

Estimated Charge Expiration Date: January 1, 2001 (at each airport).

Class of Air Carriers not Required to Collect PFC'S: Part 298 Air taxis, with the exception of commuter air carriers.

Determination: Approved. Based on information submitted in the public agency's applications, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at each airport. Although the Port Authority proposed the same class at each airport, the members of the class are different at each airport. Carriers should review the specific application or consult with the Port Authority to determine if they are

members of the class excluded from PFC collection at either EWR, JFK, or LGA.

Brief Description of Project Approved for Use of PFC Revenue: EWR monorail.

Brief Description of Project Approved for Collection and use: EWR landside access project—phase 1A.

Brief Description of Project Approved for Collection: EWR ground access monorail-Northeast Corridor connection, Automated guideway transit (AGT) system—Howard Beach component.

Brief Description of Disapproved Project: AGT system—LGA on-airport component.

Determination: Disapproved. The Port Authority's justification for this project is entirely dependent on the

construction of the entire AGT system. Completion of the entire system appears to be uncertain at this time. The Port Authority has not provided information showing that this project has independent utility as a separate on-airport system. Therefore, the FAA has determined that the LGA on-airport component does not meet the requirements of § 158.15(a) or (b), nor has the Port Authority provided adequate justification for the project as a stand-alone project as currently proposed.

Decision Date: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 295-9340.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93-01-C-ORD, Chicago, IL.	07/07/95	\$481,806,170	\$531,187,544	10/01/99	09/01/98
94-01-C-CVG, Covington, KY.	07/07/95	23,847,550	\$20,737,000	09/01/95	10/01/95
94-01-C-ILE, Killeen, TX.	06/09/95	321,200	321,200	05/01/97	05/01/97
93-01-C-PSC, Pasco, WA.	07/10/95	1,725,724	1,230,731	11/01/96	09/01/97

Issued in Washington, DC on August 4, 1995.

Sheryl Scarborough,

Acting Manager, Passenger Facility Charge Branch.

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National Highway Traffic Safety Administration

[Docket No. 93-93; Notice 2]

Century Products Co. Grant of Petition for Determination of Inconsequential Noncompliance

Century Products Company (Century) of Macedonia, Ohio, determined that some of its child safety seats failed to comply with the flammability requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Century also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 29, 1993, and an opportunity afforded for comment

(58 FR 68985). No comments were received. This notice grants the petition.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (Flammability of Interior Materials) (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute." Paragraph S4.2.1 of FMVSS No. 302 states that "[a]ny material that does not adhere to other material(s) at every point of contact shall meet the requirements of S4.3 when tested separately."

From December 1991 to May 1993, Century manufactured and sold 192,824 Model 4594 and 4595 child safety seats that did not comply with the flammability requirements of FMVSS No. 213. On June 7, 1993, NHTSA informed Century that, when its Model 4595 child safety seat was tested by a NHTSA contractor, the fabric seat cover failed to meet the Standard No. 213 flammability requirements (Century's Model 4594 has the same construction as its Model 4595). The contractor tested six samples of the seat covers, yielding burn rates of between 6.3 and 7.6 inches per minute.

The seats in question are constructed of fabric, fiberfill, and backing. The covers on these seats are formed by

sewing three sections together: The left side, the right side, and the center. Each section is fully sewn around its perimeter and the three sections are sewn together. The entire perimeter of the cover is then permanently and completely sewn together with an overlock to assure that the layers are securely attached. There is additional stitching surrounding the buckle openings and belt loop areas. Because of the construction of the seats, Century decided that testing the fabric, fiberfill, and backing together (composite testing) would be appropriate. However, Century subsequently agreed that the exterior material of the seat cover "does not adhere to other material(s) at every point of contact," and that therefore, pursuant to Paragraph S4.2.1 of FMVSS No. 302, the seat covers are "required to meet the requirements of S4.3 when tested separately."

Century supported its petition for an exemption from the recall requirements of the statute with the following arguments and also submitted test reports. All of these submissions are available for review in the NHTSA docket.

Under FMVSS No. 213, Section S5.7, "each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302." 49 CFR 571.213 S5.7 (1992). FMVSS No. 302 sets the standard for the flammability of materials used in the interior of motor vehicles. The purpose of FMVSS No. 302 is to "reduce the deaths and injuries

to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes."

When FMVSS No. 302 was originally proposed, materials used in the interior of motor vehicles were to be tested separately regardless of how the materials were used. FMVSS No. 302 was revised prior to its release to require testing as a composite if the surface material is "bonded, sewed or mechanically attached to the underlying material." 36 FR 290 (1971). The purpose of the revision was to eliminate "an element of complexity found unnecessary for safety purposes." Under this version of FMVSS No. 302, Century's infant restraint would have been tested as a composite and readily passed the standard.

However, in 1975, the testing procedure was again revised, and the standard now in place was adopted. 40 FR 14,318 (1975). Under the revised standard, materials are tested as a composite only if the material "adhere[s] to other materials(s) at every point of contact." 49 CFR 571.302 S4.2.1. The standard was revised to take into account some omissions in the testing scheme "and to reduce the complexity of testing single and composite materials." 40 FR 14,319 (1975). The standard was not revised because former FMVSS No. 302 was found to be inadequate to meet the safety standards of the Act, but to reduce the complexity of the testing.

The current version of FMVSS No. 302 may go further than necessary to prevent the "unreasonable risk of injury or death." This is evidenced by the results of a study completed by Failure Analysis Associates in March of 1991. A study of the U.S. CPSC NEISS database and the NHTSA Complaint File back to 1978 revealed not one instance in which an infant or child was injured because a car seat ignited. Failure Analysis Associates, Inc., *Flammability Tests and Examination of Accident/Injury and Complaint Data* 11 (1991). A study conducted by James H. Shanley, Jr. in conjunction with Fisher-Price's petition for determination of inconsequential noncompliance also found no instances in which a vehicle fire started in a child safety seat. *Fisher-Price*, Dkt. No. 93-79, 58 FR 59,511 (1993) (Notice of Receipt of Petition for Determination of Inconsequential Noncompliance). Century realizes that the facts in their case are different from Fisher-Price and only cites the document for the purpose stated in this Petition. Moreover, in 1971 a much larger portion of our society smoked. Now, with fewer and fewer Americans smoking, the risks that an infant or child restraint would be set on fire by lighted cigarettes or matches is becoming more remote.

The Agency could submit that the reason there have been no fires is because of FMVSS 302 and their aggressive enforcement of the standard. But, it is important to remember that the Agency standard does not require nonflammable materials; it only requires material which burns slowly. Hence, the standard, while admirable, would not explain the fact that there has been no recorded evidence of a fire.

The frequency of incidents involving nonconforming or defective equipment is a

factor in determining whether defects or noncompliance has an impact on safety. See, e.g., *United States v. General Motors Corp.*, 656 F. Supp. 1555 (D.D.C. 1987), *aff'd*, 841 F.2d 400 (D.C. Cir. 1988) (premature wheel lockup in 1980 X-cars was not a "safety related defect" when the risk of failure was no worse than, and in most instances better than, the rate for all cars); *United States v. General Motors Corp.*, 561 F.2d 923 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1033 (1978) (government presented evidence of a disproportionately high number of replacement parts (35,366) and inferred, in the absence of challenge by General Motors, that replacement part sales were due to a disproportionately high rate of failures and concluded that defect safety-related). The fact that no child has been injured by fire caused by a child car seat for the last 15 years militates strongly against a finding that Century's noncompliance has an effect on safety.

NHTSA has recognized that some technical violations of NHTSA standards do not affect safety and (has) exempted manufacturers from the notice and remedy requirements of the Act. See, e.g., *General Motors Corp.*, Dkt. No. 92-23, 57 FR 45,866 (1992) (one test point on side reflex reflector failed to meet standard, but when values for reflector considered overall, noncompliance inconsequential). Another example, in *General Motors Corp.*, Dkt. No. 91-10-IP-No. 2, 56 FR 33,323 (1991), NHTSA found that the technical violation at issue had an inconsequential effect on safety because the potential hazards were so remote.

In *General Motors Corp.*, General Motors' high beam telltale in its 1990 Oldsmobile Toronado was not in compliance with NHTSA standards because when the cigar lighter was in use, the telltale dimmed or extinguished. The Agency granted GM's petition for inconsequential noncompliance because problems would occur only under a particular set of circumstances:

The noncompliance could only manifest itself during upper beam use when the cigar lighter was also in use. But only a comparatively small portion of driving occurs at night, the time of headlamp activation. Because of State and local laws prohibiting upper beam use, only a very small percentage of nighttime driving is performed using the upper beam. The 25-second use of the cigar lighter would comprise only a limited amount of the time the upper beam is in use. The safety hazard most likely to be created by the noncompliance is glare in the eyes of oncoming driver on a two or three-lane road, but, if discomforted, the instinctive reaction of that driver would be to flash the upper beams, alerting the noncompliant vehicle to lower that vehicle's upper beams. *The probability of all these facts occurring simultaneously is low.* (Emphasis added.) *Id.* at 33,324.

The "probability of all these facts occurring simultaneously" in this Century case is exceedingly low. When tested as a composite, Century's Model 4594 and 4595 infant restraints fall within NHTSA's burning rate. The components of the infant restraint are securely sewn together. In order for

Century's infant restraint to pose a hazard to a passenger, (1) the seat would have to have somehow torn apart around the numerous sewn seams; (2) the fabric would have to be frayed in such a way that the fabric is sticking up away from the fiberfill; and (3) the source of ignition would have to land on the exposed fabric. Again, the "probability of all these facts occurring simultaneously" is low. Coupling the need for these unlikely probabilities with the fact that there has never been a fire caused by a child car seat ignition should make this a case where fairness requires a granting of the Petition.

Under the standard as enacted in 1971, Century's infant restraint would have been tested as a composite, and therefore, would be in compliance with NHTSA standards. FMVSS No. 302 was revised in 1975, not to address safety concerns, but simply for purposes of administrative ease. The fact that the requirements of FMVSS No. 302 are in excess of those needed to ensure the safety of the restraint's occupants was dramatically demonstrated by the results of a study performed by Patrick Kennedy, an expert retained by Fisher-Price. Mr. Kennedy's study revealed that typical children's clothing burns at a rate far in excess of the standard imposed by FMVSS No. 302. Therefore, an infant sitting in Century's infant restraint is at far greater risk from the clothing he or she wears than from the infant restraint itself.

Century's infant restraints do not pose an unreasonable risk to the infants they hold. The question of whether Century's infant restraint meets the objectives of the Act could be phrased in this fashion: Would a reasonable parent, after being made aware of all the facts and circumstances surrounding this noncompliance, still be willing to place his or her infant in the Model 4594 or 4595 infant restraint? Century is satisfied that a reasonable parent would use their Model 4594 and 4595 restraints without any hesitation.

Century understands how serious the flammability issue is to the Agency and commends the Agency for its vigilance. Century is also serious about the issue, and would not consider selling a product that would place a child at risk. Century strongly believes that if there is a risk in this case, it is not an unreasonable risk as required by the Act. As Century's tests have shown, the seat pad on the infant restraint as a composite burns well within the burn rate acceptable to the Agency. Furthermore, the seat pad is constructed in a way that makes tears unlikely. Because Century's infant restraints meet the objectives of the Act, Century's noncompliance is inconsequential as it relates to motor vehicle safety. For these reasons, Century respectfully requests that NHTSA grant its petition for exemption.

The agency has reviewed Century's petition and has determined that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees with Century that the noncompliant seat covers are unlikely to pose a flammability risk when they are securely sewn to the seat, which is the normal condition for these seats.

Century supported this point by performing flammability testing under two conditions: first on the seat and cover as a composite, *i.e.*, as it exists on a child seat with the two items sewn together; and second, by bunching or gathering the noncompliant seat cover and attempting to ignite it. In both cases the seat cover burned at a rate below the four inches per minute maximum set out in FMVSS No. 302.

The agency granted a petition for inconsequential noncompliance submitted by PACCAR (57 FR 45868) in which the circumstances were similar to those in this petition. PACCAR manufactures mattresses for the sleeper areas of certain truck tractors. A small portion of the material used in the construction of the mattresses, and subject to the requirements of FMVSS No. 302, failed the burn rate test. The agency determined that ignition of the noncompliant material was unlikely and, due to the small volume of the material, would not pose the threat of a serious fire if ignited. As a result of this analysis, the PACCAR petition was granted.

The circumstances here are similar to those in which the agency granted a petition for inconsequentiality by General Motors in connection with a noncompliance of the upper beam indicator. 56 FR 33323 (1991). The indicator was noncompliant only when the cigarette lighter was operating. The agency determined that the possibility of the upper beams being operated simultaneously with the cigarette lighter posed a very limited safety hazard. Similarly, it is unlikely that sections of the noncompliant cover fabric large enough to cause serious burn injuries would be separated from the cushion lining. Even if a large section of the fabric was torn away, NHTSA considers the possibility that this material would be exposed to a potential ignition source to be extremely remote.

Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the seat cover materials would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's assessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety. Although empirical results are not determinative, the

absence of any reports of fires originating in these child restraints supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Century has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its petition is granted. Accordingly, Century is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

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

Issued on: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

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[Docket No. 93-48; Notice 4]

Cosco, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On April 30, 1993, Cosco, Inc. (Cosco), of Columbus, Indiana, determined that some of its child safety seats failed to comply with flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." On May 28, 1993, Cosco petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on July 7, 1993 (58 FR 36510). On March 22, 1994, NHTSA denied Cosco's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety (59 FR 14443, March 28, 1994). Cosco appealed that denial. On June 15, 1994 (59 FR 30831), NHTSA published a notice providing an opportunity for public comment on that appeal. No comments were received. This notice grants Cosco's appeal.

Paragraph S5.7 of Standard No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials') (571.302)." Paragraph S4.3(a)

of Standard No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Fabric used in the shoulder straps of certain models of Cosco's child restraints exceeded this limit by an average of .3 inches per minute when tested by NHTSA contractors in early 1993. Apparently, the noncompliance was due to the manner in which the fabric was treated during the process in which the straps were molded into a urethane shield. The company that performed this process for Cosco is the same company that performed the identical process for Fisher-Price, Inc., another manufacturer of child restraints whose request for an inconsequentiality exemption from the recall requirements of the statute is granted elsewhere in today's **Federal Register**.

In its 1993 noncompliance notice, Cosco stated that it had produced 133,897 add-on (as opposed to built-in) child restraints whose shoulder straps did not comply with Standard No. 213. On appeal of the inconsequentiality denial, it stated that only 23,449 restraints seats should have been covered by the notice, the remainder having been shipped to its Canadian subsidiary.

On March 22, 1994, NHTSA denied Cosco's inconsequentiality petition (59 FR 14443, March 28, 1994). That notice contains a full discussion of the noncompliance, the company's petition, and the agency's rationale for its denial of the petition.

On June 15, 1994, NHTSA published in the **Federal Register** Cosco's appeal of the agency's denial pursuant to 49 CFR 556.7. In the appeal, Cosco contended that it is extremely unlikely that straps of its child restraints would ignite independently of an interior fire that was already in progress from another source. It argued that NHTSA based its denial of the petition on hypothetical situations rather than confirmed reports of child restraint fires.

NHTSA has evaluated Cosco's arguments as well as the new materials submitted by Fisher-Price in support of its appeal. For the reasons set out in the notice granting Fisher-Price's appeal, which is published elsewhere in today's **Federal Register** (Docket No. 93-79; Notice 5), the agency has determined that Cosco has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety. Accordingly, Cosco is hereby exempted from the notification