(6) Is not the subject of a court order preventing him/her from possessing a firearm;

(7) Has no physical impairments that will hinder performance as an active duty law enforcement officer; and

(8) Attends and successfully completes a mandatory orientation session developed by Reclamation to become familiar with Federal laws and procedures and with all pertinent provisions of statutes, ordinances, regulations, and Departmental and Reclamation rules and policies.

(b) Qualification standards for guards as provided in the Departmental Manual or other Department or Reclamation guidance may only be used for those persons hired exclusively to perform guard duties.

§ 422.11 Position sensitivity and investigations.

Each law enforcement contract or cooperative agreement must include a provision requiring the CLEO to certify that each officer who exercises authority under the Act has completed an FBI criminal history check and is satisfactorily cleared.

§ 422.12 Required standards of conduct.

All law enforcement officers authorized to exercise Reclamation authority must adhere to the following standards of conduct:

(a) Be punctual in reporting for duty at the time and place designated by superior officers;

(b) Be mindful at all times and under all circumstances of their responsibility to be courteous, considerate, patient and not use harsh, violent, profane, or insolent language;

(c) Make required reports of appropriate incidents coming to their attention;

(d) When in uniform and requested to do so, provide their name and identification/badge number orally or in writing;

(e) Immediately report any personal injury or any loss, damage, or theft of Federal government property as required by § 422.13;

(f) Not be found guilty in any court of competent jurisdiction of an offense that has a tendency to bring discredit upon the Department or Reclamation;

(g) Not engage in any conduct that is prejudicial to the reputation and good order of the Department or Reclamation; and

(h) Obey all regulations or orders relating to the performance of the unit's duties under the Reclamation contract or cooperative agreement.

§ 422.13 Reporting an injury or property damage or loss.

(a) An officer must immediately report orally and in writing to his/her supervisor any:

(1) Injury suffered while on duty; and

(2) Any loss, damage, or theft of government property.

(b) The written report must be in detail and must include names and addresses of all witnesses.

(c) When an officer's injuries prevent him/her from preparing a report at the time of injury, the officer's immediate supervisor must prepare the report.

(d) The supervisor must submit all reports made under this section to the Reclamation official designated to receive them, as soon as possible after the incident occurs.

[FR Doc. 02–13877 Filed 6–3–02; 8:45 am]

BILLING CODE 4310–MN–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 02–113; FCC 02–150]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies its Rules to permit the Media Bureau to deny digital television construction deadline extension requests.

DATES: Effective July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Order* (''*Order*'') in MM Docket No. 02–113, FCC 02–150, adopted May 16, 2002, and released May 24, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY–B402, Washington, DC 20554. The *Order* is also available on the Internet at the Commission's website: *http://www.fcc.gov.*

Synopsis of Order

1. The Commission has adopted an Order modifying its rules to permit the Media Bureau delegated authority to deny digital television construction deadline extension requests.

Ordering Clauses

2. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *Order* is adopted.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons set forth in the preamble, amend part 73 of title 47 of the Code of Federal Regulations as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Revise § 73.624(d)(3)(iii) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(3) * * *

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

* * * * *

[FR Doc. 02–13907 Filed 6–3–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–01–8667]

RIN 2127–AI80

Exemption From the Make Inoperative Prohibition

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

ACTION: Denial of petitions for reconsideration.

SUMMARY: On February 27, 2001, NHTSA issued a final rule establishing a limited exemption from a statutory provision that prohibits specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards or altering the equipment or features so as to adversely affect their performance. The exemption allows repair businesses to modify certain types of Federally-required safety equipment and features when passenger motor vehicles are modified for use by persons with disabilities.

NHTSA received two petitions for reconsideration of the final rule. The petitioners requested that the agency specify that obtaining a prescription from a certified driver rehabilitation specialist is a necessary pre-condition to making vehicle modifications under the exemption. The petitioners also requested that the agency remove several statements from the preamble of the final rule. The agency is denying both requests.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues, you may contact Gayle Dalrymple, Office of Crash Avoidance Standards (Telephone: 202–366–5559) (Fax: 202–366–4329).

For legal issues, you may contact Dion Casey, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On February 27, 2001, NHTSA issued a final rule establishing a limited exemption from a statutory prohibition against specified types of commercial entities from either removing safety equipment or features installed on motor vehicles pursuant to the Federal motor vehicle safety standards (FMVSS) or altering the equipment or features so as to adversely affect their performance. (66 FR 12638, Docket No. NHTSA–01–8667). The exemption allows repair businesses to alter or remove certain types of Federally-required safety equipment and features when they modify passenger motor vehicles for use by persons with disabilities. NHTSA established this exemption for the reasons explained below.

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal Motor Vehicle Safety Standards (FMVSSs). (49 U.S.C. 30112). Vehicles must continue to comply until the first retail sale. Federal law also prohibits manufacturers, distributors, dealers, and repair businesses from knowingly making inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable FMVSS. (49 U.S.C. 30122). NHTSA has interpreted the term ''make inoperative'' to mean any action that removes or disables safety equipment or features installed to comply with an applicable FMVSS, or that degrades the performance of such equipment or features. Violations of this provision are punishable by civil penalties of up to $5,000 per violation.

Individuals with disabilities often are unable to drive or ride in a passenger motor vehicle unless it has been specially modified to accommodate their particular disability. Some modifications, such as the installation of mechanical hand controls or a left foot accelerator, are relatively simple. Others, such as the installation of a joystick that controls steering, acceleration, and braking, can be complex. In some cases, it is necessary to alter or even remove Federally-required safety equipment to make those modifications. However, if a manufacturer, distributor, dealer, or repair business performed these modifications, they would violate the make inoperative provision.[1]

NHTSA has the authority to issue regulations that exempt regulated entities from the make inoperative provision. (49 U.S.C. 30122(c)(1)). Such regulations may specify which equipment and features may be made inoperative, as well as the circumstances under which they may be made so. Before the February 27, 2001 final rule, NHTSA had issued only one such regulation.[2] In all other instances, the agency had addressed the need to remove, disconnect, or otherwise alter mandatory safety equipment by issuing a separate letter to each individual requestor assuring that the agency would not seek enforcement action against the business modifying the vehicle. The vast majority of those instances involved persons seeking modifications to accommodate persons with disabilities.

NHTSA believed that the policy of handling requests for permission to make modifications on an individual, case-by-case basis did not serve the best interests of the driving public, vehicle modifiers, or the agency. NHTSA estimated that close to 2,300 vehicles are modified for persons with disabilities each year, and that this number would increase as the population aged and greater numbers of persons with disabilities pursued employment, travel, and recreational opportunities presented by the passage of the Americans With Disabilities Act (ADA).[3]

NHTSA noted that agency resources for evaluating individual modification requests are limited. Thus, a person with a disability could wait a significant period of time before the agency issued a letter stating its intent not to enforce the make inoperative provision for the vehicle modifications affected. Moreover, the unwieldiness of the case-by-case approach caused many vehicle modifiers to bypass it. Consequently, as the agency noted, only a handful of the vehicles modified annually are covered by a letter from NHTSA granting permission to make federally-required safety equipment inoperative. Most are made without the benefit of any guidance about the opportunities for making modifications without sacrificing safety.

As a result, NHTSA decided to replace the case-by-case approach with a rule exempting certain vehicle modifications from the make inoperative provision. The exemptions are listed in 49 CFR part 595, subpart C.

II. Petitions for Reconsideration and NHTSA's Responses

NHTSA received petitions for reconsideration of the final rule from the Association for Driver Rehabilitation Specialists (ADED) and Louisiana Tech University.

A. Prescriptions

In the final rule, the agency noted that a trained professional often evaluates the driving capabilities of a person with a disability and then writes a prescription detailing needed vehicle modifications. NHTSA considered requiring

> vehicle modifiers to keep a record of vehicle and equipment prescriptions to induce the modifiers to take care that modifications for persons with disabilities were completed in a manner that truly met the particular individual's needs without any unnecessary modifications and to discourage modifiers from circumventing the requirements of the various FMVSSs.

(66 FR at 12651).

NHTSA reviewed the comments and decided not to require such

[1] The make inoperative provision does not apply to vehicle owners.

[2] That regulation permits the installation of retrofit air bag on-off switches under certain circumstances.

[3] 42 U.S.C. 12101, *et seq.*

prescriptions as a condition of the exemption, stating:

> [W]e conclude that it is unlikely that persons without disabilities will try to take advantage of the exemptions in today's final rule because they are so narrowly written and because of the expense of such modifications. Additionally, given the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.

(66 FR at 12652).

Both ADED and Louisiana Tech requested that the agency reconsider its decision not to require prescriptions as a condition of the exemption. Louisiana Tech claimed that prescriptions are necessary for several reasons. First, prescriptions should be issued by ''certified driver rehabilitation specialists'' who are trained in both occupational therapy and traffic safety and are certified by the ADED. Second, while some adaptive equipment may be simple to install, there are many variables that affect an individual's ability to operate the equipment.[4] Louisiana Tech stated, ''To view the provision of these devices only from the view of the physical functioning necessary for operation is short sighted and compromises the individual's and the public safety.'' Third, according to Louisiana Tech, allowing the disabled person or an equipment dealer to determine the types of modifications that are appropriate is a dangerous practice. Fourth, Louisiana Tech stated that the process is not necessarily expensive or time-consuming, since many individuals need relatively simple adaptive equipment and there are third party funding sources available.

Both ADED and Louisiana Tech also requested that NHTSA require prescriptions for vehicle modifications be written by a ''certified driver rehabilitation specialist, or equivalent.'' The petitioners claimed that the training undergone by certified driver rehabilitation specialists is essential for conducting the clinical aspects of a driver assessment and determining a driver's potential for operating a motor vehicle safely.

NHTSA understands the petitioners' concerns. However, NHTSA does not have the authority to require individuals with disabilities to obtain prescriptions before they have their vehicles modified. The agency does have the authority to condition a repair business's eligibility under the limited exemption to modify a vehicle upon its receipt and keeping on file of a prescription for the modifications to that vehicle. However, NHTSA decided not to exercise this authority for the reasons explained below.

NHTSA does not have the qualifications, nor the authority, to judge who is qualified to conduct a driver evaluation and if there are circumstances under which no evaluation is needed. The basis for our considering a requirement for modifiers to collect prescriptions from clients before making modifications was to ensure that Federal motor vehicle safety standards would not be circumvented unnecessarily.

The petitioners, on the other hand, want to ensure that drivers have the advantage of a physical and cognitive assessment before vehicle modifications are made so that the equipment is correct for their abilities and safe for them to operate. They are also concerned that only safe, able drivers are permitted to drive. NHTSA agrees that the petitioners' goals are laudable. However, those goals are beyond this agency's authority to regulate. Vehicle inspection and driver evaluation, training, and licensing are the regulatory purview of the States.

While NHTSA can place conditions on exemptions from the make inoperative prohibition, the agency cannot directly require drivers to obtain prescriptions in order to ensure that unsafe drivers do not receive vehicle modifications and are therefore prevented from driving, or to ensure that drivers receive only modifications they are capable of using. Such actions are the responsibility of the individual States, because they regulate vehicle registration and driver licensing. NHTSA regulates motor vehicle manufacture and modification. In fact, NHTSA's authority over the modification of vehicles after the first retail sale is limited to those modifications, made by entities for hire, that affect the vehicle's certification to the Federal motor vehicle safety standards.

NHTSA decided not to adopt a requirement under which modifiers would have to obtain prescriptions prior to making vehicle modifications and to keep those prescriptions on file with records of the modifications made because the agency concluded that such a requirement would be an unnecessary and time-consuming burden on the modifier and the consumer. NHTSA did *not* conclude that driver evaluations for modifications are unnecessary. NHTSA believes that driver evaluations are an essential part in the vehicle modification process. The agency simply concluded that a Federal requirement for vehicle modifiers to obtain and keep records of prescriptions for vehicle modifications is unnecessary. The agency believes that requiring prescriptions for vehicle modification is within the regulatory purview of the individual States, and encourages the States to promulgate regulations addressing this issue.

NHTSA also concluded that the agency is not in a position to determine who is qualified to write prescriptions for vehicle modifications. The petitioners requested that NHTSA change the final rule to require that a prescription be written by a ''certified driver rehabilitation specialist or equivalent.'' A certified driver rehabilitation specialist (CDRS) is a person who has fulfilled the requirements for that title as administered by the Association for Driver Rehabilitation Specialists. The agency believes that currently there are fewer than 300 CDRSs in the Unites States, and there may be several States in which no CDRS practices.

In addition, the agency cannot realistically determine whether a person has skills ''equivalent'' to a CDRS. The agency would have to review the credentials of each person making evaluations and determine if he or she were qualified to do so. Such an action is tantamount to licensing individuals to practice driver evaluation. NHTSA believes that the agency has neither the authority nor the qualifications to make such determinations.

Accordingly, the agency is denying the petitioners' request for a Federal requirement that would make it necessary for individuals to obtain prescriptions for vehicle modifications and provide them to vehicle modifiers. Since NHTSA is denying the petitioners' request to require prescriptions, the petitioners' request that prescriptions be written only by a certified driver rehabilitation specialist is moot.

B. Preamble Language

Both ADED and Louisiana Tech expressed concerns about the language that the agency used in the section of the preamble explaining the agency's decision not to require prescriptions. The specific language they objected to is detailed below. The petitioners requested that the agency remove these

[4] ''For example,'' Louisiana Tech stated, ''a left foot accelerator is a 'simple' device [sic] to install and operate. However, these devices are usually used by individuals with amputation or [who] have had head injuries or strokes. An assessment of these individuals is necessary to determine (1) if they can operate the vehicle safely using the device, and (2) if they have the reaction time, cognitive ability, [and] visual-perception skills necessary to perform the driving task safely.''

statements from the preamble to the final rule.

At 66 FR 12652, the agency summarized the comments of those opposed to mandatory prescriptions. These commentors said that requiring prescriptions would unnecessarily increase the burden on the disabled community, increasing costs and limiting access to needed vehicle modifications (particularly in rural areas). Also at 66 FR 12652, the agency stated, ''[G]iven the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.''

ADED called these statements ''erroneous and irresponsible.'' The petitioner stated that this language ''is in direct conflict with the Rehab Act, which requires states *to not limit access or delay services* to their consumers.'' (Emphasis in original). ADED claimed that Vocational Rehabilitation coordinators are already viewing this language as detrimental to the driver evaluation process. ADED added that there are inadequate data to suggest that the evaluation process constitutes a delay to consumers.

Louisiana Tech also objected to the second statement. The petitioner claimed that the evaluation process is not necessarily time-consuming or expensive since many individuals have relatively simple adaptive needs, and there are third party funding sources available to offset the cost of evaluations.

At 66 FR 12652, the agency referred to a comment made by the American Occupational Therapy Association:

> The American Occupational Therapy Association advocated that prescriptions be issued by either occupational therapists or certified driver rehabilitation specialists. It maintained that occupational therapists are adequately qualified to make driver evaluations based on their specialized training regardless of whether they are certified driver rehabilitation specialists.

Both ADED and Louisiana Tech objected to this statement. Louisiana Tech stated that neither occupational therapists nor traffic safety professionals are adequately trained to perform driver assessments. ADED claimed that occupational therapists are not trained in adaptive driving technology application or on-road assessment, which are necessary to perform driver evaluations.

At 66 FR 12652, the agency referred to comments made by Access Wheels, a vehicle modifier:

> Access Wheels, a modifier, commented that prescriptions are rarely used and then only to justify the payment of the modification costs by a third party. It stated also that the vast majority of modifications involve relative simple, and less expensive vehicle alterations, and thus are modifications for which professional evaluations of capabilities are unnecessary.

ADED objected to the first sentence. The petitioner stated, ''Prescriptions are commonplace in the field of modifications and driver rehabilitation'' and are used for both simple and complex drier adaptations.

Both petitioners objected to the second sentence. Louisiana Tech claimed, ''While there may be some adaptive equipment that appears to be 'simple' to operate, there are many variables that go into an individual's ability to either operate that equipment, perform the driving task or both.'' ADED stated, ''Some of the most difficult evaluations involve simple equipment, because issues revolve around the driver candidate's performance and skill set to use even simple devices.''

Finally, ADED stated that the section of the preamble discussing prescriptions ''appears to recommend that prescriptions are not only not required, but unnecessary.'' ADED noted that this conflicts with a brochure written jointly by ADED, NHTSA, and the National Mobility Equipment Dealers Association (NMEDA) entitled ''Adapting Motor Vehicles for People With Disabilities.'' [5] ADED stated that the brochure devotes a significant amount of text to the evaluation process.

A final rule, which consists of a preamble and regulatory text, is a historical document that itself cannot be changed. However, the regulatory text in a final rule can be amended in a subsequent final rule. Further, any misstatements and errors in the preamble of a final rule can be corrected in a subsequent notice.

NHTSA notes that several of the statements to which the petitioners objected are not statements made by the agency, but statements in the comments of various respondents on the proposed rule. The agency is required to consider all comments, whether they represent the same or divergent points of view. To that end, in the final rule preamble, the agency summarized the comments of proponents and opponents of conditioning the exemption upon the obtaining of prescriptions. The agency specifically and correctly attributed those comments to the individuals or groups who made them.

As to the statements made by NHTSA in the preamble to the final rule, the agency believes that the petitioners have misunderstood the agency's position on driver evaluation prior to the modification of a vehicle. NHTSA does believe that driver evaluation is a very important element to a successful vehicle modification for persons with disabilities, and that evaluations should be performed whenever possible. However, the agency believes that requiring persons with disabilities to obtain prescriptions before having their vehicle modified is within the regulatory purview of the States, which regulate driver evaluation, training, and licensing, and vehicle inspection. The agency does not wish to establish such a requirement indirectly by conditioning a vehicle modifier's ability to take advantage of the limited exemption upon the modifier's obtaining a prescription from the person requesting the modifications. The agency also believes it is not qualified to judge who should conduct a driver evaluation and whether there are circumstances under which no evaluation is needed.

Finally, NHTSA addressed above the following statement made by the agency in the final rule preamble: ''[G]iven the current practice in the industry not to require or rely on prescriptions for relatively simple and inexpensive modifications, we see no need to add an additional burden to an already time-consuming and expensive process.'' As noted above, the agency did not conclude that prescriptions for modifications are not beneficial. The agency believes that driver evaluations are an essential part in the vehicle modification process. The agency simply concluded that, for NHTSA's purposes, a new Federal requirement for vehicle modifiers to obtain such prescriptions from persons seeking modifications and keep records of them would be an unnecessary and time consuming burden on the modifier and the consumer.

For these reasons, the agency cannot remove these statements from the preamble of the final rule and is denying the petitioners' request to do so.

III. Conclusion

For the reasons stated above, the agency is denying the petitions for reconsideration.

Issued: May 29, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–13968 Filed 6–3–02; 8:45 am]

BILLING CODE 4910–59–P

[5] DOT HS 809 014, December 1999.