

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 575****[Docket No. NHTSA-02-10053]****RIN 2127-AI65****Consumer Information; Safety Rating Program for Child Restraint Systems**

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

ACTION: Final rule.

SUMMARY: Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires that, by November 1, 2002, a final rule be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS). In response to this mandate, NHTSA is establishing such a program. The program will not impose any binding legal obligations on any child restraint manufacturer regarding the generation or distribution of information.

The details of the new program are set forth in a companion document being published today in the **Federal Register**. The agency is establishing an ease of use rating program at this time. This rating program will enhance the safety of children by informing consumers about the features of child restraints that make child restraints easier to use, and evaluating each child restraint on those features. The agency anticipates that the program will result in more child restraints being used correctly. NHTSA is also evaluating whether to establish two complementary consumer information programs. The first would be based on child restraint dynamic performance. The second would involve expanding the agency's New Car Assessment Program to include consumer information on how vehicles do in protecting child occupants. The agency will be conducting two pilot programs in these areas to assess how to proceed in these programs.

DATES: The amendments made in this rule are effective January 6, 2003. If you wish to petition for reconsideration of this rule, your petition must be received by December 20, 2002.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket

number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: For issues related to the ease of use rating program, you may call Lori Miller of the Office of Planning and Consumer Standards, at (202) 366-2191. For issues related to the pilot programs for the dynamic performance of child restraints or for the New Car Assessment Program, call Nathaniel Beuse or Brian Park, respectively, of the Office of Crashworthiness Standards, at (202) 366-1740. For legal issues, call Deirdre Fujita of the Office of Chief Counsel, at (202) 366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Congress has directed the National Highway Traffic Safety Administration (NHTSA) to establish a child restraint safety rating system that is practicable and understandable (Section 14 (g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106-414, 114 Stat. 1800) and that will help consumers to make informed decisions when purchasing child restraints. Section 14(g) reads as follows:

(g) Child restraint safety rating program. No later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful [to] consumers who purchase child restraint systems.

NHTSA issued an NPRM (66 FR 56048; November 6, 2001) and a companion request for comments on the details of the new program (66 FR 56146; November 6, 2001). Nineteen comments were submitted in response.

Pursuant to the TREAD Act, the agency is issuing this final rule. In this final rule, the agency establishes a program for rating the ease-of-use of child restraints. This final rule accompanies the agency's Response to Comments, Notice of Final Decision published elsewhere in today's **Federal Register**. That document addresses the

comments we received on the ratings program, and sets forth the complete details of the program established today.

The program furthers the agency's efforts to harmonize its regulations internationally where possible. The program is modeled after the Insurance Corporation of British Columbia's (ICBC's) ease of use program, which evaluates all child restraints sold in Canada. NHTSA's program uses similar ratings categories as those of the ICBC, and the features that are rated and the criteria for rating the restraints are based on ICBC's features and criteria.

The ratings program established today is just a first step towards providing consumers more information about child occupant protection for use in making informed purchasing decisions. NHTSA believes that the most effective consumer information system would be one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, and vehicle performance in crash tests. The ease of use program is sufficiently developed at this time to proceed, whereas programs evaluating the dynamic performance of child restraints and vehicles are not ready for implementation at this time.

The Notice of Final Decision explains that NHTSA will conduct a pilot test program of child restraints using new test devices and procedures incorporated into the Federal motor vehicle safety standard for child restraint systems. We will also conduct a pilot test program involving the placement of child restraints in vehicles tested in the agency's New Car Assessment Program in MY 2003 and 2004. The pilot programs will evaluate the performance of child restraints and the ability of vehicles to provide child occupant protection. The agency will evaluate the results of the two pilot programs to decide how the ratings programs on the dynamic performance of child restraints and vehicles should proceed.

In comments to the Request for Comments, the Juvenile Products Manufacturers Association (JPMA) suggested that Congress wanted NHTSA to establish the ratings program "by rulemaking in order to ensure that public notice and an opportunity to comment would be provided not only for the initial establishment of the program, but also when subsequent changes to the program are contemplated." JPMA also stated that, to fulfill the mandate of section 14(g) of the TREAD Act, NHTSA must assure the public that it will not make changes to the ratings program without providing the public an opportunity to comment

and providing the industry time to change their products.

It is our current policy, and one generally followed in the past, to seek public input when establishing new consumer information ratings programs. Public comment on the performance criteria and test protocols to be used in the programs assists the agency in developing consumer information programs that are readily understandable to consumers and helpful to their purchasing decisions. Generally, the agency has sought comment through issuing a Request for Comments or by holding public meetings on possible consumer information programs under consideration, rather than issuing a Notice of Proposed Rulemaking (NPRM). The agency has not deemed it necessary formally to propose particular performance criteria and procedures through an NPRM because the purpose of the consumer information programs is to rate products. There is no minimum level of performance specified as in the FMVSS, and the performance criteria and test protocols impose no legally binding obligations on manufacturers and are not published in the Code of Federal Regulations. However, the Request for Comments we have issued and the meetings we have held have included descriptions of the performance criteria and test protocols under consideration. In our view, there is no substantive difference between providing for that notice and comment through these procedures or through a Notice of Proposed Rulemaking.

The TREAD Act requires that we initially establish this consumer information program through a Notice of Proposed Rulemaking and a Final Rule. It is silent as to the process contemplated for any substantive changes to the program in the future. Although the agency often seeks public comment on significant substantive changes in consumer information programs, the agency does not believe a formal process is required. The agency may determine, based on experience or testing, that changes in the program are necessary to provide more descriptive or more accurate information to the public. The agency is concerned that a prolonged comment period during the course of a program could unduly delay the public's access to the best information available with which to make purchase decisions. While Congress acted to ensure that this consumer information program was developed with public comment, we do not believe that Congress intended for there to be delays in providing "timely information" by requiring a full

rulemaking process when experience has shown that the quality of the information available could be markedly enhanced.

Nor do we agree that the TREAD Act provision mandates that we provide leadtime for the industry to change their products in order to enhance performance in our consumer information program. Unlike the issuance or amending of a Federal motor vehicle safety standard, our consumer information programs impose no binding legal obligations on child restraint or vehicle manufacturers, and are therefore not constrained by the practicability concerns addressed through the statutory mandates applicable to the FMVSSs. Manufacturers may sell motor vehicles or motor vehicle equipment regardless of how well or poorly the product performs in our consumer information program, as long as it meets the requirements of any applicable FMVSS.

This issue illustrates the difference between making changes to our consumer information programs and making changes to the Federal motor vehicle safety standards. The consumer information programs are intended to identify distinctions between products and provide the public with useful and timely information about products currently available to them to assist their purchase decisions. The programs don't require product manufacturers to make any changes to their products. If the manufacturers decide nevertheless to make changes, they can make their own decisions about the timing, nature and extent of any changes. Delaying the implementation of new procedures and the dissemination of timely and useful information about currently available products would undermine, rather than further, the intent of the consumer information programs. The FMVSSs, on the other hand, are intended to ensure that all products subject to them meet minimum performance criteria in accordance with a uniform schedule set by the agency. Accordingly, sufficient leadtime is necessary to allow manufacturers to change their products in response to the new FMVSS requirements.

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 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 budgetary 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 not reviewed under Executive Order 12866. Since this final rule will not establish a rule imposing binding legal obligations on any party, it does not involve a significant rule within the meaning of that Executive Order or the Department of Transportation's Regulatory Policies and Procedures. Further, preparation of a full regulatory evaluation is not required under these circumstances. NHTSA is issuing this final rule and a companion response to comments, instead of a response to comments alone, because section 14(g) of the TREAD Act expressly requires the issuance of a final rule.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule

will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. For the reasons noted above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not involve a rule that would have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have any substantial effects on the States, or on the current Federal-State relationship,

or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This final rule does not involve a rule that would have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not require any collection of information.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272), directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this final rule since it does not involve regulatory activities. The final rule will not impose binding legal obligations on any party. Nonetheless, NHTSA looked for but did not find voluntary consensus standards for an ease of use ratings program developed or adopted by

voluntary consensus standards bodies. We did find and consider work being done by the ISO Usability Task Force on the ease of use of child restraints using ISOFIX systems. (ISOFIX refers to a child restraint anchorage system consisting of two lower anchor bars at the intersection of a vehicle seat cushion and vehicle seat back. A related anchorage system is what is commonly referred to as the LATCH system in the U.S.¹) The ISO task force is in the early stages of exploring a possible ISOFIX ease of use ratings program.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not require any expenditures by State, local, or tribal governments, or by private parties.

List of Subjects in 49 CFR Part 575

Consumer information, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

¹ "LATCH" stands for "Lower Anchors and Tethers for Children," a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required by Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems* (49 CFR § 571.225). This system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a fixture to which the tether of a child restraint system can be hooked. The draft ISOFIX system would not include the upper tether anchorage.

PART 575—CONSUMER INFORMATION

1. The heading for part 575 is revised to read as set forth above.

2. The authority citation for part 575 is revised to read as follows:

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub.L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

3. The heading for subpart A is revised to read as follows:

Subpart A—Regulations; General

4. The heading for subpart B is revised to read as follows:

Subpart B—Regulations; Consumer Information Items

5. Subpart C is added to read as follows:

Subpart C—Transportation Recall Enhancement, Accountability, and Documentation Act; Consumer Information

§ 575.201 Child restraint performance.

The National Highway Traffic Safety Administration has established a program for rating the performance of child restraints. The agency makes the information developed under this rating program available through a variety of

means, including postings on its Web site, <http://www.nhtsa.dot.gov>.

Issued on October 29, 2002.

Jeffrey W. Runge,
Administrator.

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