

**Executive Order 12866**

The Office of Management and Budget has reviewed this document under Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

**Paperwork Reduction Act**

The Secretary hereby certifies that this final rule contains no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule merely concerns requirements for proof of service of motions for withdrawal of services by a representative after certification of an appeal before the Board, and for proof of service of responses to such motions. Moreover, such motions and responses are events that occur in only a minor proportion of the cases before the Board. Any economic impact on small entities would be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**List of Subjects in 38 CFR Part 20**

Administrative practice and procedure, Claims, Attorneys, Lawyers, Legal services, Procedural rules, Veterans.

Approved: March 18, 2004.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

**PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**§ 20.608 [Amended]**

■ 2. Section 20.608, paragraph (b)(2) is amended by:

■ A. In the third sentence, removing “permitted.” and adding, in its place, “permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed.”

■ B. Removing the sixth and seventh sentences.

■ C. In the eighth sentence, removing “motion.” and adding, in its place, “motion and must include a signed statement certifying that a copy of the response was sent by first-class mail, postage prepaid, to the representative, setting forth the address to which the copy was mailed.”

■ D. Removing the ninth and tenth sentences.

[FR Doc. 04–8880 Filed 4–19–04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 595**

[Docket No. NHTSA–04–17536]

**Retrofit On-Off Switches for Air Bags; Vehicle Modifications To Accommodate People With Disabilities**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects the regulation governing vehicle modifications made to accommodate people with disabilities.

**DATES:** The effective date of this final rule is April 20, 2004. Petitions for reconsideration must be submitted so they are received by the agency June 4, 2004.

**ADDRESSES:** Petitions for reconsideration must be identified by the Docket Number in the title to this document and submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical and other non-legal issues, you may call Ms. Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards at (202) 366–5559.

For legal issues, you may call Mr. Chris Calamita, Office of Chief Counsel (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

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

**SUPPLEMENTARY INFORMATION:****Background**

The regulation that is subject to this correction is 49 CFR Part 595 subpart C, *Vehicle Modifications to Accommodate People with Disabilities*. 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 (66 FR 12638). 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.

**Need for Correction**

As published, the February 2001 final rule contained an error that needs correction. Included in the list of Federal standards that qualify for this limited exemption is Federal Motor Vehicle Safety Standard (FMVSS) No. 202, *Head restraints*. However, § 595.7, *Requirements for vehicle modifications to accommodate people with disabilities*, erroneously cites S3(b)(1) and S3(b)(2) of FMVSS No. 202, which do not exist. This correction amends § 595.7(c)(9) to cite S4.3(b)(1) and S4.3(b)(2) of FMVSS No. 202.

**Correction of Publication****List of Subjects in 49 CFR Part 595**

Imports, Motor vehicle safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 595 as follows:

**PART 595—[AMENDED]**

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

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30122, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. In § 595.7, paragraph (c)(9) is revised to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(9) S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.

\* \* \* \* \*

Issued on: April 9, 2004.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards.*

[FR Doc. 04-8932 Filed 4-19-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No.; I.D. 041404A]

#### **Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)**

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

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,347 square nautical miles (nm<sup>2</sup>) (4,620 km<sup>2</sup>) east of Boston, MA through April 30, 2004. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** Effective beginning at 0001 hours April 22, 2004, through 2400 hours April 30, 2004.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978-281-9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-1401.

**SUPPLEMENTARY INFORMATION:**

#### **Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

#### **Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy

personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On April 9, 2004, NMFS Aerial Survey Team reported a sighting of nine right whales in the proximity of 42° 10.6' N lat. and 68° 52.4' W long. This position lies east of Boston, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the restricted period unless it is modified in the manner described in this temporary rule. In April, the DAM zone is bounded by the following coordinates:

42°30'N, 69°20'W (NW Corner)  
42°30'N, 68°21'W  
41°52'N, 68°21'W  
42°10'N, 68°31'W  
41°50'N, 69°20'W

On May 1, when the restrictions on anchored gillnet and lobster trap/pot fishing gear become effective in the SAM East area, the DAM zone is completely subsumed by SAM East and the anchored gillnet and lobster fishermen with gear in the DAM zone must comply with the requirements for fishing in SAM East.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: In April, this DAM