courier. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., *e.t.,* Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via e-mail at *TIFIACredit@dot.gov* or via telephone at 202–366–9644. A TDD is available at 202–366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *http://tifia.fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2009, at 74 FR 63497, the FHWA published in the **Federal Register** a notice of availability of funding for applications for credit assistance under the TIFIA Program.

In lieu of accepting applications on a first-come first-served basis, the NOFA established due dates for submitting letters of interest and applications to compete for available funding. Additionally, the NOFA provided expanded information on the TIFIA selection criteria and requests comments on a proposed pilot program for allowing TIFIA applicants to pay an upfront fee that will fully offset the Government's subsidy cost of making credit assistance available.

The original comment period for the NOFA closes on December 31, 2009. However, DOT stakeholders have expressed concern that this closing date does not provide sufficient time for submission of the solicited Letter of Interest and a subsequent comprehensive response to the docket. To allow time for interested parties to submit Letters of Interest and comprehensive comments, the closing date is changed from December 31, 2009, to March 1, 2010.

Authority: 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR Part 180; 49 CFR Part 80; 49 CFR Part 261; 49 CFR Part 640.

Issued on: December 29, 2009.

Victor M. Mendez,

Administrator.

[FR Doc. E9–31225 Filed 1–4–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0132]

Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance

Dorel Juvenile Group (DJG or Cosco), of Columbus, Indiana, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its petitions for determinations that the noncompliance of the tether and harness webbing in some child restraint systems (CRS) that it manufactured and sold with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' is inconsequential to safety. DJG had applied to be exempt from the notification and remedy (collectively, recall) requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' (Vehicle Safety Act). This notice announces and explains our denial of DJG's appeal.

I. Webbing Strength Requirements of FMVSS No. 213

FMVSS No. 213, S5.4.1(a) [1] requires that the webbing of belts provided with a child restraint system, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209, ''Seat Belt Assemblies,'' have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested by the procedure specified in S5.1(b) of FMVSS No. 209. The test is referred to as an abrasion test and the requirement is referred to as a percent-of-strength requirement.

FMVSS No. 213, S5.4.1(b) requires that the webbing of belts provided with a child restraint system shall meet the requirements of S4.2(e) of FMVSS No. 209, which requires a breaking strength of not less than 60 percent of the strength before exposure to carbon arc light when tested by the procedure specified in S5.1(e) of FMVSS No. 209. The test is referred to as a light exposure test and the requirement is referred to as a percent-of-strength requirement.

Webbings used in child restraints may deteriorate from abrasion or exposure to sunlight or both. When they deteriorate, they lose strength. A webbing with insufficient strength will not restrain a child in a crash. The purpose of both the abrasion and light exposure requirements is to ''ensure the safe performance of the belts and associated hardware used to attach the child restraint to the vehicle.'' *Child Restraint Systems; Seat Belt Assemblies and Anchorages: Proposed Rulemaking and Invitation for Applications for Financial Assistance,* 43 FR 21470, 21475 (May 18, 1978) (Docket No. 74–9). The purpose of FMVSS No. 213 is to ''reduce the number of children killed or injured in motor vehicle crashes.'' 49 CFR 571.213 S2.

II. The Noncompliance

The noncompliant tether webbing [2] on certain DJG child restraints failed to meet the percent-of-strength requirement of FMVSS No. 213 when subjected to the abrasion test. The tether webbing had an initial strength of 19,803 Newtons (N), and a post-abrasion strength of 10,903 N. The tether webbing thus retained only 55 percent of its new webbing strength; 75 percent is required by the standard. Affected are a total of 39 models and 3,957,826 units, manufactured between January 2000 and September 30, 2001.

The noncompliant harness webbing on certain DJG child restraints failed to meet the percent-of-strength requirement of FMVSS No. 213 when exposed to a carbon arc light. Upon testing, the new harness webbing had a strength of 12,371 N, and the light-exposed webbing a strength of 4,539 N. The harness webbing thus retained only 37 percent of its new webbing strength; 60 percent is required by the standard. A total of 14 models and 54,400 units, manufactured between March 15, 2002 and August 1, 2002, are affected by this non-compliance.

[1] Throughout this Notice, references to FMVSS No. 213 are, unless otherwise noted, based on the version of the standard in effect at the time DJG manufactured the child restraints with the noncompliant webbing.

[2] ''Tether webbing'' refers to the strip of fabric that is secured to the seat back of a CRS, and is connected to a tether hook that transfers the load from the CRS to the tether anchorage.

III. DJG's Inconsequentiality Petitions, Subsequent Rulemaking and NHTSA's Denial

1. DJG's Petitions

DJG petitioned for relief from the recall provisions of the Vehicle Safety Act with respect to both the tether webbing noncompliance and the harness webbing noncompliance. *See* 49 U.S.C. 30118(d), 30120(h); 49 CFR part 556. NHTSA published receipt of DJG's applications for determination of inconsequential non-compliance regarding the tether webbing and the harness webbing on July 30, 2002 and December 3, 2002, in the **Federal Register** (67 FR 49387 and 67 FR 72025, respectively).

DJG argued that the noncompliance of the tether webbing was inconsequential to safety because the absolute strength of the abraded webbing was sufficiently high. DJG also argued that the abrasion test in effect at the time the tethers were manufactured was flawed: Since it lacked a minimum breaking strength requirement, webbing with a relatively low unabraded strength was subject to a correspondingly low abraded strength requirement, while webbing with a relatively high unabraded strength—such as that in child restraints manufactured by DJG—was subject to a proportionately higher post-abrasion strength requirement. Thus, DJG argued that the noncompliance with the abrasion test was inconsequential because, even though the abraded webbing retained only 55 percent of the strength of the new webbing, the post-abrasion strength was nonetheless adequate due to the relatively high strength of the new webbing. To support this contention, DJG argued that the strength of the abraded webbing (10,903 N) exceeded the anchor strength requirements of FMVSS No. 225, *Child Restraint Anchorage Systems* (5,296 N). DJG further argued that testing, both by it and in connection with the FMVSS No. 225 rulemaking, demonstrated that the strength of the abraded webbing exceeded both the loading on tethers observed in dynamic testing (between 3,400 N and 5,800 N) and the tether assembly break strength as determined in tensile strength tests (about 9,800 N). DJG asserted that, since the design of the tether assembly uses two belt slides that act as a manual adjuster, the tether strap is not exposed to abrasion in ordinary and reasonably foreseeable use.

With respect to the harness webbing noncompliance, DJG again argued that the absence of a minimum strength requirement in the exposure test penalized manufacturers of child restraints with webbing with a high pre-exposure strength. DJG argued that the noncompliance of its webbing was inconsequential to safety because the strength of the webbing, even after exposure, exceeded the loads observed in dynamic tests. DJG maintained that the absence of a minimum strength requirement would allow manufacturers to produce compliant webbing with low pre-exposure strength. DJG also asserted that while the webbing was noncompliant when exposed to carbon arc light filtered by a Corex-D filter, the webbing was compliant when exposed to xenon arc light.[3] DJG argued that carbon arc light does not have the same spectral characteristics as sunlight and delivers excessive relative photon energy to the test specimen in the ultraviolet and low visual spectrum which is more damaging than natural sunlight. However, it noted that xenon arc light systems more closely resemble natural sunlight characteristics. DJG also contended that carbon arc light systems are now obsolete since they have been replaced by xenon arc systems.

With respect to the first petition, one comment was received from Advocates for Highway and Auto Safety (Advocates) in support of a minimum breaking strength requirement. With respect to the second petition, no comments were received.

2. The 2006 Rule

NHTSA gave considerable attention to the statements and comment suggesting a minimum breaking strength requirement. In 2005, NHTSA initiated a rulemaking with respect to minimum breaking strength for webbing in child restraints. In 2006, NHTSA published a final rule that amended FMVSS No. 213 to include a minimum breaking strength of 15,000 N for new webbing used to secure a child restraint system to the vehicle (including the tether and lower anchorages of a child restraint anchorage system). *Child Restraint Systems; Final Rule,* 71 FR 32855 (June 7, 2006), codified at 49 CFR 571.213 S5.4.1.2(a). NHTSA noted that without a specified initial breaking strength requirement, the percentage-of-strength requirement alone did not provide an effective floor for acceptable performance. 71 FR 32858; *see* 49 CFR 571.213 S5.4.1.2(b). The rule maintained the minimum percentage-of-strength of new webbing requirement, as a means of limiting degradation. 71 FR 32858. The agency concluded that ''[a]n excessive degradation rate (e.g., over 25% when subjected to the abrasion test) indicates a problem with the quality and/or durability of the selected material.'' 71 FR 32858. The agency expressed its desire to prevent the use of webbing that degraded more than 25 percent when abraded, or 40 percent when exposed to light, because it may not last as long as necessary to protect children using the restraint (including for second-hand use).[4]

3. NHTSA's Decision on Dorel's Inconsequentiality Petitions

On July 18, 2008, NHTSA published a notice in the **Federal Register** denying both of DJG's petitions (73 FR 41397), stating that the petitioner had not met its burden of persuasion that the noncompliances were inconsequential to motor vehicle safety. In its denial of the petitions, NHTSA noted that at the time of receiving these petitions, NHTSA had undertaken a rulemaking to consider whether to amend FMVSS No. 213 to require a minimum breaking strength for CRS webbing. NHTSA had postponed final determinations on these petitions in order to obtain the benefit of public comments responding to the proposed breaking strength requirements. After completing this rulemaking action—specifying both a minimum breaking strength and a percentage-of-strength retention after abrasion and light exposure (discussed above)—NHTSA addressed these two DJG petitions for determination of inconsequential noncompliance.

In its denial of the petition relating to the tether webbing, NHTSA explained that both the unabraded webbing strength and the degradation rate requirements are important from a safety perspective. NHTSA stated that the lack of sufficient breaking strength retention after the abrasion test signals a distinct probability that the webbing strength would be insufficient throughout a lifetime of use. The high degradation rate of the DJG tether webbing meant that, over time, the webbing could abrade to the point where the webbing strength is lower than the tether anchor strength, providing for an unsafe connection to the vehicle. NHTSA also noted that, under the 2006 rule, the minimum strength for new webbing is 15,000 N. That rule did not change the 75 percent strength retention requirement.

[3] DJG also argued that the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter, but does not reassert this argument on appeal.

[4] Information available at the time of a decision on an inconsequentiality petition may be considered in making the decision; this includes information in rulemakings that post dated the violation. However, the motor vehicle equipment would not be in violation of a rule that was adopted after the equipment was manufactured.

In its denial of the petition relating to the harness webbing, NHTSA stated that DJG's concern that under a standard that lacks a specific minimum strength requirement, manufacturers could produce webbing with very low after-exposure strength if the pre-exposure strength was also low, was theoretical; NHTSA also noted that minimum breaking strengths were added to the standard in 2006. NHTSA also stated that carbon arc light filtered by a soda-lime glass is not in accordance with FMVSS No. 213 requirements and is not appropriate for light exposure testing of nylon webbing. Requirements for carbon arc light exposure testing with a soda-lime glass filter are clearly specified only for polyester materials. NHTSA also stated that its rulemaking to use xenon arc light for weathering tests of glazing material does not mean that the carbon arc is not indicative of the sunlight spectral power distribution or that it produces invalid weathering results for webbing materials. In response to DJG's argument regarding dynamic testing, NHTSA pointed out that the test conditions in FMVSS No. 213 reflect the concern that child restraint systems will withstand even the most severe crashes which are well above 30 mph. Therefore, DJG's assertion was not persuasive evidence of the noncompliance being inconsequential to safety.

IV. DJG's Appeal

On August 1, 2008, DJG appealed NHTSA's denials of both petitions. Notice of the appeal with an opportunity for comment was published in the **Federal Register** on Wednesday, November 26, 2008 (73 FR 72111).

Tether Webbing

In its appeal, DJG reiterates the arguments it made in its initial petition that the strength of the abraded webbing is sufficiently higher than reasonably foreseeable crash forces, since the strength of the abraded webbing exceeded both the loading on tethers observed in dynamic testing and the break strength of the tether assembly (particularly the tether hook) as determined in tensile strength tests. DJG's appeal goes on to note that NHTSA's initial decision relied on a concern that the webbing might not retain sufficient strength throughout a lifetime of use. DJG makes several arguments in response to this concern.

DJG argues that NHTSA has recognized that a child restraint system should not be used beyond its useful life and that a NHTSA Tip (as well as a Juvenile Products Manufacturers Association guideline) for the useful life of child restraints is 6 years. DJG notes that most of the noncompliant CRSs are already beyond this useful life given the passage of time between the filing of DJG's petition and the denial decision. DJG further points out that there have been no complaints of tether webbing degradation or failure in crashes. Accordingly, it asserts, since the purpose of the regulation is to protect children throughout the useful life of the restraint, this performance demonstrates that it has been adequate. Moreover, DJG argues that this performance resolves NHTSA's concern.

DJG also asserts that the noncompliance is inconsequential to safety because the degradation allowed for CRS webbing is identical to that for vehicle seat belts, even though, DJG argues, vehicle seat belts are expected to last longer and are subject to more use than is CRS webbing. DJG claims that the vehicle seat belt assembly is expected to last the life of the vehicle which, DJG asserts, is up to twice as long as the useful life of a CRS. DJG also maintains that the tether webbing is subject to less-frequent use than is seat belt webbing, because there will always be a driver when a CRS is used in a vehicle, but the reverse is not true. DJG argues that this is particularly true in the case of the convertible restraints at issue in its appeal, where the tether is not used when the restraint is installed in the rear-facing position or when used as a booster seat. DJG concludes, based on these arguments, that it is unreasonable for the agency to conclude that the noncompliant tether webbing creates a consequential safety risk because it ''degrades somewhat more than 75 percent'' in the abrasion test.

Next, DJG argues that, in everyday use, the noncompliant webbing is not subject to the severe abrasion simulated in the test. DJG provides tether webbing strength data for a small sample of compliant and noncompliant used child restraints showing that the tether webbing strength after 6 to 8 years of use ranges from 82.4 to 99.6 percent of initial breaking strength. DJG argues that these test results show that the tether webbing from compliant and noncompliant child restraints performed comparably, and demonstrate that NHTSA need not be concerned about degradation. In addition, on December 26, 2008, DJG submitted supplemental data from eight used noncompliant child restraints (8–9 years old) that showed that tether strength, after being used in the field, ranged from 15,168 N (3,410 pounds) to 19,038 N (4,280 pounds) (76.6 to 96.1 percent of new tether webbing strength). DJG argues that the strength of these used tethers is greater than the current minimum breaking strength requirement of 15,000 N for new tether webbing. DJG also argues that the location and two-belt slide design of the tether guarantee that it is not exposed to abrasion in ordinary and reasonably foreseeable use.

DJG also contends that the noncompliance does not significantly increase the risk of harm to children in crashes, compared to compliant webbing, because the post-abrasion strength of the non-compliant webbing is just 3 percent below what DJG argues is the ''effective minimum'' required by the current standard. The revision of FMVSS No. 213, effective September 2007, requires that new (unabraded) webbing have a minimum breaking strength of at least 15,000 N. DJG argues that 75 percent of 15,000 implies what DJG terms an ''effective minimum'' of 11,250 N. DJG further argues that since the tether's post-abrasion strength (10,903 N) is just 3 percent less than this ''effective minimum,'' the noncompliance is inconsequential to safety.

Then, DJG maintains that its petition is analogous to an inconsequentiality petition for tether webbing that degraded on certain Evenflo child restraints that NHTSA did grant. DJG states that the Evenflo grant was based on both dynamic testing and a favorable evaluation of the webbing under the regulations in effect from 1971–1979 for a Type 3 belt. DJG argues that its petition was supported with similar dynamic test data demonstrating that the noncompliant tether webbing exceeded measured maximum tensile loads in dynamic testing. DJG also argues that the webbing would have satisfied the prior version of NHTSA's regulations for a Type 3 belt.

Finally, DJG asserts that compliance test results in connection with NHTSA's rulemaking on minimum breaking strength requirements (docket no. NHTSA–2005–21243–0002) demonstrate that DJG's tether webbing post-abrasion breaking strength was higher than the post-abrasion breaking strength for at least one Britax model in the marketplace at the time. DJG asserts that since this Britax webbing complied with the FMVSS No. 213 requirements, its noncompliant tether webbing with a post-abrasion tether breaking strength of more than two times that of the Britax webbing poses no safety risk.

Harness Webbing

DJG also argues that the harness webbing noncompliance is inconsequential to safety.

First, DJG argues that a xenon arc lamp is a better surrogate of sunlight

exposure than a carbon arc lamp, and that the carbon arc lamp is obsolete. DJG argues that while the webbing (made of nylon fabric) was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's specifications), the harness webbing retained 93.5 percent of its initial breaking strength when it was exposed to a xenon arc lamp for 300 hours (3 times longer than that required by the standard). DJG also notes that FMVSS No. 205 specifies a xenon arc lamp to test glazing materials, and notes NHTSA's discussion of the use of xenon arc lamps in this context.

Second, DJG asserts that the breaking strength of its light-exposed harness webbing exceeded the corresponding harness loads in 30 mph sled tests. The median dynamic load in the 30 mph sled tests was 1,138 N, which DJG estimates corresponds to a load of 4,552 N in a 60 mph crash. DJG argues that this is virtually identical to the breaking strength of the exposed DJG webbing (4,539 N), and no child restraint is expected to afford protection in a 60 mph crash. DJG states that while NHTSA's initial decision stated that a 30 mph test is not indicative of the upper limit of safety, NHTSA granted three separate petitions in which a 30 mph dynamic test was wholly, or in part, stated as a reason for granting the petition.

Third, on December 26, 2008, DJG provided supplemental data from four used noncompliant child restraints showing that the harness webbing strength, after real world use, ranged from 8,665 N (1,948 pounds) to 11,000 N (2,473 pounds). DJG notes that all these values exceed 60 percent of the breaking strength of the original new harness webbing. DJG also references the 2006 rule's minimum breaking strength for new webbing and states that a post-exposure strength of 60 percent of this is allowable. DJG argues that this data shows that no safety problem exists.

Fourth, DJG maintains that its post-exposure webbing strength is greater than that of compliant Safeline webbing, which had low initial breaking strength. (NHTSA Docket 2005–21243–0002, Table 4). DJG argues that its webbing cannot pose a consequential risk to safety if webbing with a lower post-exposure strength is compliant.

Fifth, DJG argues that NHTSA's concerns about degradation are belied by an absence of consumer complaints.

V. Comments Submitted on the Notice of Appeal

In response to DJG's appeal, Joe Colella of Traffic Safety Projects commented that requiring the repair of child restraints that were manufactured more than 6 years ago conflicts with the consistent educational messaging that NHTSA and other organizations try to maintain regarding the use of older child restraints. NHTSA includes on its website a recommendation developed by child restraint manufacturers that a second-hand child safety restraint is recommended for use only if it is less than 6 years old. According to Mr. Colella, requiring the repair of these affected seats would potentially keep them in use for several more years, which the commenter believes could place child occupants at increased risk of injury. Mr. Colella also reiterates the comment made by Advocates, and states that NHTSA should fully evaluate whether there are real safety implications for the actual abraded or exposed webbing.

VI. NHTSA's Consideration of DJG's Inconsequentiality Petition

A. General Principles

Manufacturers may not sell motor vehicles or equipment unless they comply with the applicable motor vehicle safety standards. 49 U.S.C. 30112(a)(1). Manufacturers whose products fail to comply with these standards are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118–30120. A manufacturer may, however, petition for exemption from these notification and remedy requirements on the grounds that the noncompliance is inconsequential to motor vehicle safety. 49 U.S.C. 30118(d); 30120(h); 49 CFR 556.4(a). The petitioner bears the burden of demonstrating that the noncompliance is inconsequential to safety. *See General Motors Corp; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897 (April 14, 2004) (NHTSA 2002–12366). NHTSA must publish a notice of the petition in the **Federal Register** and allow an opportunity for members of the public to present information, views, and arguments on the petition. § 556.5. An absence of opposing argument and data, however, does not require the agency to grant the petition. *General Motors Corp,* 69 FR 19899.

In order to demonstrate inconsequentiality, the petitioner must demonstrate that the noncompliance ''do[es] not create a significant safety risk.'' *Cosco, Inc.: Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999) (NHTSA–98–4033). The relevant issue is whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant using a compliant vehicle or equipment. *GM Corp.,* 69 FR 19900; *Cosco, Inc.,* 64 FR 29409. The number or percentage of vehicles or equipment affected by the noncompliance is not relevant to the issue of consequentiality. *GM Corp.,* 69 FR 19900; *Cosco, Inc.,* 64 FR 29409. Further, a consequentiality petition is not the appropriate means to challenge the methodology of a specific test specified in a FMVSS, or to argue that the specified test is unreasonable because of a low likelihood of encountering, in actual use, the problem the test is designed to prevent. *Int'l Truck and Engine Corp.; Denial of Application for Inconsequential Noncompliance,* 68 FR 20043, 20044 (April 23, 2003) (NHTSA 2002–12005). The appropriate venue for such arguments is a petition for rulemaking to amend the current safety standard. *Id.*

The agency rarely grants inconsequentiality petitions for noncompliance with performance standards. *GM Corp.,* 69 FR 19899 (and decisions cited therein). *See also Cosco, Inc.,* 64 FR 29408. In *GM Corp.* the agency denied, in part, an inconsequentiality petition by GM regarding non-compliance with FMVSS No. 209. There, a number of models of seat belt retractors did not comply with the performance requirements pertaining to emergency locking. GM supported its petition with a risk analysis—which estimated that very few occupants would be exposed to noncomplying equipment—and with the results of dynamic tests. *Id.* at 19899. The agency found that the risk analysis was not compelling because ''the percentage of potential occupants that could be adversely affected by a noncompliance is irrelevant'' to the inconsequentiality analysis. *Id.* at 19900. The agency did, however, consider the dynamic test data provided by GM. GM used the tests to evaluate the safety-related performance of the compliant and noncompliant retractors. The agency found that for one class of vehicles in which certain noncompliant retractors were installed, there were extremely small differences between the compliant and noncompliant retractors with respect to seat belt payout and locking time. Since the noncompliant retractors did not expose a vehicle occupant to a significantly greater risk, the agency granted the petition with respect to retractors in that class of vehicles. However, for other retractors

in a different class of vehicles, there was a significant difference in the performance of the compliant and noncompliant retractors. Accordingly, the agency denied the petition with respect to retractors installed in that class of vehicles.

B. Assessment of DJG's Arguments in Support of Its Petitions

The agency has determined that DJG has not met its burden of persuasion that the noncompliances are inconsequential to safety. The agency is thus denying the appeals with respect to both the tether and harness webbing. The agency's reasons for the denial of each appeal are discussed below.

Tether Webbing

The agency finds that the arguments DJG reasserts from its original petition, as well as its new arguments, are unpersuasive.

DJG argues that the strength of the abraded webbing is sufficiently higher than reasonably foreseeable crash forces, since the strength of the abraded webbing as measured after the abrasion test exceeded both the loading on tethers observed in dynamic testing, and the break strength of the tether assembly (particularly the tether hook) as determined in tensile strength tests. DJG's argument amounts to an assertion that from a safety perspective, all that matters is whether webbing that has been subjected to the abrasion test is stronger than some minimum strength. This approach is inconsistent with the two-faceted regulatory structure that NHTSA adopted in the 2005–2006 rulemaking.

In the 2005–2006 rulemaking that amended FMVSS No. 213, NHTSA explicitly considered—and ultimately rejected—DJG's approach. The 2005 NPRM proposed amending FMVSS No. 213 so that webbing, before and after abrasion, would have to meet or exceed specified minimum breaking strengths. 70 FR 37732, 37739. As specified in the proposed rule, the regulatory gauge would be breaking strength. The agency ''tentative[ely] conclude[d]'' that the percent of strength requirement that had been in the rule up to that point was no longer necessary, and that holding abraded webbing to this minimum strength requirement was sufficient to ensure adequate webbing strength, and thus, safety. 70 FR 37732.

However, after receiving comments on this proposed rule, the agency concluded that the final rule should have two facets: It should retain the historical percent of strength requirement for abraded webbing, and add a minimum strength requirement for new webbing. *See* 49 CFR 571.213 S5.4.1.2(a), (b). One commenter that manufactures child restraints (Britax) pointed out that the proposed rule ''potentially permits a greater percentage of degradation'' and that this ''wider window of degradability'' could lead to an increased safety risk. 71 FR 32858. The agency concluded, in the final rule, that the proposed minimum strength requirement for abraded webbing ''did not sufficiently limit the degradation rate of webbing material and thus did not adequately fulfill the second of the agency's goals for the rulemaking.'' 71 FR 32858. As the agency explained, the fact that webbing has a particular strength after being subjected to the abrasion test does not mean that further degradation is not possible. *See* 71 FR 32858–32859. The abrasion test is intended to be a measure of material durability and performance, but, is ''not intended to and [does] not assess how strong a particular tested specimen will be at the end of its life.'' 71 FR 32859. Rather, the test is an accelerated aging test which measures how the webbing performs after prolonged—but not necessarily lifetime—exposure to environmental conditions. *Id.* Accordingly, the fact that the strength of the webbing, after being subjected to the abrasion test, exceeds the required or actual strength of the tether assembly or the tether loads observed in dynamic tests, is not dispositive. Over an entire lifetime of actual use the webbing strength could degrade to levels even lower than observed after the abrasion test, and the degradation rates are indicative of further degradation: ''Exceeding the degradation rates of the standard indicates a quality problem with the webbing material selection and raises concern that the webbing may not satisfactorily perform at the end of its product life as it did at the beginning, even if the exposed webbing has a breaking strength that is higher in magnitude than a competitor's webbing that met the percent-of-strength requirement.'' 71 FR 32859. Accordingly, the 2006 final rule retained the 75 percent of strength requirement for abraded webbing.

The noncompliant DJG webbing degraded to 55 percent of its unabraded strength in the abrasion test. The high degradation rate of the DJG webbing gives significant justification for concerns that the webbing could further abrade to the point where the webbing strength is lower than the tether anchor strength or the tether loads observed in dynamic tests, providing for an unsafe connection to the vehicle.[5]

DJG, in response to NHTSA's degradation concerns, asserts that most of the child restraints at issue are now more than seven years old and beyond their useful life. DJG adds that there have been no complaints of tether webbing abrasion or failure in crashes. DJG concludes in its appeal that this proves that the noncompliance of the tether and harness webbing is inconsequential to safety. Similarly, Mr. Colella argues that requiring recall of the noncompliant restraints would potentially keep them in use for several more years, perhaps placing children occupants at increased risk of injury.

The assertion by DJG that the majority of the subject noncompliant restraints are already beyond their useful life is essentially a claim that only a small number or percentage of child restraints actually in use would be noncompliant. This type of argument is not relevant to the inconsequentiality analysis. *See GM Corp.,* 69 FR 19899; *Costco, Inc.,* 64 FR 29408. Even assuming, however, that this assertion, if proved, would provide sufficient grounds for granting an inconsequentiality petition, the agency has concluded that DJG has not shown that the restraints could not and would not be used by a parent to restrain a child. Current industry practice is to place an expiration date on new child restraints. However, the noncompliant DJG child restraints lack such labeling so that a person owning a noncompliant DJG restraint might not be aware that the age of the restraint exceeded the recommended retirement age. Additionally, despite the recommendation of JPMA and consumer organizations for a 6 year useful lifespan, even consumers that hear

[5] DJG asserts that NHTSA has provided no evidence for its concern about webbing degradation. As NHTSA pointed out in the preamble to the 2006 final rule, the use of a degradation rate for material selection and performance is standard industry practice and is supported by the engineering literature. 71 FR 32858. And, more specifically, the 75% post-abrasion strength retention requirement, expressed as a percentage of the webbing's pre-abrasion strength, was based on ''an SAE standard (Motor Vehicle Seat Belt Assemblies SAE J4C, 1966) whose requirements were originally adopted into FMVSS No. 209, and subsequently into FMVSS No. 213.'' *Child Restraint Systems; Notice of proposed Rulemaking,* 70 FR 37733 (June 30, 2005) (NHTSA–2005–21243). There is also empirical evidence that webbing strength degrades after being exposed to the abrasion test. See Louise Robinson, Health and Safety Laboratory, Assessment of the effects of different types of abrasion on the tensile strength of safety harness and lanyard webbings (2007), at *http://www.hse.gov.uk/research/hsl_pdf/2007/hsl0712.pdf* (last visited Sept. 9, 2009) (study finding that webbing subjected to 5,000 cycles of the FMVSS No. 209 hexagonal bar abrasion test had lower tensile strength than webbing subjected to 1,000 cycles of the test).

about these recommendations might not heed them—particularly in tough economic times—and continue, instead, to use the noncompliant child restraints. In any event, NHTSA does not accept the assertion that an industry recommendation on product life span terminates a manufacturer's recall responsibilities.

DJG goes on to argue that not only are the noncompliant restraints past their ''useful lives,'' there also have been no complaints of tether webbing abrasion or failure during the entire time the restraints have been in use. NHTSA, however, does not consider the absence of complaints to show that the noncompliances are inconsequential to safety. The overall concern with the abrasion test is the degradation of the strength of the webbing. The degradation of the abraded tethers was very high. Particularly on older products, which may have been handed down, the absence of a complaint does not mean there have not been any problems or failures. And it does not mean that there will not be failures in the future.

DJG's comparison of the safety standard for tether webbing to the similar standard for vehicle seat belt webbing does not meet its burden. This argument challenges the reasonableness of the standard, and, as such, is inapt for an inconsequentiality petition. Child restraint manufacturers, such as DJG, had opportunity to challenge the incorporation of the FMVSS No. 209 requirements into FMVSS No. 213 during the rulemaking process and they did not. Even assuming that these arguments are relevant, the agency does not accept them. DJG's argument that it is unreasonable to subject CRS webbing to the same degradation requirement as seat belt webbing because the ''useful life'' of seatbelts is longer than that of the CRS webbing is unpersuasive because, as discussed above, the agency is not persuaded that the real-world use of the noncompliant child restraints will be limited to six years. DJG's related argument that the CRS webbing is subject to less-frequent use than seat-belt webbing is unpersuasive because it does not fairly address seat belt use and is unsupported. DJG focuses on the seat belt used by the driver, but ignores seat belts for other designated seating positions—such as passengers—which, if anything, are subject to less use than the driver's seat belt. DJG also ignores the fact that vehicle seat belt webbing is subject to the same abrasion test requirement in FMVSS No. 209 regardless of where the belt is located in the vehicle. The agency's vehicle seat belt webbing requirements do not vary based on probable use patterns; instead, because of the crucial safety function of the webbing, the agency subjects all vehicle webbing to the same high standard. Indeed, when the agency established FMVSS No. 213, it explicitly adopted some of the buckle and belt requirements of FMVSS No. 209 such as those relating to abrasion and resistance to light, and the adoption of these requirements was not opposed by any of the commenters. *Child Restraint Systems Seat Belt Assemblies and Anchorages: Final Rule,* 44 FR 72136 (Dec. 13, 1979). Additionally, DJG's argument that CRS webbing is subject to less-frequent use than is seat belt webbing, particularly in the case of the convertible restraints, ignores hand-me-down use of child restraints by children other than the first user.

DJG's arguments that, in actual use, the restraints are not subject to the severe abrasion reflected in the test, are also unavailing. These arguments challenge the validity of the test methodology in the standard; as noted above, a petition for rulemaking, not an inconsequentiality petition, is the appropriate means for such an argument. And, even if these arguments were relevant, the agency does not find them persuasive. NHTSA has examined the limited test data of used child restraints (between 6–9 years old) submitted by DJG, including the supplemental submission of December 26, 2008, and notes that although the restraints were from the affected population of noncomplying restraints, the precise history of their use is unknown. DJG did not make a showing that these restraints have seen many years of hard, real world use. Therefore, DJG's data showing that the tether webbing on these used restraints retained more than the minimum strength required by the standard for new webbing is not compelling evidence that the noncompliance is inconsequential to safety. The supplemental DJG data reflects substantial degradation. Of the 8 restraints tested, one (#7B) was 77 percent of the strength of new webbing (15,168 N [3,410 pounds]/19,803 N [4,452 pounds]) and another (#2B) was 78 percent of the strength of new webbing (15,489 N [3,482 pounds]/19,803 N [4,452 pounds]). The standard is 75 percent. DJG's other argument that the location and two-belt slide design of the tether guarantee that it is not exposed to abrasion in typical use is also unpersuasive. DJG did not provide any additional information or data to support this claim. Therefore, the agency finds this claim to be unsubstantiated. In addition, there have been complaints about tether webbing fraying.[6] These documented complaints undermine DJG's claim of the lack of abrasion during actual use.

DJG's argument that the tether's post-abrasion strength is inconsequential to safety because it is just 3 percent below what DJG calls the new ''effective minimum'' is also unpersuasive. The current standard contains a minimum breaking strength requirement for new webbing, and retains the pre-2006 standard's 75 percent-of-strength requirement. 49 CFR 571.213 S5.4.1.2 (2009). The percent-of-strength requirement is calculated as a percentage of the strength of the new (unabraded) tether, not as a percentage of the minimum breaking strength requirement. The current standard thus does not require or imply an ''effective minimum'' post-abrasion strength of 11,250 N.[7] The abraded DJG tether webbing retained only 55 percent of its unabraded breaking strength—20 percentage points below the allowable minimum. DJG's argument that the post-abrasion strength of its tether should be evaluated relative to the required minimum breaking strength ignores the safety concerns reflected in the standard—that a diminution in webbing strength of more than 25 percent when abraded in testing ''indicates a problem with the quality and/or durability of the selected material,'' such that the webbing ''may not last as long as necessary to protect children using the restraint (including for second-hand restraint use).'' 71 FR 32858–32859.

The agency's resolution of the Evenflo petition is not controlling, as it was based on dated considerations. *Evenflo Co., Inc.; Grant of Application for Decision of Inconsequential Noncompliance,* 67 FR 21798 (May 1, 2002) (NHTSA Docket 2000–7818). Prior to NHTSA's 2006 amendments to FMVSS No. 213, NHTSA granted an inconsequentiality petition by Evenflo regarding child restraint tether straps that did not comply with the abrasion test. The noncompliant webbing retained 67.1 percent of its unabraded strength. The child restraint performance requirements in effect at the time of this grant did not specify a minimum breaking strength requirement, and the agency, as it noted in its decision, had come to believe that the absence of such a requirement was inappropriate. 67 FR 21799. The agency

[6] *See* DJG letter to NHTSA dated August 24, 2001.

[7] In the 2005 NPRM, the agency did propose calculating the post-abrasion strength in this manner, but, in the 2006 final rule, explicitly declined to do so. Compare 70 FR 37734 with 71 FR 32858–32859.

also noted that it planned to initiate rulemaking to amend the standard. During this time frame when the agency had not resolved what strength would be required, the agency considered the Evenflo webbing in light of a version of FMVSS Nos. 213 and 209 in effect from 1971 to 1979 that included a minimum breaking strength requirement for child seat webbing. Evenflo's webbing would have complied with this earlier standard. The agency also considered the results of dynamic testing, which showed that the tensile strength of abraded Evenflo tethers was greater than the measured maximum tensile loads. After the Evenflo petition was granted, the agency initiated rulemaking to amend FMVSS No. 213. In the NPRM, the agency proposed to include a minimum breaking strength requirement for new (unabraded) tether webbing. 70 FR 37731. The agency also proposed replacing the percent of unabraded strength degradation requirement with a minimum breaking strength requirement for exposed webbing. 70 FR 37731. However, in its final rule the agency concluded that the proposed rule did not sufficiently limit the degradation rate of webbing material. Accordingly, the final rule retained the percent of unabraded strength degradation requirement.

The agency now considers DJG's inconsequentiality appeal in light of its safety concerns based on both the strength of the unabraded webbing and the percent of unabraded strength degradation requirement. It is thus inappropriate to apply the 1971–1979 version of the standard—which did not specify a percent of strength requirement based on the unabraded webbing—because the agency has concluded that exposed webbing should be required to maintain a minimum percentage of its unabraded strength. 71 FR 32858.

In any event, if DJG's noncompliant tethers were evaluated using the reasoning laid out in the resolution of the Evenflo petition, DJG's noncompliance would still not be inconsequential to safety. There are three main reasons for this.

First, DJG's tether webbing is not compliant if evaluated under the 1971–1979 FMVSS No. 213. From 1971–1979, FMVSS No. 213 required that child restraint webbing meet the webbing requirements for Type 3 seat belt assemblies [8] specified in FMVSS No. 209. During this period, FMVSS No. 209 specified webbing breaking strength requirements for various elements and configurations of Type 3 seat belt assemblies. FMVSS No. 213 required that child restraint webbing meet the post-abrasion strength requirement contained in FMVSS No. 209 S4.2(d). Section 4.2(d) specified that webbing retain a post-abrasion strength of not less than 75 percent of the minimum breaking strength required of new webbing for that particular type of belt assembly.[9] The minimum breaking strength requirements were specified in FMVSS No. 209 S4.2(b), which specified different new webbing minimum breaking strengths for each element and configuration of Type 3 seat belt assembly. The most stringent of these minimum breaking strength requirements for new webbing was 17,793 N [10] and the agency referenced this requirement in considering the Evenflo petition. Multiplying the 75 percent post-abrasion strength requirement with this most stringent new webbing strength requirement yields a post-abrasion strength requirement of 13,345 N. Evenflo's tether—with an unabraded strength of 20,426 N, and an abraded strength of 13,706 N—met both the abraded and unabraded strength requirements for this most stringent Type 3 webbing breaking strength under the 1971–1979 version of FMVSS No. 213.

DJG argues that its noncompliant tethers should be evaluated using the less stringent breaking strength requirement for the Type 3 seat belt configuration consisting of ''webbing connecting pelvic and upper torso restraint to attachment hardware when assembly has two or more webbing connections.'' S4.2(b) (1979). DJG notes that since its noncompliant restraints are not equipped with lower LATCH anchors,[11] they are secured to the vehicle by means of both the tether and vehicle safety belt, and that this less stringent requirement is therefore appropriate. The breaking strength requirement for new webbing having this Type 3 configuration was 3,000 pounds (13,345 N), and the post-abrasion strength requirement was 75 percent of this, or 2,250 pounds (10,008 N). DJG concludes that since its noncompliant tethers satisfy the less stringent abraded and unabraded strength requirements for this Type 3 configuration, the noncompliance is inconsequential to safety.

While we do not agree that the old Type 3 provisions are the appropriate frame of reference, if one were considered, the most stringent Type 3 requirement would be considered in reviewing DJG's restraint, as it was to Evenflo's. Since both Evenflo and DJG's noncompliant restraints pre-date LATCH, neither is equipped with lower anchors. *See* 49 CFR 571.225 S9.1 *et seq*. The restraints at issue in both petitions are therefore secured to the vehicle in the same manner—by means of the seat belt and tether. Since the restraints are attached to the vehicle in the same manner, a similar application of the Evenflo analysis to DJG's petition would require that the same—more stringent—strength requirement also be applied. As noted earlier, the post-abrasion strength requirement associated with the most stringent Type 3 webbing requirement was 13,345 N. Since the post-abrasion strength of DJG's tethers was only 10,903 N, they would not satisfy the prior standard.

Second, the agency notes that while Evenflo's noncompliant restraints retained 67 percent of their strength after being subjected to the abrasion test, DJG's restraints retained only 55 percent. This is a significant difference.

Third, for Evenflo, the sled tests alone were not sufficient to establish inconsequentiality—it was only in conjunction with the fact that the Evenflo tether webbing surpassed the previous requirements for Type 3 webbing in both the unabraded and abraded condition.

The performance of DJG's webbing is also distinguishable from that of a Britax restraint cited by DJG. DJG cited information docketed in connection with NHTSA's rulemaking to add a minimum breaking strength requirement to FMVSS No. 213, which showed that the webbing of at least one Britax child restraint model had a lower post-abrasion strength than DJG's noncompliant tethers. NHTSA–2005–21243–0002 (Table 1). NHTSA notes that the 2006 final rule amended FMVSS No. 213 to include a minimum breaking strength of 15,000 N for new webbing used to secure a child restraint

[8] A Type 3 seat belt assembly was defined as ''a combination pelvic and upper torso restraint for persons weighing not more than 50 pounds or 23 kilograms and capable of sitting upright by themselves, that is children in the approximate age range of 8 months to 6 years.'' FMVSS No. 209 S3 (1979).

[9] This specification of the post-abrasion strength requirement—in terms of the minimum breaking strength requirement—differs from the specification set out in the versions of FMVSS No. 213 in effect currently, and when DJG's noncompliant webbing was manufactured, which requires that post-abrasion strength be calculated as a percentage of the strength of the new (unabraded) webbing.

[10] This was the requirement for a Type 3 seat belt assembly with ''webbing in seat back retainer and for webbing connecting pelvic and upper torso restraints to attachment hardware when assembly has single webbing connection.'' FMVSS No. 209 S4.2(b) (1979). The standard was 4000 pounds. The conversion from pounds to Newtons is 1 pound force = 4.448 N.

[11] *See* FMVSS No. 213 S5.9(a) (2008); FMVSS No. 225 S9.1 (2008) *et seq*.

system to the vehicle (including the tether and lower anchorages of a child restraint anchorage system). In addition, the 2006 final rule affirmed that retaining control over webbing material degradation rates is critical to ensure sufficient webbing strength over time. The Britax child restraint referenced by DJG showed literally no signs of degradation after being abraded, and therefore does not present the same degradation risks associated with the subject DJG restraints. While the Britax CRS complied with the standard in effect at the time of manufacture, the DJG CRS neither complied with the standard in effect at the time of manufacture nor does it comply with the new requirements established in the 2006 Final Rule. The agency notes that in the course of the rulemaking that resulted in the 2006 Final Rule, the agency looked at tether webbing abrasion compliance test data for 20 child restraints. See NHTSA–2005–21243–0002. The average strength for new tether webbing was 17,153 N and the median was 18,156 N. The average strength for tether webbing after being subjected to the abrasion test was 15,689 N and the median was 16,287 N. The average percentage of strength retained was thus 92 percent, and the median was 96 percent. The noncompliant DJG webbing retained only 55 percent of its new webbing strength after the abrasion test—the lowest retention percentage of any of the 20 child restraints examined in these compliance tests. A concern with the DJG tether webbing is the high degradation in its breaking strength after the abrasion test. This lack of breaking strength retention signals a distinct probability that the webbing strength would be insufficient throughout a lifetime of use and therefore, may pose a safety risk with long term usage.

Harness Webbing

The agency finds similarly unpersuasive the arguments that DJG reasserts from its original petition, as well as its new arguments, regarding the inconsequentiality of the harness webbing noncompliance.

First, as to DJG's disagreement with NHTSA's reliance on a carbon arc lamp as provided by the standard, instead of a xenon arc lamp which DJG now prefers, NHTSA's regulations require and NHTSA's position is that the carbon arc light is to be used in exposure tests for webbing materials. As noted earlier, an inconsequentiality petition is not the appropriate means for challenging testing methodology. Nevertheless, as NHTSA noted in its initial denial, the use of xenon arc light, which is used in weathering tests of glazing material under FMVSS No. 205, and is favored by DJG, does not invalidate the use of carbon arc light for webbing materials. The xenon arc light has not been evaluated adequately by the agency to justify its use with respect to webbing materials. The agency does not have adequate testing information regarding the effect of xenon arc light on different webbing materials to develop an appropriate test while ensuring sufficient safety performance requirements are maintained. It is common for child restraint webbing to be produced from polyester or nylon materials. Preliminary studies of carbon arc and xenon arc light exposure testing of polyester and nylon webbing materials conducted by NHTSA showed that while carbon arc testing was more severe (i.e., resulted in higher strength degradation rates) for nylon webbing materials as compared to xenon arc testing, the opposite result was observed for polyester webbing materials. NHTSA can not simplistically conclude, as DJG would have it, that xenon arc light testing adequately assures safety. Carbon arc testing is specified in the standard and the agency continues to adhere to the standard for evaluation of webbing materials.[12]

Second, DJG's reliance on sled test results, which DJG refers to as dynamic tests, is also unavailing. In the course of the rulemaking that resulted in the 2006 rule, NHTSA looked at harness webbing compliance test data for 109 child seats, spanning several different manufacturers and years. 70 FR 37735–37736; Docket NHTSA–2005–21243–2. The average strength for new harness webbing was 13,519 N and the median was 12,594 N. The average strength for harness webbing after exposure to light was 11,287 N and the median was 10,636 N. The average percentage of strength retained was thus 83 percent, and the median was 84 percent. The noncompliant DJG harness webbing retained only 37 percent of its new webbing strength after exposure to light, falling from a pre-exposure strength of 12,371 N to a post-exposure strength of only 4,539 N. 60 percent was required. Even more, the DJG harness webbing's 37 percent retention was the lowest of any of the 109 different child seats examined in these compliance tests. Docket NHTSA–2005–21243–2. DJG offers dynamic test data at 30 mph. DJG has not shown that this data supports its contention that the noncompliant harness webbing does not pose a significant safety risk. Crucially, DJG's dynamic test analysis does not address the agency's concern with possible further loss in webbing strength with continued long term use. Moreover, DJG does not describe the deceleration pulse or measurement technique in the tests. DJG's argument that the noncompliant webbing is virtually strong enough to withstand crash forces even greater than those generated in a 30 mph crash is also flawed. DJG notes that the median load measured in its 30 mph dynamic tests (1,138 N) would yield a load of approximately 4,552 N in a 60 mph test, which is approximately the same as the post-light exposure webbing strength. DJG bases its 60 mph load calculations on the median measured webbing load. However, if the maximum measured load (1,432 N) is instead used to calculated the 60 mph-equivalent load, the resulting load (5,728 N) is, in fact, in excess of the post-exposure strength of the noncompliant webbing.

DJG cites NHTSA's granting of certain petitions for inconsequential noncompliance as supporting use of a 30 mph sled test. Those grants are not controlling.

The first petition, from Evenflo (67 FR 21799) was previously discussed. This petition was granted when safety concerns were not as developed as they are today (see discussion above). Also, the agency's grant focused on the fact that the noncompliant Evenflo webbing met the most stringent of the 1971–1979 Type 3 webbing strength requirements.

The second petition cited by DJG, also from Evenflo, concerned a noncompliance with the tether hook dimensional requirements of FMVSS No. 213. See 69 FR 39545. FMVSS No. 213 section 5.9(b) (2003) requires that the height of the tether hook shall not exceed 20 millimeters. The maximum Evenflo tether hook height measured by NHTSA was 20.38 millimeters. The dimensional requirements were intended to minimize the chances of incompatibility between the seat and the vehicle. 62 FR 7873. Evenflo supported its petition with testing evidence showing that actual users would not have difficulty attaching the tether hook to the anchorage, as well as the results 30 mph dynamic test data to show that there was no failure and the slight noncompliance in the tether hook dimension was inconsequential to motor vehicle safety. DJG's reliance on the agency's grant of the Evenflo petition is unpersuasive because the two noncompliances are dissimilar. There was no concern that the noncompliant Evenflo tether hook would degrade over time; thus, Evenflo's user test data, as

[12] DJG also argues that it is unable to purchase carbon arc lamps meeting NHTSA requirements. Carbon arc lights are available for purchase. One supplier is Atlas Material Testing, 4114 North Ravenswood Ave., Chicago, IL 60613.

well as the dynamic tests, sufficed to demonstrate inconsequential noncompliance. On the other hand, as discussed previously, one of the agency's concerns with DJG's noncompliant harness webbing is that it will further degrade over time so that its strength would be insufficient to withstand the forces in crashes. In addition, the Evenflo noncompliance involved a small—.38 millimeters, or 2 percent—dimensional difference between the compliant and non-compliant equipment; in contrast, the post-exposure strength of DJG's harness webbing was 23 percentage points less than the required minimum.

The third petition relied on by DJG came from Baby Trend regarding the head foam compression-deflection resistance (i.e., stiffness) in their rear facing infant seat. 69 FR 59302 (October 4, 2004). Baby Trend's head foam had a measured stiffness of 0.3 pounds per square inch. FMVSS No. 213 requires a head foam stiffness of between 0.5 and 10 pounds per square inch. Prior to NHTSA granting Baby Trend's petition, FMVSS No. 213 was amended to use a CRABI test dummy to directly measure Head Injury Criteria (HIC) in lieu of the head foam stiffness test. Baby Trend provided dynamic test data showing compliance with the new FMVSS No. 213 dynamic test requirements using the CRABI dummy. The noncompliance was determined inconsequential to safety. Thus, with the noncompliant head foam, the child restraint would comply with the requirement that became effective after the date on which Baby Trend's noncompliant head foam was manufactured. DJG's harness webbing, on the other hand, manufactured in 2002, is not compliant with FMVSS No. 213, as amended by the 2006 final rule. This final rule retained the percent-of-strength requirement, while adding a minimum breaking strength for new (unexposed) webbing. DJG's harness webbing does not satisfy the percent-of-strength requirement. Accordingly, DJG's petition is distinguishable from Baby Trend's petition.

Third, the argument advanced by DJG in its supplemental submission of December 26, 2008 that the strength of the harness webbing on certain used restraints shows that no safety problem exists is also unavailing. This argument essentially claims that the restraints are not subject to the severe degradation reflected in the compliance test; as such, it challenges the validity of the test methodology in the standard. However, as noted earlier regarding the tether webbing, a petition for rulemaking, not an inconsequentiality petition, is the appropriate means for such an argument. In any case, NHTSA has examined this limited test data on four restraints, and notes that although the webbing was from the affected population of noncomplying restraints, the precise history of their use is unknown. DJG did not provide evidence showing that these restraints have seen many years of exposure to sunlight. Therefore, DJG's data showing that the harness webbing on these used restraints retained more than the minimum strength required by the standard is not compelling evidence that the noncompliance is inconsequential to safety. DJG further suggests that the fact that the strength of the webbing on these used restraints exceeds 60 percent of the new webbing minimum breaking strength requirement of 11,000 N in the 2006 regulation also shows that the noncompliance is inconsequential to safety. This argument is similar to the argument DJG makes, in connection with its tether webbing appeal, that the standard adopted in 2006 instituted an ''effective minimum'' based on the minimum breaking strength requirement for new webbing. As discussed in detail above, the agency finds this argument unpersuasive.

Fourth, DJG's assertion that the noncompliance is inconsequential to safety because the post-exposure strength of its webbing was higher than that of certain Safeline child restraints that did comply with the exposure test, is similarly not persuasive. These Safeline restraints, manufactured from 2000–2002, had harness webbing post-exposure strengths ranging from 4,005 N to 5,563 N, and strength retentions between 62 percent to 81 percent. *See* Docket NHTSA–2005–21243–002. These restraints were required to comply with the version of FMVSS No. 213 in effect at the time these restraints were manufactured. As discussed previously, the version of FMVSS No. 213 in effect from 2000–2002 did not have a minimum breaking strength requirement for new webbing. Accordingly, these Safeline restraints complied with the standard because they retained at least 60 percent of their strength after being exposed to light, even though the strength of the new webbing was relatively low—and, would have been too low to have complied with the minimum breaking strength requirement that was added to the standard in 2006.

DJG points out that the post-exposure strength of its webbing was greater than the post-exposure strength of the Safeline webbing, and goes on to argue that the Safeline webbing was compliant because it had a low initial breaking strength. DJG cites this result as confirmation of its argument that the noncompliance of its harness webbing is inconsequential to safety. NHTSA does not find this argument persuasive. As discussed above, the 2006 rulemaking codified and highlighted the agency's two concerns regarding webbing strength—that it be sufficiently strong when new, and suffer limited diminution in strength after being exposed to environmental conditions such as light and abrasion. DJG's comparison of its noncompliant webbing to Safeline's compliant webbing addresses the agency's concern that new webbing be sufficiently strong, but does not address the agency's concerns about the degradation of DJG's webbing. While DJG points out that the Safeline webbing had a low initial breaking strength and that the post-exposure strength of its webbing was greater than that of Safeline's, this argument does not address NHTSA's concern that the extremely high degradation rate of DJG's webbing—almost double that of the Safeline webbing—indicates that the webbing strength could be insufficient throughout a lifetime of use and expose child occupants to a risk that increased with long-term usage. While it is true that the strength of the unexposed Safeline webbing would not comply with FMVSS No. 213 as amended in 2006, the fact that another manufacturer's webbing complied with a standard that the Agency later determined to insufficiently protect against certain safety risks does not excuse DJG's noncompliance. This is especially true when the amended version of the standard re-affirms the requirement—namely, the post-exposure percent-of-strength requirement—with which DJG's webbing was noncompliant.

Finally, as discussed above, the agency finds that the absence of consumer complaints is insufficient evidence of an inconsequential effect on safety of the webbing.

VII. Conclusion

After carefully considering the arguments presented on this matter, NHTSA has decided that the petitioner has not met its burden of persuasion in establishing that the noncompliances described are inconsequential to motor vehicle safety. Accordingly, Dorel Juvenile Group's appeal of NHTSA's decision on its inconsequential noncompliance petitions is hereby denied. This decision constitutes final agency action, and the petitioner has no further administrative review of NHTSA's denial.

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

Issued on: December 30, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–31334 Filed 1–4–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 311X)]

Norfolk Southern Railway Company—Petition for Exemption—in Baltimore City and Baltimore County, MD

On December 16, 2009, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its rail freight operating rights and freight service operations over a 13.26-mile dead-end segment (''Line'') of a line of railroad commonly known in recent years as the Cockeysville Industrial Track (''CIT''). The Line is located between railroad milepost UU–1.00 (located just north of Wyman Park Drive, formerly Cedar Avenue) and the end of the CIT line south of the bridge at railroad milepost UU–15.44 in the City of Baltimore and in Baltimore County, MD.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, NSR seeks exemption from 49 U.S.C. 10904 [offer of financial assistance procedures] and 49 U.S.C. 10905 [public use conditions]. In support, NSR states that, following abandonment of the freight service operating rights and freight service operations, the Line will remain in use for a public purpose as a passenger rail transit line of railroad operated by the Maryland Transportation Administration (MTA) and owned by the Maryland Department of Transportation (MDOT). This request will be addressed in the final decision.

The line does not contain Federally granted rights-of-way. Any documentation in NSR's possession concerning this matter will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 5, 2010.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[1] Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than [20 DAYS AFTER SERVICE DATE]. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 311X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) James R. Paschall, Senior General Attorney, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510. Replies to NSR's petition are due on or before [20 DAYS AFTER SERVICE DATE].

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

[1] In the petition, NSR states that it does not have a sufficient property interest in the right-of-way that NSR could convey to a third party for additional public use. NSR therefore claims that the Line's right-of-way property is not suitable for additional public use.

Decided: December 24, 2009.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. E9–31041 Filed 1–4–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 311X)]

Norfolk Southern Railway Company—Petition for Exemption—in Baltimore City and Baltimore County, MD

On December 16, 2009, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its rail freight operating rights and freight service operations over a 13.26-mile dead-end segment (''Line'') of a line of railroad commonly known in recent years as the Cockeysville Industrial Track (''CIT''). The Line is located between railroad milepost UU–1.00 (located just north of Wyman Park Drive, formerly Cedar Avenue) and the end of the CIT line south of the bridge at railroad milepost UU–15.44 in the City of Baltimore and in Baltimore County, MD.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, NSR seeks exemption from 49 U.S.C. 10904 (offer of financial assistance Procedures) and 49 U.S.C. 10905 (public use conditions). In support, NSR states that, following abandonment of the freight service operating rights and freight service operations, the Line will remain in use for a public purpose as a passenger rail transit line of railroad operated by the Maryland Transit Administration (MTA) and owned by the Maryland Department of Transportation (MDOT). This request will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in NSR's possession concerning this matter will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 5, 2010.