

Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-98-4167; Notice 1]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking requesting that NHTSA amend Standard 213, "Child Restraint Systems," to delete the head excursion requirement for rear-facing convertible restraints. Petitioners believe that infants should be rear-facing until at least 1 year of age, and that the head excursion limit in Standard 213 makes it unnecessarily difficult for manufacturers to recommend their restraints be used rear-facing for children of at least that age. NHTSA is denying the petition because the head excursion limit serves a safety need and there are unknown safety consequences to the petitioners' requested action. Second, more and more manufacturers are able to meet the head excursion requirement and certify rear-facing restraints for children older than 1 year in age. Further, the petitioners did not provide—and

NHTSA has not identified—any data which indicate that injuries could have been prevented by the requested amendment.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Mike Huntley, Office of Crashworthiness Standards, Special Vehicle and Systems Division (telephone 202-366-0029).

For legal issues: Deirdre Fujita, Office of the Chief Counsel (202-366-2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Petitioners' Request

On March 1, 1997, Stephanie Trombello and Deborah Stewart, Executive Director and Technical Consultant, respectively, of SafetyBeltSafe U.S.A., Inglewood, California, petitioned NHTSA to amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213), concerning certain labeling and occupant excursion requirements in the standard. Petitioners believe that infants should be rear-facing until at least 1 year of age, and that the head excursion limit in Standard 213 makes it unnecessarily difficult for manufacturers of convertible¹ child restraint systems to recommend that their restraints be used rear-facing until the child is at least that age.

Standard 213 specifies performance requirements that a child restraint must meet when tested with dummies representing the range of children for which that child restraint is recommended. Under Standard 213's requirements, child restraints recommended for use by children weighing over 22 lb are tested with a test dummy representing a 3-year-old child. So tested, they must meet all performance requirements of the standard, including limits on how far they allow the rear-facing dummy's head to extend beyond and above the top of the child restraint in a 30-mph dynamic test. (This document refers to these limits as the head excursion limits.) The head excursion limits are set forth in S5.1.3.2 of Standard 213, as follows:

S5.1.3.2. *Rear-facing child restraint systems.* In the case of each rear-facing child restraint system, all portions of the test

¹ A convertible restraint is used to restrain children from birth to about 40 lb. When restraining an infant, the restraint is positioned so that it faces the rear of a vehicle. When restraining a toddler, the restraint is positioned so that it faces the front of a vehicle.

dummy's torso shall be retained within the system and neither of the target points on either side of the dummy's head and on the transverse axis passing through the center of mass of the dummy's head and perpendicular to the head's midsagittal plane, shall pass through the transverse orthogonal planes whose intersection contains the forward-most and top-most points on the child restraint system surfaces.

The petitioners request that Standard 213 be amended to exclude convertible child restraints from the head excursion limit when the restraint is tested rear-facing with the 33 lb dummy. Petitioners state that, but for the head excursion limit,

(S)ome currently available convertible safety seats have performed well in crash tests with the 33-pound dummy in the rear-facing position. (However, we) understand that the reason the manufacturers have hesitated to change their instructions to encourage rear-facing use for heavier babies is that the child's head could ramp up and over the top edge of the car seat in a head-on collision.

Petitioners believe that injuries will be prevented if NHTSA amends the standard as they request. Twenty-two (22) lb is the weight of a 50th percentile 12-month-old. Petitioners state that many babies reach 22 lb at six months of age or even earlier. They believe that current labeling on convertible child restraints results in parents of "heavy" infants turning the child forward when the child is less than 1 year.

Petitioners believe that the head excursion limit is unnecessary because a heavy one-year-old is much shorter than the 33 lb (3-year-old) dummy. They suggest that in lieu of the head excursion requirement, parents can be instructed, by way of a label, to limit use of the rear-facing child restraint based on the child's height. They suggest a statement such as "This safety seat may be used in the rear-facing position until the child weighs 30 pounds if the child's head is below the top edge (or within ___ inches of the top edge) of the seat."

II. Evaluation of Petition

NHTSA is denying the petition for the reasons set forth below.

1. Rear-Facing Restraints Certified Above 22 Lb

Infants should be transported rear-facing until the child's skeletal and muscular structure can develop to where they can more safely withstand crash forces in a forward-facing position, which typically occurs at around age 1. Transporting infants rear-facing spreads crash forces evenly across the infant's back and shoulders, the strongest part of the child's body.

Further, the infant's head will be supported by the seating surface in a crash, which helps reduce the likelihood of severe neck injuries in a crash. To better enable child restraint manufacturers to produce rear-facing child restraints for children up to age 1, Standard 213 specifies that child restraints will not be tested with the 3-year-old child test dummy unless the restraint is recommended for use by a child weighing more than the 50th percentile 12-month-old (which weighs 22 lb) (see July 6, 1995 final rule, 60 FR 50477).²

While positioning an infant rear-facing is generally preferable to facing the child forward, that may not be the case if the child restraint system is unable to adequately limit the head excursion of the child, or otherwise meet the performance requirements of Standard 213. If the head excursion limit were deleted, that would negate the agency's ability to evaluate the restraint's ability to limit the upwards ramping of a child's head in a crash and would hamper the evaluation of the restraint's ability to prevent the partial or full ejection of the dummy.

Petitioners state that a "heavy" 1-year-old is much shorter than the 33 lb dummy, but do not provide any values quantifying the height difference. Available data indicate only a 3.5 centimeter (cm) difference in height. NHTSA evaluated data in a 1975 report by the University of Michigan, "Physical Characteristics of Children as Related to Death and Injury for Consumer Product Safety Design," May 1975 (UM-HSRI-BI-75-5, HS 017743), to determine the difference in sitting heights between a 95th percentile 1-year-old and a 50th percentile 3-year-old child. The sitting height (crown-rump) of the 95th percentile 1-year-old (combined sexes) is approximately 50 cm, while that of the 50th percentile 3-year-old (combined sexes) is 53.5 cm.³ The agency believes that the 3.5 cm height difference is not of a magnitude to render the 3-year-old dummy inappropriate as a test device for evaluating the restraint's ability to limit the head excursion of a 95th percentile 12-month-old child. To the contrary, the difference between the two may be unsubstantial.

² The interrelationship of weight, height, and age as they relate to positioning an infant rear facing in a child restraint system was discussed at length in the development of this rule, which amended FMVSS No. 213 to add a greater array of sizes and weights of test dummies for use in the standard's compliance tests.

³ The agency's 3-year-old dummy represents a 50th percentile male child. Data on the sitting height of a 50th percentile male are not available.

Petitioners have also not provided data showing that a "heavy" 1-year-old would have adequate head support in a crash without a head excursion limit in the standard. They believe that a child whose head is "below the top edge (or within ___ inches of the top edge) of the seat" will be adequately protected, but do not specify what value should be specified in the blank. They also do not provide data supporting their belief that a child restraint will adequately support a child's head which is "below the top edge" or below that unspecified location on the child restraint. NHTSA is concerned that not enough is known about the safety consequences of reducing the stringency of the head excursion requirement for rear-facing child restraints.

In addition to the above consideration, the current requirement is practicable. Some manufacturers have been able to develop convertible child restraints that they have certified as meeting Standard 213 when tested rear-facing with the 33 lb dummy. NHTSA is aware of at least three manufacturers who currently market convertible child restraints that are certified for children weighing more than 22 lb, in the rear-facing position. Century, Evenflo and Britax have all developed products which they certify meet all requirements of Standard 213 when tested in the rear-facing position with the 33 lb dummy. Thus, NHTSA believes that rear-facing restraints are available to families with "heavy" infants that exceed 22 lb prior to 1 year of age.

In summary, petitioners state that "although the 3-year-old dummy may be too tall for full head support in the rear-facing position, a heavy 1-year-old is much shorter," but did not provide any technical rationale to support eliminating the excursion requirements of the standard when testing convertible restraints in the rear facing position with the 3-year-old dummy. Petitioners did not explain why the head excursion limit should be relaxed given the insubstantial sitting height difference between an average 3-year-old child and a "heavy" 1-year-old child, nor did they explain the extent to which the head excursion limit could be relaxed given that height difference. These factors, in conjunction with the knowledge that various manufacturers have developed convertible restraints that meet the current requirements of the standard while tested rear-facing with the 33 lb, 3-year-old dummy, lead the agency to believe that the current excursion requirement does not impose an unreasonable impediment to restraint manufacturers in the design of rear-facing restraints for children over 22 lb.

2. Excursion Requirements; Total Height Considerations

Petitioners also recommend that Standard 213's labeling requirements should be amended such that "references to the total height of the child should be deleted, since the only significant measurements are the child's weight and the length of the torso." (The standard currently requires that manufacturers label their child restraints with information on both the height and weight of children for whom the restraint is recommended.) The agency discussed at length the relevancy of height as a significant criterion in the development, evaluation, and certification of child restraints in a 1995 rulemaking to incorporate the new set of test dummies into Standard 213 for compliance testing.

In the notice of proposed rulemaking (NPRM) for that regulation, NHTSA had proposed that Standard 213 should require that manufacturers base their height recommendations on the sitting height of the child (51 FR 12225, March 16, 1994). In response to the NPRM, commenters generally agreed that the height of a child is an important factor in the certification and proper use of child restraint systems. While some supported the use of a sitting height criterion as had been proposed by the agency in the NPRM, others objected to its use because of concerns regarding the complexity and potential misinterpretation of information by users of these child restraint systems. Those who opposed adoption of a sitting height criterion proposed incorporation of a sitting height limit which references a readily identifiable body landmark (such as the top of the ears or top of the head) in relation to the top of the head restraint in conjunction with modified labeling requirements to convey information about the proper use of the child restraint to the consumer to prevent whiplash-type injuries.

In the final rule (July 6, 1995, 60 FR 35127), the agency reconfirmed that information about the suitability of a restraint for children of certain heights serves a useful purpose in that it helps ensure the proper fit of a restraint to the child. At the same time, the agency acknowledged that consumers may not know the sitting height of their child as well as they know standing height. The latter is routinely measured by pediatricians and provided to parents during the child's medical examinations. Because standing height is more familiar to parents, the final rule specified recommended standing height,

rather than sitting height, to be on the label.

Since the existing Standard 213 required manufacturers to label each child restraint with recommendations for the maximum height of children who can safely occupy the system, and because NHTSA was unconvinced of a need to change to sitting height, the final rule maintained the status quo. Petitioners have not provided any information supporting their request to change to sitting height and the agency is unaware of any reason to amend the standard as they suggest. Accordingly, the agency is denying this request.

3. Crash Data

Underlying the petition is the implication that infants weighing over 22 lb are being injured because parents position them forward-facing in a vehicle before the infants are 1 year of age. Petitioners did not provide any data or statistics indicating a greater incidence of neck and spinal cord injuries for this segment of the population. NHTSA examined the agency's National Automotive Sampling System (NASS) General Estimates System (GES)⁴ records for the years 1988–1996 for those crashes (1) involving an infant under 1 year of age, and (2) where both the child's weight and the child restraint orientation (rear or forward facing) were known. In 328 total cases investigated by NASS, there were no reported incidences of serious spine or other neck-related injuries. Seventeen (17) percent of the 328 cases (55 of 328) involved infants weighing between 23 and 30 lb who were positioned forward-facing in his/her child restraint at the time of the crash, but in only one case did the child receive a serious (AIS level 3 or greater) injury. Injuries to heavy infants placed forward-facing in vehicles have not occurred with any frequency.⁵

⁴ Data for the General Estimates System (GES) come from a nationally representative sample of police reported motor vehicle crashes of all types, from minor to fatal. The system began operation in 1988, and was created to identify traffic safety problem areas, provide a basis for regulatory and consumer initiatives, and form the basis for cost and benefit analyses of traffic safety initiatives. The information is used to estimate how many motor vehicle crashes of different kinds take place, and what happens when they occur. Although various sources suggest that about half the motor vehicle crashes in the country are not reported to the police, the majority of these unreported crashes involve only minor property damage and no significant personal injury. By restricting attention to police-reported crashes, the GES concentrates on those crashes of greatest concern to the highway safety community and the general public.

⁵ The vast majority (273 of 328, or 83 percent) of reported cases involved infants weighing 22 lb or less. Nearly one half (47 percent) of these infants were positioned forward-facing in their child

In accordance with 49 CFR part 552, this completes the agency's review of the petition. For the aforementioned reasons, the agency has decided not to amend Standard 213 at this time to afford child restraint manufacturers greater latitude in certifying rear-facing convertible restraints. NHTSA has concluded that there is no reasonable possibility that the amendment requested by the petitioners would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

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

Issued on April 20, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990330083–9083–01; I.D. 031999B]

RIN 0648–AK32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Certification of Bycatch Reduction Devices

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS proposes procedures for the testing and certification of bycatch reduction devices (BRDs) for use in shrimp trawls in the exclusive economic zone (EEZ) in the Gulf of Mexico. The intended effect is to foster the

restraints. This clearly suggests that nearly one half of the adults placing the infants in the child restraints either: (1) Were unaware that infants are safest rear-facing in child restraints, or (2) chose to ignore the manufacturer's recommendations and placed their child forward-facing in the restraint. This suggests a need to better inform parents about the need to properly position infants weighing less than 22 lb in vehicles.

development and provide for the certification of additional BRDs.

DATES: Written comments must be received on or before May 14, 1999.

ADDRESSES: Comments on the proposed rule and requests for copies of the regulatory impact review (RIR) must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the *Gulf of Mexico Bycatch Reduction Device Testing Protocol Manual* should be sent to the Southeast Regional Office, NMFS.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, NMFS, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Amendment 9 to the FMP mandated, with limited exceptions, the use of BRDs in shrimp trawls fished in the EEZ of the Gulf of Mexico shoreward of the 100-fathom (fm) (183-m) depth contour west of 85°30' W. longitude. Excluded from the requirement to use BRDs are vessels trawling for royal red shrimp beyond the 100-fm (183-m) depth contour, vessels trawling for butterfish or groundfish, and vessels trawling for shrimp with no more than two rigid-frame roller trawls that are 16 ft (4.9 m) or less in length. In addition, a vessel may use a single trynet without a BRD installed if the headrope length is 16 ft (4.9 m) or less. The fisheye, Gulf fisheye, and Jones-Davis BRDs are currently certified for use in shrimp trawls in the EEZ of the Gulf of Mexico (63 FR 18139, April 14, 1998; 63 FR 27449, May 19, 1998).

Amendment 9 to the FMP specified that a testing protocol and administrative procedures for conducting tests on additional BRDs would be developed by NMFS, and implemented via a regulatory amendment (framework procedure). In accordance with the framework procedures of the FMP, the Regional Administrator (RA), Southeast Region, NMFS, referred to as the RD in the