

| State and location                         | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|--|---------------|---|----------------------------|--|
| Doyline, Village of, Webster Parish .....  | 220236        | July 21, 1978, Emerg; September 18, 1979, Reg; March 2, 2010, Susp.               | .....do* .....             | Do.  |
| Minden, City of, Webster Parish .....      | 220237        | December 17, 1974, Emerg; July 18, 1985, Reg; March 2, 2010, Susp.                | .....do* .....             | Do.  |
| Sibley, Village of, Webster Parish .....   | 220258        | May 16, 1980, Emerg; July 18, 1985, Reg; March 2, 2010, Susp.                     | .....do* .....             | Do.  |
| Springhill, City of, Webster Parish .....  | 220238        | March 12, 1975, Emerg; June 15, 1981, Reg; March 2, 2010, Susp.                   | .....do* .....             | Do.  |
| <b>Region X</b>                            |               |   |                            |  |
| Oregon:                                    |               |   |                            |  |
| Amity, City of, Yamhill County .....       | 410250        | May 20, 1975, Emerg; December 1, 1981, Reg; March 2, 2010, Susp.                  | .....do* .....             | Do.  |
| Carlton, City of, Yamhill County .....     | 410251        | May 6, 1975, Emerg; June 30, 1976, Reg; March 2, 2010, Susp.                      | .....do* .....             | Do.  |
| Dayton, City of, Yamhill County .....      | 410252        | June 4, 1975, Emerg; June 1, 1982, Reg; March 2, 2010, Susp.                      | .....do* .....             | Do.  |
| Dundee, City of, Yamhill County .....      | 410253        | April 23, 1975, Emerg; March 1, 1982, Reg; March 2, 2010, Susp.                   | .....do* .....             | Do.  |
| Lafayette, City of, Yamhill County .....   | 410254        | May 20, 1975, Emerg; June 15, 1982, Reg; March 2, 2010, Susp.                     | .....do* .....             | Do.  |
| McMinnville, City of, Yamhill County ..... | 410255        | July 22, 1975, Emerg; December 1, 1982, Reg; March 2, 2010, Susp.                 | .....do* .....             | Do.  |
| Newberg, City of, Yamhill County .....     | 410256        | August 5, 1974, Emerg; March 1, 1982, Reg; March 2, 2010, Susp.                   | .....do* .....             | Do.  |
| Sheridan, City of, Yamhill County .....    | 410257        | January 21, 1975, Emerg; August 1, 1980, Reg; March 2, 2010, Susp.                | .....do* .....             | Do.  |
| Willamina, City of, Yamhill County .....   | 410258        | January 21, 1975, Emerg; March 15, 1982, Reg; March 2, 2010, Susp.                | .....do* .....             | Do.  |
| Yamhill, City of, Yamhill County .....     | 410259        | June 30, 1975, Emerg; March 1, 1982, Reg; March 2, 2010, Susp.                    | .....do* .....             | Do.  |
| Yamhill County, Unincorporated Areas       | 410249        | May 28, 1974, Emerg; September 30, 1983, Reg; March 2, 2010, Susp.                | .....do* .....             | Do.  |

\* do=Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 2, 2010.

**Sandra K. Knight,**

*Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

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**BILLING CODE 9110-12-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2009-0156]

RIN 2127-AK57

### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

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

**SUMMARY:** This document provides the agency's response to petitions for reconsideration of a November 12, 2008 final rule that amended the child restraint systems (CRSs) prescribed in Appendix A of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection." The final rule established a new appendix, "Appendix A-1," which effectively deleted seven older CRSs, added five new CRSs, and provided cosmetic replacements for seven others. Today's response grants some aspects of two of the petitions. All other requests are denied.

**DATES:** This final rule is effective April 9, 2010. If you wish to petition for reconsideration of this rule, your petition must be received by March 25, 2010.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents 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 non-legal issues, you may contact Ms. Carla Rush, NHTSA Office of Crashworthiness Standards, telephone 202-366-1740, fax 202-366-2739. For legal issues, you may contact Ms. Deirdre Fujita, NHTSA Office of Chief Counsel, telephone 202-366-2992, fax 202-366-3820. You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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### I. Overview

This document responds to petitions for reconsideration of a November 12, 2008 final rule<sup>1</sup> that updated Appendix A of FMVSS No. 208. The appendix lists CRSs that the agency uses in compliance testing of advanced air bag systems. The November 12, 2008 final rule replaced a number of older CRSs with those that are more available and more representative of the CRSs currently on the market. Today's document grants a petition to exclude small vehicle manufacturers from the phase-in schedule of the final rule, grants the Alliance's request to change the car bed model number designation, and adds the Evenflo Tribute 381xxx to the appendix. All other requests are denied.

### II. Background

On May 12, 2000, NHTSA issued a final rule for advanced air bags ("Advanced Air Bag Rule") that amended FMVSS No. 208 to, among other things, minimize injuries to small adults and young children due to air bag deployment.<sup>2</sup> Under the Advanced Air Bag Rule, in order to minimize the risk to infants and small children from deploying air bags, vehicle manufacturers may suppress an air bag in the presence of a child restraint system (CRS) or provide a low risk deployment (LRD) system. To minimize the risk to children, manufacturers relying on an air bag suppression or LRD system must ensure that the vehicle complies with the suppression or LRD requirements when tested with the CRSs specified in Appendix A of the standard. As part of ensuring the robustness of automatic air bag suppression and LRD systems, the CRSs in the appendix represent a large portion of the CRS market and CRSs with unique size and weight characteristics. NHTSA stated in the Advanced Air Bag Rule that the list will be updated periodically to subtract restraints that are no longer in production and to add new restraints (65 FR at 30724).

On November 12, 2008, the agency published a final rule that updated

Appendix A to replace a number of older CRSs with those that were more available and more representative of the CRSs currently on the market.<sup>3</sup> The final rule continued to call the current appendix "Appendix A," and established an "Appendix A-1" consisting of the updated appendix. The revisions made to establish Appendix A-1 included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. The final rule phased-in the use of the Appendix A-1 CRSs in compliance testing. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 are subject to testing by NHTSA using Appendix A-1, and all vehicles tested by NHTSA that are manufactured on or after September 1, 2010 are subject to testing using Appendix A-1.

On May 4, 2009, the agency denied a petition for rulemaking from the Alliance that requested, among other matters, that NHTSA commit to amending the list of child restraints in Appendix A every three years and allow manufacturers the option of certifying vehicles to any edition of Appendix A for five model years after the edition first becomes effective.<sup>4</sup> We denied the petition because the requests were not conducive to maintaining the appendix, to ensuring child restraints are representative of the current fleet for testing with advanced air bag systems, and were unnecessarily restrictive.

### III. Petitions for Reconsideration

The agency received petitions for reconsideration of the November 12, 2008 final rule from: The Alliance of Automobile Manufacturers (Alliance),<sup>5</sup> Ford Motor Company (Ford), Evenflo Company, Incorporated (Evenflo), IEE S.A. (IEE), and Vehicle Services Consulting, Inc. (VSCI). The issues raised by the petitioners are summarized below.

**Lead time and phase-in.** The final rule specified that manufacturers must begin certifying 50 percent of their vehicles manufactured on or after September 1, 2009 to Appendix A-1 and all vehicles manufactured on or after September 1, 2010 to Appendix A-1. The Alliance, Ford, IEE and VSCI asked for changes to the phase-in schedule.

**Positioning procedure for car bed testing.** The final rule made no change to the procedures for conducting testing

with the newborn infant dummy installed in the car bed. The Alliance requested that the agency provide a procedure for positioning the infant dummy in the car bed in FMVSS No. 208.

**Changes to car bed model number designation.** The final rule adopted the Angel Guard Angel Ride Car Bed AA2403FOF in the final rule. The Alliance requested that the agency change the model designation to be less specific.

**Replacement seats.** The final rule revisions to the appendix included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. Evenflo petitioned for removal of four Evenflo-manufactured seats and suggested the incorporation of replacement seats that are currently in production.

In addition to the petition for reconsideration issues, the Alliance requested clarification on the use/removal of three CRSs.

### IV. Final Rule; Agency Response to Petitions

#### a. Lead Time and Phase-In

The November 2008 final rule provided a two-year phase-in, such that 50 percent of vehicles manufactured on or after September 1, 2009 must be certified as meeting FMVSS No. 208 when tested with the CRSs in the revised Appendix A (Appendix A-1), and all vehicles manufactured on or after September 1, 2010 must be so certified. Four organizations, the Alliance, Ford, IEE, and VSCI, submitted petitions for reconsideration of the final rule's lead time and phase-in.

The Alliance stated that the lead time specified in the final rule would impose significant cost burden on the industry without any safety benefit, which it said, is especially problematic for them now because the financial resources of the industry are under tremendous strain. The Alliance stated that many manufacturers have already certified their model year 2010 vehicles to the existing Appendix A and that the lead-time and phase-in contained in the final rule would require a costly recertification of those vehicles. In a February 27, 2009 letter to the agency, the Alliance provided supplemental information on its petition. It estimated that recertifying vehicles in accordance with the phase-in schedule set forth in the final rule would lead to aggregate incremental costs for five companies to be \$526,120 from that date until September 1, 2009 and an additional

<sup>3</sup> 73 FR 66786; Docket No. NHTSA-2008-0168.

<sup>4</sup> 84 FR 20445; Docket No. NHTSA-2009-0064.

<sup>5</sup> Alliance members at the time of the petition included: BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar/Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi, Porsche, Toyota, and Volkswagen.

<sup>1</sup> 73 FR 66786; Docket No. NHTSA-08-0168.

<sup>2</sup> 65 FR 30680; Docket No. NHTSA-00-7013; responses to petitions for reconsideration, 66 FR 65376; Docket No. NHTSA 01-11110, 66 FR 65376; Docket No. NHTSA 01-11110.

\$679,720 between September 1, 2009 and September 1, 2010. The Alliance stated in its petition that the certification testing specified in the final rule can require in excess of 1,500 individual child restraint installations, taking over 20 days to complete with high confidence. Based on this extensive testing, the Alliance stated that the burden placed on industry is very significant and there is little to no safety benefit estimated. Therefore, the Alliance petitioned that NHTSA postpone and extend the phase-in to three years on a schedule of 20 percent of vehicles built on or after September 1, 2010, 50 percent of vehicles built on or after September 1, 2011 and 100 percent of vehicles built on or after September 1, 2012.

Ford, an Alliance member, also stated that the lead time and phase-in schedule is not sufficient. Ford submitted confidential information detailing a typical vehicle test plan with associated costs to conduct tests necessary to demonstrate compliance with the passenger air bag suppression requirements of FMVSS No. 208.

IEE petitioned for a one-year delay of the current phase-in schedule. IEE stated that it has been the agency's position that the compliance date for changes to Appendix A would be the next model year introduced one year after publication of a final rule modifying Appendix A. IEE stated that NHTSA did not publish the final rule modifying Appendix A before September 1, 2008, and the current final rule only provides 9 months and 18 days, not a full year. IEE stated that "[t]he supplier industry can not start on November 12, 2008 with the system calibration and testing for all vehicle models \* \* \* a manufacturer decision has to be taken first in order that the supplier knows which models to focus on for short-term (September 1, 2009) adaptation, and for which models one more year would be available to guarantee certification." IEE stated that NHTSA's indicant tests cannot conclude that the changes in the CRS characteristics are not significant enough to alter an advanced air bag system's performance. It noted that only four CRSs were used in this indicant testing with seventeen vehicles. IEE stated that a supplier can only decide if the modified Appendix A-1 alters the system's performance, or not, after having tested all Appendix A-1 CRSs on all vehicle models it is equipping. It suggested that only testing a subset of new CRS, and then concluding there would be no issues with all the new CRS would not be acceptable in view of having to guarantee FMVSS No. 208

compliance. IEE stated that NHTSA's indicant testing "can not be used to motivate an earlier compliance."

Finally, VSCI was concerned that there is no provision in the final rule for small volume manufacturers (SVMs), and that the final rule phase-in period should not apply to all SVMs. It noted that there are some SVMs that only sell one model in the U.S., which means under the current final rule, those manufacturers would be required to be 100 percent compliant within the first year without any lead time. VSCI suggested that the agency allow "\* \* \* manufacturers selling fewer than 5,000 vehicles per year in the U.S. \* \* \* [to] wait until the end of the phase-in before having to comply." This provision would allow all SVMs to be 100 percent compliant within two years.

#### Agency Response

NHTSA is granting the petition to exclude SVMs from the phase-in schedule of the final rule and is denying all other aspects of the petition concerning lead time. The agency agrees that under the final rule, SVMs with only a single model line would have to be fully compliant with Appendix A-1 a year ahead of larger vehicle manufacturers. We believe this would be unduly burdensome on SVMs. Today's final rule is amended such that SVMs selling fewer than 5,000 vehicles per year in the U.S. may certify to either version of Appendix A until the end of the phase-in.

NHTSA is denying the petitions to change the provisions of the final rule lead time and phase-in schedule for other manufacturers. In the November 2008 final rule, the agency stated its belief that the phase-in effectively balanced the competing considerations in updating the appendix, namely, the need to have a representative list that ensures the compatibility of suppression and LRD systems with CRSs in the field, while maintaining some stability to minimize the certification burden on vehicle manufacturers. Based on our analysis of the petitions for reconsideration, we do not agree with the petitioner's requests for additional lead time and extended phase-in. The Alliance's petition for an additional year of lead time would effectively postpone use of the new Appendix A-1 seats for approximately two years and would only require 20% of the fleet to be certified at that time (or 50% under the IEE petition request). We believe that delaying implementation of Appendix A-1 is in conflict with the agency's goal of moving toward a newer version of the Appendix that would better ensure the CRSs are available and representative of

those in use. Furthermore, the Alliance's additional request to extend the phase-in for three years on top of the additional year of lead time would compound the delay in implementation of the testing and diminish how representative the child seats are during that time period.

In response to IEE, we note that our decision on lead time and phase-in was only partially based on testing the agency conducted with new vehicles and new child restraints. We acknowledge that our indicant testing was not all-inclusive (i.e., it did not test every type of CRS with every model of vehicle in the current fleet); however, it was considered as an indicator of general performance that could be anticipated by the use of CRSs in Appendix A-1. Our indicant testing used 4 representative CRSs and 17 new vehicles equipped with current suppression systems.<sup>6</sup> The testing identified no compliance issues or challenges with the new seats, and bolstered the agency's expectation that new vehicles would readily identify the CRSs without needing redesign and recalibration. It was also consistent with GM's comments to the notice of proposed rulemaking<sup>7</sup> where GM stated, "Neither our warranty data or the feedback we receive through our continuous and close involvement with the Child Passenger Safety (CPS) community indicates that there are any child restraints in use that do not properly classify in our vehicles when used in the field."

The intention in providing a phase-in in the final rule was, in part, to provide vehicle manufacturers the flexibility of selecting vehicles that could readily comply with the new appendix in the first year and delay more challenging vehicle models, if they existed, to the following years. None of the petitioners provided any evidence that any of the vehicle models would need redesign or recalibration.

We are not persuaded by IEE's arguments for an additional year of lead time because of a perceived conflict between the final rule and the agency's past position on implementation dates, and the fact that the rule only provides 9 months and 18 days for certification. Only half of a vehicle manufacturer's production needs to comply with the first year of the phase-in. Vehicle manufacturers can minimize recertification burdens by certifying their new model year 2010 vehicles to Appendix A-1 to meet the required

<sup>6</sup> See test report provided in the docket for this final rule.

<sup>7</sup> Docket No. NHTSA-2007-28710-0016.

percentage of vehicles that must be certified using Appendix A–1 for the first year of the phase-in. The effective date and phase-in schedule apply to all vehicles, without differentiation between new and “carryover” models (these are vehicles that were previously certified to the existing Appendix A). A manufacturer may choose to have new vehicle models, carryover models, or both, comprise the 50 percent phase-in requirement. The lead time and phase-in schedule adopted in the final rule allow vehicle manufacturers to carryover a large percentage of its vehicles for a year to alleviate recertification burdens.

#### *b. Positioning Procedure for Car Bed Testing*

The November 12, 2008 final rule did not make amendments to positioning the newborn infant dummy in the car bed. It was also not discussed in the notice of proposed rulemaking or in the comments in response to that notice. Section S20.2.3 of FMVSS No. 208 currently states: “(c) Position the 49 CFR Part 572 Subpart K Newborn Infant dummy in the car bed by following, to the extent possible, the car bed manufacturer’s instructions provided with the car bed for positioning infants.”

The Alliance petitioned for a new positioning procedure for placing the newborn infant dummy in the Angel Guard Angel Ride AA2403FOF car bed. It noted that when the dummy’s head is contained within the car bed, the dummy’s legs/feet rest on the opposite edge of the CRS. The Alliance noted that the Angel Guard Angel Ride AA2403FOF car bed is designed for a child up to 5 pounds. The Alliance requested that NHTSA provide a positioning procedure such that the dummy’s head is contained inside the CRS and its legs/feet are allowed to rest on the opposite edge of the CRS. The Alliance suggested this could be included in FMVSS No. 208 or included as a footnote to Appendix A–1.

#### *Agency Response*

NHTSA is denying the Alliance petition to adopt a positioning procedure for the newborn infant dummy in the car bed. The newborn infant dummy only weighs approximately 7.5 pounds.<sup>8</sup> According to the label on the car bed, the bed can accommodate a child up to 9 pounds. We are also unconvinced that the exact position of the newborn infant dummy in the car bed would have any significant effect on FMVSS No. 208

advanced air bag suppression testing. The distribution of where the newborn infant dummy weight is applied to the seat will not change significantly. The Alliance has not provided any data demonstrating that there are practical issues with the exact positioning of the newborn infant dummy in this car bed and we are unconvinced that sensing systems are not robust enough to accommodate small weight shifts within the carrier.

#### *c. Changes to Car Bed Model Number Designation*

The final rule adopted the Angel Guard Angel Ride AA2403FOF car bed in Appendix A–1. In its petition, the Alliance noted that the model designation specified in the final rule for this car bed is no longer available. According to the Alliance, it contacted the manufacturer of this product and learned that the first two characters in the model number are for packaging and minor product changes that would not change its expected performance in FMVSS No. 208 low risk deployment and suppression tests. It also learned that the last three characters refer to the specification of fabric color (also not affecting FMVSS No. 208 performance). Therefore, the Alliance petitioned for the model designation for the Angel Guard Angel Ride infant car bed to be changed from AA2403FOF to xx2403xxx.

#### *Agency Response*

NHTSA is granting the Alliance’s petition to change the car bed model number designation. From our contact with the manufacturer,<sup>9</sup> we learned that the first letter of the model number designates the way in which the car bed was packaged and should not have an influence on the performance of the car bed in FMVSS No. 208 CRS testing. The second letter designates small manufacturing changes that would not affect the footprint, and weight of the seat significantly and the last three letters denote that the CRS had the factory option fabric (FOF) installed. The manufacturer reported that the second letter currently changed due to label changes and a re-designed harness. The label changes were made in response to NHTSA’s Ease-of-Use program. Because the letters do not represent any feature of the infant car bed that would affect FMVSS No. 208 CRS testing, the agency agrees with the Alliance that there is no need to specify these designations.

#### *d. Replacement Seats*

The final rule adopted revisions to the appendix that included the deletion of seven existing CRSs, addition of five new CRSs, and cosmetic replacements for seven existing CRSs. In its petition for reconsideration, Evenflo requested that four Evenflo-manufactured CRSs be removed from Appendix A–1 because they are no longer in production. They include: the Discovery Adjust Right 212, Medallion 254, Right Fit 245, and Tribute V 379xxxx. Evenflo provided three potential replacements for the four CRSs.

#### *Agency Response*

The agency is denying the Evenflo petition. With regard to three out of four of the CRSs, these CRSs (Discovery Adjust Right 212, Medallion 254 and Right Fit 245) were not proposed for deletion in the NPRM and subsequently not deleted in the final rule. The agency purposely left these seats effective in the final rule since they were not targeted for immediate replacement at that time. While replacing these CRSs is presently out of scope of this rulemaking, the agency may consider these suggestions in a future update of Appendix A.

The fourth seat, the Evenflo Tribute V 379xxxx, was a new addition to the appendix. Evenflo suggested that the Tribute 381xxxx would be a viable replacement for the Tribute V 379xxxx. According to Evenflo, the latter CRS went out of production in October of 2008 (shortly prior to the publication of the final rule). This request was also made by the Alliance in its petition for reconsideration. The agency is partially granting this request. See Section V.b. of today’s document for the agency’s response regarding this CRS.

### **V. Technical Clarifications**

#### *a. Evenflo First Choice 204*

The November 12, 2008 final rule regulatory text of Appendix A–1 did not include the Evenflo First Choice 204 and the preamble was silent about its removal. In its petition, the Alliance requested confirmation that the removal of this CRS was intentional since the CRS was not specifically discussed in the NPRM and was not mentioned in the preamble of the final rule.

#### *Agency Response*

We confirm that the Evenflo First Choice 204 has been removed and is not included in Appendix A–1. In section II.c. of the NPRM (72 FR at 54407), NHTSA requested comment on changing CRSs in Appendix A other than those proposed to be deleted in section II.a. or added in section II.b. The

<sup>8</sup> <http://www.dentonatd.com/dentonatd/pdf/cami.pdf>.

<sup>9</sup> See the NHTSA ex-parte memo provided in the docket for this final rule.

changes proposed by section II.c were primarily to update older CRSs in the appendix with newer model CRSs that have the same main physical features as the older restraints. TRW commented that either the Evenflo First Choice 204 or the Evenflo Discovery Adjust Right 212 should be deleted because, aside from the latter having a removable base, they are identical seats. The agency agreed to delete the Evenflo First Choice 204 because this child restraint shares the same shell as the Evenflo Adjust Right. Since FMVSS No. 208 CRS testing is done with and without the base attached, testing with the Evenflo Adjust Right in the “no base” mode is the same as testing with the Evenflo First Choice 204. The agency decided to delete the Evenflo First Choice 204 to avoid redundant testing.

#### b. Evenflo Tribute V 379xxxx

In its February 27, 2009 supplement to its petition, the Alliance stated that it learned, subsequent to its December 2008 petition, that the Evenflo Tribute V 379xxxx was no longer in production after October 2008. The Alliance urged NHTSA to confirm that in view of the seat “becoming unavailable” prior to the issuance of the final rule adopting Appendix A–1, vehicle manufacturers will not need to certify compliance of their vehicles using this CRS.<sup>10</sup> It said that the agency stated the following on November 19, 2003 regarding unavailability:

Even with diligent review of Appendix A, there may be rare occasions when a new addition of the list becomes unavailable or undergoes a significant design change between the time an amendment is proposed and when it is issued as a final rule. Under this limited circumstance, the agency would not use the unavailable or altered CRS for compliance testing and the manufacturers would likewise be relieved of any burden to procure the CRS or use it to test for suppression. 68 FR at 65179, 65188.

#### Agency Response

The view of the agency expressed in the 2003 statement was explained in and modified by the November 12, 2008 final rule (73 FR at 66795). In the 2008 final rule, NHTSA re-evaluated the statement and determined that it was overtaken by events in today’s context. We also determined that the decision as to whether a CRS differs so much on the day of publication of a rule from the CRS that the agency had proposed should be addressed in a rulemaking proceeding. It was not a matter to be assumed that the CRS would be

removed from compliance testing. Relatedly, while production of the Evenflo Tribute V 379xxxx ceased in October 2008, no data was provided by the Alliance to suggest that the seats were “unavailable for purchase.” Thus, we decline to remove the CRS from the appendix.

That being said, we have decided to grant Evenflo’s request to include the Evenflo Tribute 381xxxx in the appendix. Both the Evenflo Tribute V 379xxxx and the Tribute 381xxxx have the same footprint and dimensions. The only minor differences are the internal harness adjuster and the number of adjustments for the shoulder belts and crotch strap. We will not replace the Evenflo Tribute V 379xxxx with the Evenflo Tribute 381xxxx, but will instead allow certification testing to be conducted with either CRS. We are allowing this option in this final rule so as not to penalize manufacturers that diligently procured a sufficient supply of the Evenflo Tribute V 379xxxx for testing and have since certified vehicles to the final rule. The agency will permit this unique option since both CRSs would provide an equivalent level of safety for the purposes of FMVSS No. 208 testing.

#### c. Cosco Arriva 22–013PAW

In its February 27, 2009 supplement to its petition, the Alliance reported that Dorel Juvenile Group (DJG), the manufacturer of the Cosco Arriva 22–013PAW, has indicated that the CRS is no longer in production due to the unavailability of its base, No. 22–999WHO. The Alliance urged NHTSA to confirm that in view of the seat “becoming unavailable” prior to the issuance of the final rule adopting Appendix A–1, vehicle manufacturers will not need to certify compliance of their vehicles using this CRS.

#### Agency Response

The agency does not concur with the Alliance’s reliance on the statement of the 2003 final rule for the reasons given above regarding the Cosco Arriva 22–013PAW. Further, the agency received information from the manufacturer that the base, No. 22–999WHO would be put back in production for FMVSS No. 208 testing.<sup>11</sup> Accordingly, the request is denied.

## VI. Rulemaking Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department’s Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The costs and benefits of advanced air bags are discussed in the agency’s Final Economic Assessment for the May 2000 final rule (Docket 7013). The cost and benefit analysis provided in that document would not be affected by this final rule, since this final rule only slightly adjusts the phase-in schedule for SVMs and makes small adjustments to the CRSs used in test procedures of that final rule. The minimal impacts of today’s amendment do not warrant preparation of a regulatory evaluation.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this final rule will not have a significant impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, multistage manufacturers and alterers, some of which qualify as small entities. However, the entities that qualify as small businesses will not be significantly affected by this rulemaking because this rule adjusts the phase-in schedule for them, which is a positive impact. These entities are already required to comply with the advanced air bag requirements, so this final rule does not establish new requirements.

### *Executive Order 13132 (Federalism)*

NHTSA has examined today’s final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking does not have federalism implications because this final rule does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Further, no consultation is needed to discuss the issue of preemption in connection with today’s rulemaking. The issue of preemption can arise in connection with NHTSA rules in two

<sup>10</sup> As discussed in Section IV.d. of this document, Evenflo also petitioned for this seat to be replaced with the Evenflo Tribute 381xxxx.

<sup>11</sup> See the NHTSA ex-parte memo provided in the docket for this final rule.

ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of an NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

#### *National Environmental Policy Act*

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

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The November 12, 2008 final rule contained a collection of information because of the phase-in reporting requirements. There was no burden to the general public.

The November 12, 2008 final rule required manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,856 kg (8,500 lb) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the FMVSS No. 208 requirements using Appendix A-1 during the phase-in of those requirements. The purpose of the reporting and recordkeeping

requirements is to assist the agency in determining whether a manufacturer of vehicles has complied with the requirements during the phase-in period. Today's final rule has no further reporting or recordkeeping requirements.

#### *National Technology Transfer and Advancement Act*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

There are no voluntary consensus standards that address the CRSs that should be included in Appendix A.

#### *Civil Justice Reform*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation, with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the

aggregate, or by the private sector in excess of \$100 million annually.

#### *Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) 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. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

#### *Executive Order 13211*

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

#### *Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us at the address provided at the beginning of this document.

#### *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.

*Privacy Act*

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).

**List of Subjects in 49 CFR Part 571**

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

■ 1. The authority citation for Part 571 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 571.208 is amended by:

- • Adding S14.8.5
- • Revising Appendix A-1

**§ 571.208 Standard No. 208; Occupant crash protection.**

\* \* \* \* \*

S14.8.5 Until September 1, 2011, manufacturers selling fewer than 5,000 vehicles per year in the U.S. may certify their vehicles as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A. Vehicles manufactured on or after September 1, 2011 by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A-1.

\* \* \* \* \*

**Appendix A-1 to § 571.208—Selection of Child Restraint Systems**

This Appendix A-1 applies to not less than 50 percent of a manufacturer's vehicles manufactured on or after September 1, 2009 and before September 1, 2010, as specified in S14.8 of this standard. This appendix applies to all vehicles manufactured on or after September 1, 2010.

A. The following car bed, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

**SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A-1**

|                                   | Manufactured on or after |
|-----------------------------------|--------------------------|
| Angel Guard Angel Ride XX2403XXX. | September 25, 2007.      |

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

**SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A-1**

|  | Manufactured on or after |
|--|--------------------------|
| Century Smart Fit 4543.                      | December 1, 1999.        |
| Cosco Arriva 22-013 PAW and base 22-999 WHO. | September 25, 2007.      |
| Evenflo Discovery Adjust Right 212.          | December 1, 1999.        |
| Graco Infant 8457 .....                      | December 1, 1999.        |
| Graco Snugride .....                         | September 25, 2007.      |
| Peg Perego Primo Viaggio SIP IMUN00US.       | September 25, 2007.      |

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19, or S21. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2):

**SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A-1**

|   | Manufactured on or after |
|---|--------------------------|
| Britax Roundabout E9L02xx.                            | September 25, 2007.      |
| Graco ComfortSport ..                                 | September 25, 2007.      |
| Cosco Touriva 02519                                   | December 1, 1999.        |
| Evenflo Tribute V 379xxxx or Evenflo Tribute 381xxxx. | September 25, 2007.      |
| Evenflo Medallion 254                                 | December 1, 1999.        |
| Cosco Summit Deluxe High Back Booster 22-262.         | September 25, 2007.      |

**SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A-1—Continued**

|                                 | Manufactured on or after |
|---------------------------------|--------------------------|
| Evenflo Generations 352xxxx.    | September 25, 2007.      |
| Graco Toddler SafeSeat Step 2.  | September 25, 2007.      |
| Graco Platinum Cargo.           | September 25, 2007.      |
| Cosco High Back Booster 22-209. | September 25, 2007.      |

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

**SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A-1**

|   | Manufactured on or after |
|---|--------------------------|
| Britax Roadster 9004                          | December 1, 1999.        |
| Graco Platinum Cargo.                         | September 25, 2007.      |
| Cosco High Back Booster 22-209.               | September 25, 2007.      |
| Evenflo Right Fit 245                         | December 1, 1999.        |
| Evenflo Generations 352xxxx.                  | September 25, 2007.      |
| Cosco Summit Deluxe High Back Booster 22-262. | September 25, 2007.      |

Issued: January 25, 2010.

**David L. Strickland,**  
*Administrator.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 0810141351-9087-02]

**RIN 0648-XU22**

**Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.