

- (c) Raritan River from Grossman Dock/Arsenal to New York Harbor, Lower Bay;
- (d) Arthur Kill Channel;
- (e) Kill Van Kull Channel;
- (f) Newark Bay;
- (g) Passaic River from Point No Point to Newark Bay;
- (h) Hackensack River from the turning basin to Newark Bay; and
- (i) New York Harbor, Upper and Lower Bay.

#### § 15.1040 Massachusetts.

The following U.S. navigable waters located within the State of Massachusetts when the vessel is in transit, but not bound to or departing from a port within the following listed operating areas:

- (a) Cape Cod Bay south of latitude 41°48'54"N;
- (b) The Cape Cod Canal; and
- (c) Buzzards Bay east of a line extending from the southernmost point of Wilbur Point (latitude 41°34'55"N longitude 70°51'15"W) to the easternmost point of Pasque Island (latitude 41°26'55"N longitude 70°50'30"W).

Dated: April 24, 1995.

**G.N. Naccara,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

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### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 74-09; Notice 40]

RIN 2127-AE61

### Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

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

**SUMMARY:** This document amends the labeling requirements of Standard 213 that were adopted in a rule facilitating the manufacture of belt-positioning child seats (booster seats designed to be used with a vehicle's lap/shoulder belt system). Specifically, this document amends the requirements for a type of belt-positioning seat known as a dual-purpose booster (a booster that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of a child seated in the booster, but only with a lap/shoulder belt when used

without the shield). In response to a petition for reconsideration from Gerry Baby Products, NHTSA is amending several of the labeling requirements to exclude dual-purpose boosters that are designed such that the shoulder belt is not placed in front of the child when the booster is used with a shield and a lap/shoulder belt. This rule also corrects labeling requirements adopted in the rule by excluding from those requirements car beds and rear-facing restraints, restraints for which the requirements were not intended.

**DATES:** This rule is effective August 8, 1995.

Manufacturers may voluntarily comply with the amendments promulgated by this final rule on or after June 9, 1995.

Petitions for reconsideration of the rule must be received by June 9, 1995.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202-366-4919), or Ms. Deirdre Fujita, Office of the Chief Counsel (202-366-2992), National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 21, 1994 (59 FR 37167), NHTSA published a final rule amending Standard 213 to facilitate the manufacture of "belt-positioning" child booster seats (i.e., booster seats designed to be used with a vehicle's lap/shoulder belt system). The amendment adopted performance and labeling requirements and test criteria for belt-positioning booster seats. The labeling requirements were intended to decrease the likelihood that positioning booster seats will be misused. The rule adopted requirements in S5.5.2(i)(2) for "dual purpose" boosters (boosters that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of the restrained child, but only with a lap/shoulder belt when used without the shield).

To ensure that dual purpose boosters are used with the proper vehicle belt system, S5.5.2(i)(2) requires dual purpose boosters to be labeled with the following warning:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT

PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description*.

The agency adopted the warning regarding the placement of the shoulder belt portion of the belt system behind the child in response to test data. Those data showed that, for small shield booster seats, "the routing of the shoulder belt (three point belt) in front of the dummy significantly affected the [head injury criterion] HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size." Specifically, the study stated that:

The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that routing the shoulder belt in front of the dummy caused the chest clip acceleration to increase for the 3-year-old dummy tested in two shield booster seats, from 31G to 44G and from 38G to 45G, respectively. The chest acceleration increases for these seats were from about 36G to 52G and 28G to 44G, respectively, when tested using a six-year-old dummy. NHTSA stated that it did not know of any shield-type booster seat that performs well when the booster seat is used with a lap/shoulder belt system and the restraining system element (i.e., the shield) and the shoulder portion of the belt system is left in front of the child. In view of safety concerns about the performance of boosters when the restraining system element (shield) is used and the shoulder belt is in front of the child, NHTSA required dual purpose boosters to be labeled with an instruction to consumers to place the shoulder belt behind the child when the restraining system element (shield) is used, and required this instruction to be included in the printed instructions for each of these boosters (S5.6.1.9).

#### Petition for Reconsideration

Gerry Baby Products Company petitioned for reconsideration of the final rule. Gerry informed NHTSA that the Gerry Double Guard, a dual purpose booster, is designed to have the lap/shoulder belt threaded through a

pathway in the base of the booster when the booster is used with a shield and a lap/shoulder belt. Gerry said that, since the shoulder belt is used to attach the booster to the seat when the booster is in the shield-mode, the instruction to "use only" the lap belt to restrain the booster is misleading for its restraint. Gerry also stated that since it is impossible to place the shoulder belt behind the child when the child is restrained in the Double Guard (the shoulder belt is routed under the child), the labeling requirement about placing the shoulder belt behind the child is inappropriate for its booster. Alternatively, the petitioner suggested amending the warnings required by S5.5.2(i)(2) and S5.6.1.9 to make them more suitable for the Double Guard.

NHTSA has reviewed Gerry's petition and agrees that the petitioner's arguments have merit. The instruction about using only the vehicle's lap belt to attach the booster does not appear correct for a booster such as the Double Guard, which uses both the lap and shoulder belts for attachment. Moreover, the instruction about placing the shoulder belt behind the child is inappropriate for boosters that, by design, will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. Indeed, since the Double Guard is designed so that the shoulder belt is actually placed under the child (routed through a pathway in the booster's base) when the booster is used with a shield and a lap/shoulder belt, the label required by S5.5.2(i)(2) to place the shoulder belt behind the child could mislead and confuse consumers about the proper attachment of the booster seat. Moreover, Gerry's seat, through its design that routes the shoulder belt under the child, avoids the safety concerns about the increased HIC, chest acceleration and head excursion found in the report for shield-boosters used with the shoulder belt routed in front of the child.

Accordingly, NHTSA is amending S5.5.2(i)(2) and S5.6.1.9 to exclude from those requirements dual-purpose boosters that are designed such that, when the restraint is used according to the manufacturer's instruction, the shoulder belt cannot be placed in front of the child when the booster is used with a shield and a lap/shoulder belt. However, this rule retains a requirement that all dual purpose boosters be labeled with a warning or contain a warning in their instructions to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

### Correction

The July 1994 rule required restraints other than dual-purpose boosters to be labeled with a warning similar to that discussed above for dual-purpose boosters. The rule required belt-positioning boosters to be labeled with a warning to use only the vehicle's lap/shoulder belt system to restrain the child. Shield-type boosters were required to bear a warning label to use only a lap belt or the lap belt part of a lap/shoulder belt system. The intent of the requirements was to "decrease the likelihood that belt-positioning seats will be misused," i.e., used with an incorrect vehicle belt system. 59 FR at 37167, 37172.

The rule adopting the labeling requirements intended those requirements to apply only to booster seats, and not to every type of child restraint system. However, as drafted, the rule applies those requirements to car beds and rear-facing child restraint systems (a child restraint that positions a child to face in the direction opposite to the normal direction of travel of the motor vehicle). Because the application of the labeling requirement to car beds and rear-facing restraints was inadvertent, NHTSA is correcting the error by revising the introductory paragraph of S5.5.2(i)(1) to exclude those restraint systems from the requirement. NHTSA is also making a conforming change to S5.6.1.9(a) of the standard, which requires the warning about proper belt use to be included in the manufacturer's instructions for the restraint. NHTSA is amending that section to exclude from that requirement instructions for car seats and rear-facing child restraints. (This rule also redesignates S5.6.1.9 (a) through (c) as S5.6.1.10 (a) through (c), since they relate to a subject matter that is unrelated to that of the introductory paragraph of S5.6.1.9.)

### Request for Interpretation

In the July 1994 rule, NHTSA adopted a requirement prohibiting belt-positioning boosters from being certified for use on aircraft. In its petition for reconsideration, Gerry asked how this requirement applies to the Double Guard, given that the booster is both a belt-positioning booster and a shield booster.

As a result of the July 1994 rule, Standard 213's certification requirements for the two types of boosters are different. The rule requires that manufacturers of belt-positioning boosters label them with the following statement: "This Restraint is Not Certified for Use in Aircraft." Shield-

type boosters are treated differently because they can be certified for aircraft use. Manufacturers of shield boosters wishing to so certify their boosters must label them with the following statement: "This Restraint is Certified for Use in Motor Vehicles and Aircraft."

Gerry said the Double Guard is presently labeled with the aircraft certification, in accordance with the above requirement. Gerry asks whether it could certify its Double Guard, when used with its shield, for aircraft use. To make clear the limitation of that certification, as well as to comply with the new rule, Gerry would state that "THIS RESTRAINT IS NOT CERTIFIED FOR USE IN AIRCRAFT," but insert the following language, "When used without the shield as a belt positioning seat," in front of the required statement.

NHTSA has reviewed the labeling requirement in question and has determined that it can be interpreted as permitting Gerry to label its booster as it desires. Given the dual nature of Gerry's Double Guard, it appears to be subject to the labeling requirements for both shield and belt-positioning boosters. It further appears that the booster complies with the requirements for both types. The only variation from the required labeling is Gerry's added clarification, "When used without the shield as a belt-positioning seat \* \* \*". This addition is appropriate, and necessary, to clarify the required text. The agency's longstanding position with regard to the labeling required by Standard 213 is that voluntarily added wording which clarifies required text is permitted, as long as the added language does not confuse or obscure the required labeling. Gerry's added text does not confuse or obscure the required label. Indeed, it clarifies the labeling. Therefore, it would be permitted.

However, Gerry's ability to certify its Double Guard booster for aircraft could be affected in the future by possible rulemaking on the certification of child restraints for aircraft. The Federal Aviation Administration (FAA) is concerned about the effectiveness of booster seats on aircraft, as a result of a testing program performed at FAA's Civil Aeromedical Institute (CAMI). The CAMI research is discussed in a report entitled, "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats," which was published in September 1994. A copy of the report has been placed in the NHTSA rulemaking docket for this notice.

### Effective Date

This amendment is effective June 9, 1995. An effective date earlier than 180 days after the date of issuance of this

rule is in the public interest because this rule relieves manufacturers of child restraints of certain designs from a labeling requirement that is inappropriate for those restraints. Yet, this rule specifies a warning requirement for those restraints in place of the removed requirement, to help ensure the restraints are properly used with the vehicle's lap/shoulder belt system. A 90-day effective date provides manufacturers sufficient leadtime to print revised warning labels.

Nevertheless, this rule provides an optional early effective date for manufacturers that can meet the new requirements sooner than 90 days. They may comply with the amendments in this rule any time after June 9, 1995, but not later than August 8, 1995.

**Rulemaking Analyses and Notices**

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

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. Manufacturers will be minimally affected by this action because it only makes slight changes to the July 1994 final rule which only minimally affected manufacturers since the rule simply permitted new designs in booster seats and did not require any design change or impose additional costs on any party.

*Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting vehicle manufacturers that produce and install built-in restraints), there are three that qualify as small businesses. This is not a substantial number of small entities.

Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant since today's rule only makes minor changes to the existing labeling requirements for some dual-purpose restraints. The agency believes this rule has no impact

on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will therefore not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

*Executive Order 12612 (Federalism)*

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*National Environmental Policy Act*

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

*Executive Order 12778 (Civil Justice Reform)*

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

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

Imports, Motor vehicle safety, Motor vehicles.

**PART 571—[AMENDED]**

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

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 571.213 is amended by revising the introductory text of S5.5.2(i)(1), revising S5.5.2(i)(2), republishing the introductory paragraph

of S5.6.1.9, redesignating S5.6.1.9 (a) through (c) as S5.6.1.10(a) through (c) and revising (a) and (b) and republishing (c) to read as follows:

**§ 571.213 Standard No. 213, Child restraint systems.**

\* \* \* \* \*

S5.5.2 \* \* \*  
(i)(1) For a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate:

\* \* \* \* \*

(2)(i) Except as provided in paragraph (i)(2)(ii) of this section, for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description*.

(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.5.2(i)(2)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, such a booster shall be labeled with a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

\* \* \* \* \*

S5.6.1.9 In the case of each rear-facing child restraint system that has a means for repositioning the seating surface of the system that allows the system's occupant to move from a reclined position to an upright position during testing, the instructions shall include a warning against impeding the ability of the restraint to change adjustment position.

S5.6.1.10(a) For instructions for a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate, and the reasons for the statement:

(i) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(ii) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE

LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(b)(i) Except as provided in S5.6.1.10(b)(ii), the instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield), AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE insert above description.*

(b)(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.6.1.10(b)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, the instructions for such a booster shall include a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(c) The instructions for belt-positioning seats shall include the statement, "This restraint is not certified for aircraft use," and the reasons for this statement.

\* \* \* \* \*

Issued on May 4, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95-11392 Filed 5-9-95; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

[Docket No. 95020641-5041-01; I.D. 050495B]

**Groundfish of the Gulf of Alaska; Pacific Cod in the Western Regulatory Area**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA) for processing by the offshore component. NMFS is requiring that catches of Pacific cod by these vessels in the Western Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of Pacific cod specified for the offshore component in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), May 5, 1995, until 12 midnight, A.l.t., December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod total allowable catch (TAC) for the offshore component in the Western Regulatory Area, GOA, was established by the final 1995 groundfish specifications (60 FR 8470, February 14, 1995), as 2,010 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the allocation of Pacific cod TAC specified for the offshore component in the Western Regulatory Area, GOA, has been reached. Therefore, NMFS is requiring that further catches of Pacific cod by operators of vessels catching Pacific cod for processing by the offshore component in the Western Regulatory

Area in the GOA, be treated as prohibited species in accordance with § 672.20(e)(4).

**Classification**

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 5, 1995.

**Richard W. Surdi,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95-11542 Filed 5-5-95; 3:14 pm]

BILLING CODE 3510-22-F

**50 CFR Parts 672 and 675**

[Docket No. 95031062-5121-02; I.D. 021695C]

RIN 0648-AH40

**Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Revised Product Recovery Rate**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces approval of a regulatory amendment to revise the standard product recovery rate for pollock, deep skin fillets, and product code 24. The revision is necessary to respond to new information on the current recovery rate achieved by the groundfish processing industry for this product type. This action is intended to further the objectives of the fishery management plans (FMPs) for the groundfish fisheries off Alaska.

**EFFECTIVE DATE:** June 9, 1995.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area is managed by NMFS according to the FMP for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared