *Seating surface measurement.* (1) As used in this section, "seating surface width" is the maximum width of a seating surface measured in a zone extending from a transverse vertical plane 150 mm (5.9 inches) behind the front leading surface of that seating surface to a transverse vertical plane 250 mm (9.8 inches) behind that front leading surface, measured horizontally and longitudinally.

(2) Adjacent seating surfaces are considered to form a single, continuous seating surface whose overall width is measured as specified in (c)(1) of this section, unless

(i) The seating surfaces are separated by:

(A) A fixed trimmed surface whose top surface is unpadding and that has a width not less than 140 mm (5.5 inches), as measured in each transverse vertical plane within that measurement zone, or

(B) A void whose cross section in each transverse vertical plane within

that measurement zone is a rectangle that is not less than 140 mm (5.5 inches) wide and not less than 140 mm (5.5 inches) deep. The top edge of the cross section in any such plane is congruent with the transverse horizontal line that intersects the lowest point on the portion of the top profile of the seating surfaces that lie within that plane, or

(ii) Interior trim interrupts the measurement of the nominal hip room of the seating surfaces, measured laterally along the "X" plane through the H-point. For purposes of this paragraph, the H-point is located using the SAE three-dimensional H-point machine per Society of Automotive Engineers (SAE) Surface Vehicle Standard J826, revised July 1995, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation" (incorporated by reference, see section 571.5) with the legs and leg weights removed, or

(iii) The seating surfaces are adjacent outboard seats, and the lateral distance between any point on the seat cushion of one seat and any point on the seat cushion of the other seat is not less than 140 mm (5.5 inches).

(3) Folding, removable, and adjustable seats are measured in the configuration that results in the single largest maximum seating surface width.

■ 5. Section 571.210 is amended by revising S4.3.2, S5.1, and the introductory text of S5.2 to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages

* * * * *

S4.3.2 *Seat belt anchorages for the upper torso portion of Type 2 seat belt assemblies.* Adjust the seat to its full rearward and downward position and adjust the seat back to its most upright position. With the seat and seat back so positioned, as specified by subsection (a) or (b) of this section, the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional drafting template described in Society of Automotive Engineers (SAE) Standard J826, revised May 1987, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation" (incorporated by reference, see § 571.5). The template's "H" point shall be at the design "H" point of the seat for its full rearward and full downward position, as defined in Society of Automotive Engineers (SAE) Recommended Practice J1100, revised June 1984, "Motor Vehicle Dimensions" (incorporated by reference, see § 571.5), and the template's torso line shall be at the same angle from the vertical as the seat back.

(a) For fixed anchorages, compliance with this section shall be determined at the vertical centerline of the bolt holes or, for designs using another means of attachment to the vehicle structure, at the centroid of such means.

(b) For adjustable anchorages, compliance with this section shall be determined at the midpoint of the range of all adjustment positions.

* * * * *

S5.1 Seats with Type 1 or Type 2 seat belt anchorages. With the seat in its rearmost position, apply a force of 22,241 N in the direction in which the seat faces to a pelvic body block as described in Figure 2A, in a plane parallel to the longitudinal centerline of the vehicle for forward and rear facing seats, and in a plane perpendicular to the longitudinal centerline of the vehicle for side facing seats, with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 222,411 N per second. Attain the 22,241 N force in not more than 30 seconds and

maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in Figure 2B may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard.

S5.2 Seats with Type 2 or automatic seat belt anchorages. With the seat in its rearmost position, apply forces of 13,345 N in the direction in which the seat faces simultaneously to a pelvic body block, as described in Figure 2A, and an upper torso body block, as described in Figure 3, in a plane parallel to the longitudinal centerline of the vehicle for forward and rear facing seats, and in a plane perpendicular to the longitudinal centerline of the vehicle for side facing seats, with an initial force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 133,447 N per second. Attain the 13,345 N force in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in Figure 2B may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard.

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Issued: October 1, 2008.

David Kelly,

Acting Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717342-7713-02]

RIN 0648-XJ86

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2009

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

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (120 mm) for Atlantic surfclams for the 2009 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2009, through December 31, 2009.

ADDRESSES: Written inquiries may be sent to; Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Edward Stern, Fishery Management Specialist, (978) 281-9177; fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2008 meeting, the Mid-Atlantic Fishery Management Council voted to recommend that the Regional Administrator suspend the minimum size limit for the 2009 fishing year. In accordance with the provisions of the FMP, the Regional Administrator will publish the suspension of the surfclam minimum size if the proportion of undersized surfclams is under 30 percent of the total surfclam landings for each fishing year.

Commercial surfclam data for 2008 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 2.83-percent of the overall commercial landings were composed of surfclams