

Issued in Washington, DC, on August 14, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26283; Notice 2]

Britax Child Safety, Inc.; Denial of Petition for Decision of Inconsequential Noncompliance

Britax Child Safety, Inc. (Britax) has determined that certain child restraint systems that it produced in 2006 do not comply with paragraph S5.1.1 of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Britax has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Britax also has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 15, 2006 in the **Federal Register** (71 FR 75609). The National Highway Traffic Safety Administration (NHTSA) received one comment from Advocates for Highway Safety (Advocates). To view the petition and all supporting documents, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter Docket No. NHTSA-2006-26283.

For further information on this decision, contact Mr. Zachary R. Fraser, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5754, facsimile (202) 366-7002.

Affected are a total of approximately 34,355 Marathon Child Restraint Systems (models E9L06, E9W06, and E906) produced by Britax between May 23 and July 28, 2006. Britax recommends that the Marathon be used forward-facing for children weighing between 20 and 65 pounds, and with the tether at all times. FMVSS No. 213 specifies that a child restraint recommended for use above 50 pounds be tested with a 49 CFR Part 572 Subpart S dummy. The Subpart S dummy is a Hybrid III 6 year-old dummy with weights added to the spine. Also, paragraph S5(d) specifies that each child restraint system tested with a 49 CFR Part 572 Subpart S dummy need not meet paragraph S5.1.2,

Injury Criteria and paragraph S5.1.3, *Occupant Excursion* of FMVSS No. 213. In addition, paragraph S5.1.1 of FMVSS No. 213 requires that the child restraint system exhibit no complete separation of any load bearing structural element during dynamic testing. When the noncompliant child restraint systems were tested with the weighted 6 year-old dummy, the top tether hook opened and released from the top tether anchor. Britax has corrected the problem that caused the tether hook to release so that it will not be repeated in future production.

Britax believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Britax states that the system has "excellent biomechanical performance * * * even with the opening of the system's top tether hook." Britax says that the systems "exceed expectation with head excursion well below the limit for products in which this performance is actually measured," even though the noncompliant systems are not required to meet head excursion limits. Britax also points out that there was a lower HIC and lower chest acceleration with the top tether hook open than when not open, and "[t]hese results demonstrate that the opening of the top tether dissipates some of the occupant energy and thereby reduc[es] overall biomechanical injury measures."

Britax concludes that the open top tether hook is inconsequential to the system working. Britax states, "The biomechanical results and performance of the other structural components of the Marathon prove that the *system* [emphasis in original] does what is it intended to do—that is, save children's lives."

Advocates commented by expressing their concern about the potential negative impacts on public confidence that failures of this type in actual use and an agency decision granting inconsequential noncompliance could have on the rate of tether use. Advocates also asserted that publicity that may accompany the failure of an upper tether could have a negative impact on consumer confidence and complicate the agency's efforts to educate the public regarding the use of tethers.

NHTSA Decision

In reaching our decision, NHTSA has carefully reviewed the subject petition, the Advocates' comments and a similar petition (which Britax attempts to distinguish from its petition) that was submitted to NHTSA in 2002 by another child restraint systems manufacturer, Dorel Juvenile Group (Dorel). (To view

the Dorel petition and all supporting documents, go to: NHTSA Docket No. NHTSA-2002-13014.)

As part of its reasoning, Britax argued that because the Britax Marathon system displayed "excellent biomechanical performance * * * even with the opening of the system's top tether hook" during the NHTSA testing that the noncompliance is inconsequential to motor vehicle safety. NHTSA does not agree with this line of reasoning. As Britax acknowledges, even though the Britax Marathon system met other dynamic test requirements, it did not meet paragraph S5.1.1(a) of FMVSS No. 213 because the system's top tether hook opened and released from the top tether anchorage. The agency has consistently viewed tether strap separation as a load bearing structural failure. A tether strap structural failure is similar to vehicle LATCH anchorage failure; a failure of either one will not provide full occupant protection for children. In requiring upper tethers and anchors, NHTSA noted that, "the tether is especially effective at reducing head excursion and the potential for head impacts." 64 FR 10786. By definition, the child restraint anchorage system consists of both the lower anchorages and the tether. 49 CFR 571.225 S3. This line of reasoning is consistent with NHTSA's decision to deny the previously referenced Dorel petition. Here, because the seat was recommended for weights greater than 50 pounds, the injury criteria applicable in other situations did not apply. This makes structural integrity all the more important. As Britax itself notes (petition at page 2), where the injury criteria do not apply, "there is a reliance on the structural integrity of the restraint to ensure safety of the child occupant * * *"

The agency has taken enforcement action for a similar failure. In 2001, the agency notified Britax of a potential noncompliance due to the detachment of a tether strap during dynamic testing of one of its child restraint models. Britax initiated a recall campaign to provide owners of the affected model with repair kits. In its current petition, Britax stated it did not believe that the failure that resulted in the 2001 recall should be compared to the current failure. Britax's argument for this is that the 2001 failure had the potential for increased forward movement of the head and therefore potential for exceeding head excursion limits whereas the current Marathon "exceeds its biomechanical requirements and expectations." We disagree with this reasoning and believe that the Marathon, while not required to meet a

head excursion requirement when tested with the weighted 6 year-old dummy, also has the potential for increased forward movement of the head in excess of the required limit in the event of a top tether failure. We note that, as the Britax explanation makes clear, the head excursion limit (720 mm) was exceeded in one out of the three tests the company performed. In that test, the tether hook opened. In the other two tests performed by Britax, the tether hook did not open and the head excursions were substantially less. Furthermore, lower biomechanical responses would naturally occur as a result of increased excursion due to a top tether failure.

Finally, NHTSA agrees with Advocates that granting this petition would send a mixed message to the public regarding the use of tethers and would be contradictory to NHTSA's mission to promote greater use of LATCH and tether.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Britax's petition is hereby denied, and the petitioner must notify according to 49 U.S.C. 30118 and remedy according to 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 15, 2007.

Daniel C. Smith,
Associate Administrator for Enforcement.
[FR Doc. E7-16408 Filed 8-20-07; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous

materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before September 5, 2007.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC or at <http://dms.dot.gov>.

The notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 14, 2007.

Delmer F. Billings,
Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permit thereof
7835-M	Richem Company, Inc., Albuquerque, NM.	49 CFR 177.848(d)	To modify the special permit to authorize additional bulk and non-bulk containers for transporting class 8 liquids.
8554-M	Orica USA Inc., Watkins, CO	49 CFR 173.62; 173.240; 173.242; 173.93; 173.114a; 173.154; 176.83; 176.415; 177.848(d).	To modify the special permit to authorize the transportation in commerce of certain Division 1.5D explosives in the same vehicle with Division 5.1 oxidizers.
8723-M	Dyno Nobel, Inc., Salt Lake City, UT	49 CFR 172.101; 173.62; 173.242; 176.83; 177.848.	To modify the special permit to authorize the transportation in commerce of an additional Division 5.1 hazardous material.
8723-M	Austin Powder Company, Cleveland, OH.	49 CFR 172.101; 173.62; 173.242; 176.83; 177.848.	To modify the special permit to authorize the transportation in commerce of an additional Division 5.1 hazardous material.
11194-M	Carleton Technologies, Inc., Westminster, MD.	49 CFR 173.302(a); 173.304(a); 175.3.	To modify the special permit to authorize the transportation in commerce of additional Division 2.2 gases.