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

and remedy provisions of 49 U.S.C. 30119 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. 93–79; Notice 6]

Fisher-Price, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On September 16, 1993, Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, filed a petition for an exemption from the notification and remedy provisions of 49 U.S.C. Chapter 301 on the ground that the noncompliance of certain of its child restraints with the flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' was inconsequential as it relates to motor vehicle safety. On March 22, 1994, the National Highway Traffic Safety Administration (NHTSA) denied Fisher-Price's petition (59 FR 23253; May 5, 1994).

On May 6, 1994, Fisher-Price appealed that denial. Notice of the appeal was published on June 16, 1994 (59 FR 30957), and an opportunity was afforded for comment. However, on August 12, 1994, before the agency reached a decision on the appeal, Fisher-Price notified NHTSA that it was taking the position that it had never formally determined that a noncompliance existed. In response, on August 17, 1994, the agency terminated the inconsequentiality proceeding (59 FR 42326), as its regulations require that a determination of noncompliance exist before an inconsequentiality petition may be filed. See 49 CFR 556.4(b)(6).

Following this termination, on September 26, 1994, NHTSA's Associate Administrator for Enforcement published an initial decision, pursuant to 49 U.S.C. 30118(a), that the child restraints at issue failed to comply with FMVSS No. 213 (59 FR 49100). The agency then conducted a public proceeding on October 21, 1994 to allow Fisher-Price and other interested persons the opportunity to present information, views, and arguments on whether a noncompliance existed. Prior to the agency's final decision on this issue, on July 10, 1995, Fisher-Price submitted a Noncompliance Report in accordance with 49 CFR part 573, that memorializes its formal determination that, under NHTSA's interpretation of the applicable test procedures, the seats in question fail to comply with S5.7 of FMVSS No. 213.

In view of the fact that a determination of noncompliance has been made, the agency may now consider Fisher-Price's petition for an inconsequentiality exemption. Moreover, rather than require Fisher-Price to file a new petition, NHTSA has decided to reinstate the proceeding at the same stage it was at when it was terminated.

For the reasons set forth below, the agency has decided to grant Fisher-Price's appeal. Thus, Fisher-Price will not be required to conduct a recall campaign. However, as part of the resolution of this matter, Fisher-Price has agreed to pay $35,000 to the United States in settlement of NHTSA's claim that it violated 49 U.S.C. 30118(c) and 30119(c) by failing to notify the agency in a timely manner after it should, in good faith, have determined that these child restraints did not comply with the standard.

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.''

Fabric used in the shoulder straps in some models of Fisher-Price's child restraints exceeded this limit by .3 to .6 inch per minute when tested by NHTSA contractors in the spring of 1993 and when retested by Fisher-Price in the summer of 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 Fisher-Price is the same company that performed the identical process for Cosco, 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 September 16, 1993 letter to NHTSA, Fisher-Price acknowledged that it had ''become aware of information suggesting that the molded shoulder belt webbing on its Model AO9101, DO9101, 9103, 9149, 9173, 9179 and 9180 car seats may not comply with the requirements of FMVSS 302.'' At the same time, pursuant to 49 U.S.C. 30118(d) and 30120(h), Fisher-Price sought an exemption from the notification and remedy requirements of the statute on the ground that any such noncompliance was inconsequential as it relates to motor vehicle safety.

On March 22, 1994, NHTSA denied Fisher-Price's inconsequentiality petition (59 FR 23253, May 5, 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 May 6, 1994, Fisher-Price submitted an appeal of the agency's denial pursuant to 49 CFR 556.7. The appeal contains an analysis of the agency's decision, the affidavit of Gail E. McCarthy, Ph.D., P.E., of Failure Analysis Associates (FaAA), and a summary of the supplemental information Fisher-Price had submitted on February 25, 1994, March 17, 1994, and March 24, 1994 that had not been considered by the agency in its denial.

The February 25, 1994 submission contained information on the location of mold release compound on the shoulder webbing and its possible dissipation over time.

The March 17, 1994 submission contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires. The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994 submission, entitled ''Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing,'' contained the detailed data and test results on which the material in the March 17, 1994 document was based.

In its May 6, 1994 appeal, Fisher-Price raised the following points: (1) Fisher-Price claimed that it had not determined that its child restraints failed to comply with FMVSS No. 213. (In view of Fisher-Price's recent acknowledgement that a noncompliance exists, this issue is now moot.) (2) Fisher-Price claimed that NHTSA had considered its petition under a stricter standard for inconsequentiality exemptions than is provided by statute because it involved child restraints. (3) Fisher-Price asserted that NHTSA's past precedent in granting inconsequentiality petitions compels a grant of this petition. (4) Fisher-Price contended that the data it submitted in support of its argument that the flammability of children's clothing