

1997) because it is not economically significant and it is not based on environmental health or safety risks.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they met criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation,

Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 21, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 06-2012 Filed 3-8-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2006-23848]

RIN 2127-AJ84

Federal Motor Vehicle Safety Standards; Head Restraints

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

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the December 2004 final rule amending our head restraints standard. The amended standard contains new requirements applicable to head restraints voluntarily installed in rear outboard designated seating positions. Because of the time constraints faced by vehicle manufacturers in certifying voluntarily installed rear outboard head restraints to the new requirements, we are bifurcating our response. This document addresses those issues we feel are most time sensitive. In particular, we are responding to those petitions asking the agency to delay the application of the new requirements to voluntarily installed rear outboard head restraints. This final rule delays the date on which the manufacturers must comply with the requirements applicable to head restraints voluntarily installed in rear outboard designated seating positions from September 1, 2008 until September 1, 2010. The remaining petitions for reconsideration will be addressed in a separate notice.

DATES: *Effective Date:* The amendments made in this rule are effective May 8, 2006.

Petitions: Petitions for reconsideration of the amendments made by this rule must be received by April 24, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact David Sutula of the Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS-112, (Phone: (202) 366-3273; Fax: (202) 366-4329; E-mail: David.Sutula@nhtsa.dot.gov).

For legal issues, you may contact George Feygin of the Office of Chief Counsel, NCC-112, (Phone: (202) 366-2992; Fax (202) 366-3820; E-mail: George.Feygin@nhtsa.dot.gov).

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Petitions for Reconsideration
- III. Response to Rear Seat Lead-time Issues in Petitions
- IV. Regulatory Analyses and Notices

I. Background

On December 14, 2004, we published in the **Federal Register** a final rule (December 2004 final rule) upgrading Federal Motor Vehicle Safety Standard (FMVSS) No. 202, "Head restraints."¹ The standard, which seeks to reduce whiplash injuries in rear collisions, was upgraded to provide better whiplash protection for a wider range of occupants. For front seats, the final rule established a higher minimum height requirement, a requirement limiting the distance between the back of an occupant's head and the occupant's head restraint (backset), as well as a limit on the size of gaps and openings within head restraints. There were also new requirements for height, strength, position retention, and energy absorption. In addition, the final rule established new requirements for head restraints voluntarily installed in rear outboard designated seating positions, and added certain requirements specific to rear head restraints capable of folding or retracting into a "non-use position" to accommodate stowable rear seats, or to increase rearward visibility. The upgraded provisions were designated FMVSS No. 202a.

In response to the final rule, vehicle manufacturers expressed concern that adoption of the rear seat head restraint requirements would reduce vehicle

¹ See 69 FR 74848.

utility by interfering with or even reducing the ability to provide the sort of folding seats currently available in "multi-configuration" vehicles such as vans and multipurpose passenger vehicles.

II. Petitions for Reconsideration

We received eight petitions for reconsideration of the December 14, 2004, final rule. These petitions were filed by the Alliance of Automobile Manufacturers (Alliance), Syson-Hille and Associates (Syson-Hille), Keiper, Johnson Controls (JC), BMW, Ford Motor Company (Ford), and DaimlerChrysler (DCX). GM filed comments in support of the Alliance petition, and Kongsberg Automotive (Kongsberg) submitted a late petition.

The petitions from the Alliance, Syson-Hille, Keiper, JC, BMW, Ford, DCX and Kongsberg requested revisions to the final rule in the areas of backset measurement and limit, height measurement and limit, clearance between the head restraint and roofline, measurement of the gap between the head restraint and seat back, retention test procedure, dynamic test alternative, energy absorption tests, and owner's manual requirements. Many petitioners also argued for delaying the September 1, 2008, effective date for all new requirements. Our response to these particular issues will be addressed in a subsequent notice.

The remaining petitions for reconsideration pertained to the requirements for optional rear head restraints. The Alliance argued that recently many new vehicles have been designed such that the rear seats retract into the floor. The head restraints on these seats can be lowered to a position nearly flush with the top of the seat back, allowing the seat to be stowed without head restraint removal. The Alliance argued that the new requirements applicable to folding rear head restraints are so stringent that it would be impossible for manufacturers to provide rear head restraints that can retract enough to allow flat-folding rear seats. Ford argued that strong customer demand for vehicle functionality requires rear seats with folding or otherwise stowable seats and stated that the current requirements are not reasonable, necessary or practicable.

The Alliance, BMW, and DCX requested that the manually stowed non-use position compliance option originally in the NPRM be reinstated except that the required torso angle change should be no more than 5 degrees. The Alliance commented that the final rule prohibits designs that meet the 10-degree torso angle requirement

from the NPRM even though those designs could provide occupants with an obvious physical cue that the head restraint is not properly positioned. The Alliance added that design work on seats that meet the NPRM criteria are well underway by some companies, and those companies would experience hardship if those designs are prohibited by the final rule.

The Alliance petitioned the agency to allow non-use positions of less than 700 mm, and in-use adjustment positions between 700 and 750 mm. In effect, this petition is asking the agency to lower the minimum height requirement for rear seat head restraints from 750 mm to 700 mm, while maintaining that the head restraint be capable of reaching 750 mm. In addition, the Alliance requested that the clearance between the head restraint and roofline be clarified to "inside of the headliner." The Alliance commented that a clearance of at least 50 mm, with the roof in place, is needed in the rear seat outboard locations to permit convertible roof mechanisms to operate freely. DCX requested that during the roof folding process a clearance of 10 mm be permitted.

Finally, the Alliance and DCX petitioned that NHTSA modify the effective date to require 80 percent compliance with FMVSS 202a beginning September 1, 2008, and 100 percent beginning September 1, 2009, with carry forward credits as has been allowed in other NHTSA rulemakings. The Alliance commented that the effective date set forth in the final rule does not provide sufficient lead-time for design modifications to mechanisms that allow for conversion of passenger compartments to cargo areas. The Alliance further stated that certain vehicle models that are past final design release will continue in production beyond the September 1, 2008, effective date, but would require extensive changes to comply with the mandatory FMVSS 202a requirements. DCX commented that the phase-in would alleviate the need for design and development activity to occur all at once, and potentially eliminate short seat production runs.

GM² submitted additional comments on the final rule requesting additional lead-time to permit development of the Global Technical Regulation on head restraints. GM argued that without relief from the existing requirements, an unintended consequence of the final rule would be that manufacturers may opt not to install head restraints in rear seats instead of installing head restraints

that present stowage incompatibility or visibility concerns. The Alliance³ submitted additional comments in support of GM's position.

III. Response to Rear Seat Lead-time Issues in Petitions

This document responds only to those portions of the petitions regarding the lead-time for manufacturers to meet the requirements for head restraints voluntarily installed in rear outboard seating positions. Resolution of the remaining petition for reconsideration issues will be addressed in a subsequent notice.

We agree that manufacturers need additional time to design manually retractable rear head restraints that meet the new performance requirements. In meetings with DCX⁴, Ford⁵, and GM⁶, the petitioners stated that the final rule adversely impacts the design of head restraints for stowable seating. For example, DCX argued that shingle-type (shingle-type) head restraints, often used on stowable folding seats, would not meet the minimum height requirement when adjusted to their lowest position, and would not meet the non-use position criteria. Ford argued that a flat vehicle floor is a key requirement of consumers that would be affected if the final rule were not amended. GM argued that less stringent criteria with respect to non-use positions is preferable to a situation where vehicle operators are forced to remove the rear head restraint to fold the rear seats. GM argued that the standard should be amended to permit seat designs that allow consumers to keep the head restraint attached to the seat when folding, because it will help reduce the risks of improper head restraint installation, non-installation, and potential seat damage.

In meetings⁷ held with the agency in August of 2005, GM proposed several options for visual cues that a rear seat head restraint is in a non-use position. These included a permanent label similar to that already present in some Volvo models, and indicators that deploy only when the head restraint is in the lowest position. GM suggested that visual cues such as these could be employed to ensure that consumers properly adjust rear seat head restraints for use after stowage. A delay in the final rule is needed for the agency to fully analyze these cues as an option.

³ Docket NHTSA-04-19807-19.

⁴ Docket number NHTSA-2004-19807-13.

⁵ Docket number NHTSA-2004-19807-20.

⁶ Docket number NHTSA-2004-19807-17.

⁷ Dockets NHTSA-04-19807-14 and NHTSA-04-19807-17.

² Docket NHTSA-04-19807-17.

The agency believes that a delay in the effective date of the requirements applicable to rear head restraints would permit development of seat designs that meet the new requirements and still provide for stowage. It is not the agency's intent to discourage vehicle manufacturers from offering head restraints in rear seats. Further, because the vehicles that will become subject to the new requirements in 2008 are either already in production or in the final design stages, we believe that a delay is necessary at this time. Without this action, vehicle manufacturers indicated that they would be forced to remove rear head restraints from MY 2008 vehicles while they are attempting to resolve the issues raised above.

We considered the option of only delaying the application of "non-use" provisions for the rear seats. However, to allow a position of non-use below 750 mm, without any limitations, is tantamount to allowing a height lower than 750 mm. Thus, we believe a 2-year delay in regulations for the rear seat head restraints will give manufacturers the extra lead-time needed to address the folding rear seat packaging issues while implementing the front seat regulations.

NHTSA believes that this delay is a reasonable change. Based on National Analysis Sampling System (NASS) data from 2001 to 2003, the distribution of occupants by seating position for all vehicle types shows that 10 percent of all occupants sit in the second (or higher) row of outboard seats. Fewer rear seat occupants are exposed to risks in rear impacts because rear seats are much less likely to be occupied than front seats. We note that children and small adults derive less benefit from taller head restraints because their head center of gravity often does not reach the height of 750 mm above the H point.⁸ Therefore, if we further refine these data to include only occupants who are 13 years or older, the relevant percentage is reduced to approximately 5.1 percent. Our conclusions about rear seat occupancy are further supported by the FRIA (Final Regulatory Impact Analysis) data, which indicate that out of a total of 272,464 annually occurring whiplash injuries, approximately 21,429 (7.8 percent) occur to the rear seat occupants. In sum, only a small percentage of occupants who are tall enough to benefit from taller head

restraints sit in rear outboard seating positions. Furthermore, without this delay, manufacturers would likely exercise the option to remove rear seat head restraints entirely.

In light of the foregoing, NHTSA is granting an additional 2 years for manufacturers to develop designs that comply with the voluntarily installed rear head restraint requirements. The requirements applicable to head restraints installed in rear outboard designated seating positions will become effective September 1, 2010.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Although this document amends the agency's December 2004 final rule, which was economically significant, NHTSA has determined that this document does not affect the costs and benefits analysis for that final rule. Readers who are interested in the overall costs and benefits of head restraints are referred to the agency's Final Economic Assessment for the December 2004 FMVSS No. 202 final rule (NHTSA Docket No. 04-19807). This notice has also been determined not to be significant under the Department's regulatory policies and procedures. The amendments made by this document provide some relief rather than impose additional costs on manufacturers or consumers. Their impacts are so minimal that a full regulatory evaluation is not merited.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the December 2004 final rule. Instead, this document delays the effective date of some of the requirements. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule will not affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the

National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no 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. 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). While the December 2004 final rule is likely to result in over \$100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2004 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 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.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information

⁸ The H-point is defined by a test machine placed in the vehicle seat (Society of Automotive Engineers (SAE) J826, July 1995). From the side, the H-point represents the pivot point between the torso and upper leg portions of the test machine. It can be thought of, roughly, as the hip joint of a 50th percentile male occupant viewed laterally.

by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements.

H. 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.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. This final rule will not significantly impact the complexity of FMVSS 202.

J. Executive Order 13045

Executive Order 13045 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 rulemaking does not involve decisions based on health risks that disproportionately affect children.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards⁹ in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as

⁹Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NHTSA as "a performance-based or design specific technical specifications and related management systems practices. They pertain to products and processes, such as size, strength, or technical performance of a product, process or material."

voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the December 2004 final rule as a result of this final rule.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, 49 CFR part 571 is amended 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 571.202a is amended by revising S4.1 to read as follows:

§ 571.202a Standard No. 202a; Head restraints.

* * * * *

S4.1 *Performance levels.* In each vehicle other than a school bus, a head restraint that conforms to either S4.2 or S4.3 of this section must be provided at each front outboard designated seating position. In each vehicle manufactured after September 1, 2010 and equipped with rear outboard head restraints, the rear head restraint must conform to either S4.2 or S4.3 of this section. In each school bus, a head restraint that conforms to either S4.2 or S4.3 of this section must be provided for the driver's seating position. At each designated seating position incapable of seating a 50th percentile male Hybrid III test dummy specified in 49 CFR part 572, subpart E, the applicable head restraint must conform to S4.2 of this section.

* * * * *

Issued on: March 1, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 06-2108 Filed 3-8-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02; I.D. 011106A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, March 7, 2006, through 6 a.m., January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727-824-5305, fax: 727-824-5308, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern