

law. Thus, each person who considers himself or herself to be aggrieved by a NHTSA rule or standard must file a timely petition for reconsideration or a timely petition for judicial review in order to preserve his or her ability to challenge the underlying rule.

NHTSA wishes to emphasize two additional points. First, this amendment does not preclude any person who is aggrieved by the agency's action in response to a petition for reconsideration from seeking judicial review of that response, since such a response is itself a reviewable agency action. Second, a person who files a petition for reconsideration may obtain judicial review of all aspects of the original order, not merely the portion of that order on which he or she sought reconsideration. See *Bellsouth Corp.*, 17 F.3d at 1489-90. However, persons who did not seek timely reconsideration or timely judicial review of the original agency action may only challenge the actions taken by the agency in response to the petition for reconsideration. All other issues were final as to the nonpetitioning parties at the time of the original action. Therefore, any court challenge by nonpetitioning parties to agency actions not affected by the response to the petition for reconsideration must be made within 59 days of the original agency action.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rulemaking was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. Because the changes are only procedural in nature, they will not have any cost impacts.

##### *Regulatory Flexibility Act*

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. For reasons discussed above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

##### *Paperwork Reduction Act*

There are no requirements for information collection associated with this final rule.

##### *National Environmental Policy Act*

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

##### *Executive Order 12612 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

##### *Civil Justice Reform*

This final rule does not have any retroactive or preemptive effect.

##### List of Subjects in 49 CFR Part 553

Administrative practice and procedure.

#### **PART 553—RULEMAKING PROCEDURES**

In consideration of the foregoing, 49 CFR part 553 is amended as follows:

1. The authority citation for part 553 of title 49 is revised to read as follows:

Authority: 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.50.

2. Section 553.39 is revised to read as follows:

##### **§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.**

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner, and not as to other interested persons. For the petitioner, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

Issued on: December 5, 1995.

Ricardo Martinez,

*Administrator.*

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#### **49 CFR Part 571**

[Docket No. 74-09; Notice 43]

RIN 2127-AF02

#### **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, delay of compliance date.

**SUMMARY:** This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child restraint systems must comply with a final rule that was published July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," to add a greater array of sizes and weights of test dummies for use in compliance tests. Today's document responds to those requests in petitions for reconsideration of the rule relating to the compliance date. It provides needed leadtime to manufacturers of add-on (portable) child restraint systems to make necessary design changes to conform to the new requirements.

The agency will respond to the remaining requests in the petitions for reconsideration in another document that will be published in the Federal Register in the near future.

**DATES:** The effective date (i.e., the date on which the text of the CFR is changed) of the final rule published July 6, 1995 (60 FR 35126) and corrected September 29, 1995 (60 FR 50477), remains January 3, 1996.

For manufacturers of built-in child restraint systems, the compliance date for the amendments remains September 1, 1996.

However, for manufacturers of add-on child restraint systems, the compliance date for the amendments made by those rules (i.e., the date on which these manufacturers must begin complying with the amendments) is changed to September 1, 1996.

Petitions for reconsideration of the rule must be received by January 11, 1996.

**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:** For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202-366-4919).

For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202-366-2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

This document delays until September 1, 1996, the date on which manufacturers of add-on (portable) child

restraint systems must begin complying with the amendments made by a final rule that was published Thursday, July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). The July 1995 final rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," by adding a greater array of sizes and weights of test dummies for use in compliance tests. The rule, which completed a substantial upgrade of the standard long envisioned by the agency, also responded to the NHTSA Authorization Act of 1991 (sections 2500-2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA")). That Act directed NHTSA to initiate rulemaking on child seat safety. The notice of proposed rulemaking (NPRM) for the rule was published March 16, 1994 (59 FR 12225).

**Current Requirements**

Standard 213 applies to any device, except Type I (lap) or Type II (lap/shoulder) seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children whose mass is 23 kilograms (kg) (50 pounds) or less. The standard evaluates the performance of child restraint systems in dynamic tests under conditions simulating a frontal crash of an average automobile at 48 kilometers per hour (kph) (30 miles per hour (mph)).

The dynamic tests are conducted using a test dummy. Currently, Standard 213 (S7) specifies that a dummy representing a 6-month-old child be used for testing a child restraint system that is recommended by its manufacturer for use by children in a mass range that includes children whose mass is 9 kg or less (weighing 20 pounds or less). That dummy, which is not instrumented, is specified in subpart D of 49 CFR part 572. A dummy whose mass is 15 kg (weighing 33 pounds), representing a 3-year-old child, is used for testing a child restraint system that is recommended for children whose mass is 9 kg or more (weighing 20 or more pounds). This dummy is instrumented with accelerometers for measuring accelerations in the head and chest during impacts, and is specified in 49 CFR Part 572, subpart C.

The requirements to be met by a child restraint in the dynamic testing include maintaining its structural integrity, retaining portions of the dummy within specified excursion limits (limits on how far specified portions of the body may move forward), and in the case of the 3-year-old dummy, limiting the forces exerted on the head and chest of the dummy in the crash. These

requirements reduce the likelihood that the child using a child seat will be injured by the collapse or disintegration of the seat, by contact with the interior of the vehicle, or by imposition of intolerable forces by the seat.

**July 1995 Final Rule**

The July 1995 final rule amended Standard 213 to add three dummies, representing a newborn infant, 9-month-old and 6-year-old child, for use in compliance testing under the standard. The rule removed the 6-month-old child dummy currently used, since the need for it was eliminated by the addition of the new dummies.

The additional dummies provide a better evaluation of the ability of child restraint systems to restrain and protect the range of children recommended for those systems. As a result of the rule, child restraints must meet the performance requirements of the standard while tested with dummies more representative of the range of children for whom the restraints are recommended. As a result, the performance of child restraints is more thoroughly evaluated. A dummy representing children at the lower end of the weight ranges recommended for a restraint evaluates the ability of the restraint to restrain its occupant. In other words, it evaluates the ability of a restraint to prevent a smaller child from slipping out of the restraint. A dummy at the higher end approximates the heaviest load that the restraint will have to bear in a crash and thus is particularly useful in evaluating the structural integrity of the restraint.

The rule adopted the following provisions specifying which of the new dummies NHTSA will use in the compliance testing of child restraint systems:

If the range of children recommended by a child restraint's manufacturer includes any children in the following range	The following dummy(ies) is(are) used in the compliance testing of that restraint
Birth—5 kg or less (Birth—11 lb or less).	Newborn.
More than 5 kg—10 kg (22 lb).	Newborn.
More than 10 kg—18 kg (40 lb).	9-month-old. 9-month-old.*
More than 18 kg or 40 lb ....	3-yr-old. 6-yr-old.

\* This dummy is not to be used to test booster seats.

**Compliance Dates**

The rule was drafted to have one compliance date for add-on child restraint systems, and another for built-

in systems. The compliance date for add-on child restraint systems was January 3, 1996 (which is 180 days after the publication date of the rule), and for built-in systems, September 1, 1996.

**Rationale for Different Dates**

Different compliance dates were established due to NHTSA's belief, at the time, that add-on restraint manufacturers did not need so much time to comply with the amendments as did built-in restraint manufacturers. In the apparent absence of comments objecting to the proposed 180 day effective date, the agency concluded that manufacturers of add-on systems could comply with the proposed period of 180 days. In contrast, there were comments indicating that a 180-day effective date would be insufficient for built-in restraint manufacturers. In commenting on the NPRM, an individual built-in restraint manufacturer (Ford) and a association of built-in restraint manufacturers (American Automobile Manufacturers Association) requested a September 1, 1996 compliance date for amending the standard with regard to built-in systems. Ford stated that the proposed 180-day period would not provide enough time for it to test all its built-in systems to the adopted requirements and make any needed design changes. Ford also said that 180 days is insufficient to enable it to modify the labeling of its built-in restraints, or to change the vehicle owner's guides of the vehicles equipped with built-in systems, in accordance with the rule. Ford indicated that a September 1, 1996 compliance date would better allow it to incorporate necessary changes in the vehicle owner's manual, since the manuals are usually printed in June or July of the model year. NHTSA concluded that a September 1, 1996 compliance date for built-in restraints "gives motor vehicle manufacturers sufficient leadtime to evaluate their products and make any necessary changes to them, and prepare the labels and owners manuals for the new model vehicles without unnecessary burdens." 60 FR 35138.

**Correction of Effective Date**

As noted above, the agency drafted the rule so that the "effective date" for add-on child restraint systems was January 3, 1996, and the "effective date" for built-in systems was September 1, 1996. This wording did not conform to the drafting practices of the Federal Register. Based on the language of 49 U.S.C. 30101 *et seq.* (formerly the National Traffic and Motor Vehicle Safety Act), NHTSA has traditionally used the term "effective date" to mean

the date on and after which any vehicle or item of equipment subject to a rule must comply with the requirements of the rule. The Federal Register uses different terminology. It calls this date the rule's "compliance date," not its "effective date." For Federal Register purposes, the "effective date" of a rule is the date on which the Code of Federal Regulations (CFR) is amended to reflect the changes set forth in the rule. Since the amendments of a rule appear in the CFR on the "effective date" of the rule, amendments cannot vary in effective date by subject matter, e.g., a rule cannot have one effective date for add-on systems and another for built-in systems.

On September 29, 1995 (60 FR 50477), NHTSA corrected the error by correcting the **DATES** section of the final rule to specify that the rule is effective (as the Federal Register uses that term) on January 3, 1996, with two provisos. The provisos, relating to the compliance dates of the rule, are as follows:

However, manufacturers of built-in child restraint systems may comply with existing requirements for built-in systems (as of July 6, 1995) until September 1, 1996.

Manufacturers of add-on child restraint systems may comply with existing requirements for add-on systems (as of July 6, 1995) until January 3, 1996.

The correction conformed the wording of the **DATES** section to Federal Register drafting practices. It did not affect the compliance date of the amendments made by the rule. Thus, beginning January 3, 1996, each add-on restraint would have to meet the performance criteria and labeling requirements specified in the standard when tested with the test dummies specified by the rule, including, if appropriate for a particular restraint, the newly-adopted dummies.

#### *Petitions for Reconsideration of Compliance Date*

Cosco Inc. and Gerry Baby Products Company, two manufacturers of add-on child restraint systems, petitioned for reconsideration of the January 3, 1996 compliance date for add-on restraints. Both manufacturers requested NHTSA to change the date to September 1, 1996, to make the compliance date the same as that for built-in restraint manufacturers.

In support of its petition, Cosco said it needs a leadtime longer than 180 days to test its products and make needed design and tooling changes. Cosco disagreed with NHTSA's statement in the final rule that "No comment was received on leadtime for add-on restraints." (60 FR at 35137) Cosco said it had commented on the issue, and

quoted a statement in its comment which stated: "Whatever changes are made to the standard, Cosco reminds NHTSA that manufacturers need enough time to deplete inventories of printed materials (at least 6 months) or develop complying designs (up to 2 years)." In its petition, Cosco said that:

While this two year time period may be compressed to some degree, certain critical elements of the design, development, tooling and testing of a new add-on child restraint cannot be accelerated. For instance, the tooling time for the mold for an add-on child restraint shell is approximately six months. This does not include time for fine tuning the tool after it is completed and for testing the first production adequately to ensure that safety guidelines and compliance with FMVSS 213 are met. \* \* \*

Cosco believed there is no reason to have a compliance date for add-on systems that differed from that for built-in systems. It stated:

The discussion in the final rule regarding Ford's comments essentially reflects the same concerns that Cosco raised in response to the NPRM. \* \* \* This arbitrary distinction will have an unnecessary, negative impact on add-on restraint manufacturers and should be amended as requested.

Gerry Baby Products raised similar concerns in its petition. Gerry said that 180 days does not provide enough time for it to sufficiently test its products to the new requirements and implement any necessary design changes. Gerry also stated:

This short phase-in time period may result in Gerry Baby and other child restraint manufacturers pulling a significant percentage of shield type booster seats (for which head excursion limits may be an issue) from the market. Thus, the end result of the 180-day effective date could be a significant time period in which the retail market would have minimal, if any, shield-type booster seats available. Consumers with Type I seat belt systems in the rear seats of their vehicles would thus probably have no child restraints available to restrain their 40 to 60 pound children.

Gerry requested that the compliance date for add-on restraints and built-in restraints be the same, September 1, 1996.

#### *Agency Decision*

NHTSA has reviewed the petitions and has decided that, for add-on systems, the compliance date for the July rule should be changed to September 1, 1996. NHTSA adopted a 180-day compliance date, as proposed, for the rule for add-on systems because a longer leadtime did not seem necessary. In its petition for reconsideration, Cosco and Gerry have provided information explaining why they believe that the rule's original

compliance date "is not practicable, is unreasonable, or is not in the public interest." 49 CFR 553.35. The agency agrees that, similar to built-in restraint manufacturers, manufacturers of add-on systems need sufficient time to evaluate their products and make any necessary changes to them. As noted by Gerry, shield boosters, in particular, will likely need to be redesigned to meet Standard 213's head excursion requirement when tested with the 6-year-old dummy. Shield boosters, used for older children who have outgrown a convertible or toddler seat, enables a Type I (lap only) vehicle belt to more properly fit the child by preventing the belt from riding up across the child's stomach.

NHTSA is therefore extending the compliance date for add-on systems to ensure that adequate time is provided add-on restraint manufacturers to test their seats and implement necessary design changes. This will also ensure the continued availability of shield booster seats. The compliance date of the July 1995 final rule, as corrected September 29, 1995, is delayed to September 1, 1996 for add-on restraints.

#### *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 impacts of this rulemaking action and has determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are so minimal that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers will be minimally affected by this rulemaking because it only extends the compliance date of the July 6, 1995 final rule, which amended Standard 213. There will be no additional costs associated with this final rule.

##### *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. Since this document simply extends the compliance date of a previously-issued rule, no costs are associated with it. Accordingly, the agency has not prepared a 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, and 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 section 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.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on December 7, 1995.

Ricardo Martinez,

*Administrator.*

[FR Doc. 95-30233 Filed 12-7-95; 2:11 pm]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 672 and 675

[Docket No. 950905226-5282-02; I.D. 083095A]

RIN 0648-AH00

**Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing Amendment 38 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 40 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 38 implements an allocation of pollock for processing by the inshore and offshore components in the BSAI management area from January 1, 1996, through December 31, 1998. Amendment 40 implements an allocation of Pacific cod for processing by the inshore and offshore components, and an allocation of pollock for processing by the inshore component in the GOA from January 1, 1996 through December 31, 1998. It also continues the Western Alaska Community Development Quota (CDQ) Program for pollock for the same period of time. This action is necessary to continue the management measures that were contained in Amendments 18 and 23 to the BSAI and GOA FMPs, respectively. The intended effect of this final rule is to promote management and conservation of groundfish, enhance the stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

**EFFECTIVE DATE:** January 1, 1996.

**ADDRESSES:** Copies of Amendments 38 and 40, and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendments 38 and 40 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, room 306, Anchorage, AK 99501-2252; telephone: 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** David Ham, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676; for the GOA FMP, regulations are found at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/FRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP, respectively.

Amendments 18 and 23 and their implementing regulations expire on December 31, 1995. The Council has not yet completed development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries. Therefore, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40. A notice of availability of Amendments 38 and 40 was published at 60 FR 46572 (September 7, 1995).

Amendments 38 and 40 are essentially the same as amendments 18 and 23, with minor changes. A full discussion of these changes is listed in the proposed rule for amendments 38 and 40 (60 FR 48087, September 18, 1995).

Amendments 38 and 40 were approved by NMFS on November 28, 1995, under section 304(b) of the Magnuson Act. Upon reviewing the reasons for Amendments 38 and 40 and the comments on the proposed rule to implement it, NMFS has determined that this final rule extending the allocation between inshore and offshore components is necessary for fishery conservation and management.

**Changes in the Final Rule From the Proposed Rule**

This final rule includes the following changes from the proposed rule:

1. In § 675.27(e)(1)(iii), the date that the annual budget reconciliation report