

at least one instance, the dummy was not retained within the restraint. Failure of the child restraint system in this manner increases the likelihood of head injury to the occupant, which is clearly not insignificant or inconsequential to safety.

Following the NHTSA compliance test failures, Cosco implemented a material change to the housing of the buckle assembly and the material of the plunger pin. Cosco incorporated these material changes into all T-shield restraints manufactured after November 27, 1997 (the effective date for this engineering change is December 5, 1997, as no soft shield units were produced between November 27 and December 5). Testing performed by Cosco has demonstrated that this material change has resulted in the elimination of any noncompliance related to both the high post-test buckle release force and the shearing of the plunger pin. Test results provided in Cosco's application show that some units manufactured as late as November 1997—immediately prior to incorporation of the material change—failed to meet the performance requirements of the standard because the buckle released during dynamic testing, head excursion exceeded 813 mm (32.0 inches), and in one case, the dummy was not retained within the restraint. All subsequent tests of units with the revised materials, including compliance tests performed for NHTSA, have yielded passing results. Despite this, in its application for decision of inconsequential noncompliance, Cosco contends that the "minimal differences in properties between the materials does not adequately or conclusively explain the test results."

However, if the material properties of the differing buckle assembly housing and plunger pin are virtually identical as stated by Cosco, T-shields manufactured with the new materials would be expected to exhibit inconsistent test results similar to those in question, specifically with respect to release of the buckle assembly during dynamic testing and excessive post-test buckle release forces. Testing of child restraint systems with the material change incorporated has not demonstrated this. Accordingly, we are unconvinced that the noncompliant conditions are simply attributable to "test variances and anomalies that are inherent in the 213 test procedures" as Cosco claims. Rather, these test results indicate that a recall by Cosco in which the earlier seats were modified by bringing them up to the performance level of the later seats would have a beneficial and "consequential" impact on safety.

In its application for decision of inconsequential noncompliance, Cosco states that:

The public, upon seeing the number of recalls, concludes that child restraints currently available are unsafe and therefore declines to use them. The agency is aware and, in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints.

We wish to clarify and correct the above statement. It is correct that we generally advise consumers to continue using child restraints which have identified defects or noncompliances until such a time when the appropriate remedy can be effected. However, this is in recognition that—in most cases—use of a child restraint with an identified defect or noncompliance is safer than the alternatives of (a) restraining the young child with a vehicle belt system that does not fit properly, or (b) not restraining the child at all. In the absence of a grant of an inconsequentiality petition, we have never stated, nor implied, that a noncompliance—"technical" or otherwise—does not compromise the safety or effectiveness of child restraints.

In consideration of the foregoing, we have decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8).

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**L. Robert Shelton,**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-98-4383; Notice 2]

#### Kolcraft Enterprises, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that 706,068 child restraint systems it manufactured fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate

report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published on September 8, 1998, in the **Federal Register** (63 FR 47545), with a 30-day comment period. We received no comments.

FMVSS No. 213, S5.6.1.8, requires:

In the case of each child restraint system that can be used in a position so that it is facing the rear of the vehicle, the instructions shall provide a warning against using rear-facing restraints at seating positions equipped with air bags, and shall explain the reasons for, and consequences of not following the warning. The instructions shall also include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions.

In adopting S5.6.1.8, we said that such instructions would "complement" the requirement that owner's manuals of vehicles having a front passenger side air bag provide information regarding "proper positioning of occupants, including children, at seating positions equipped with an air bag." 59 FR 7643, 7646 (Feb. 16, 1994) (final rule). This requirement appears in S4.5.1(f) of FMVSS No. 208, which was added in 1993. 58 FR 46551, 46564 (Sep. 2, 1993) (final rule).

The items affected by the noncompliance are the instructions for proper use that were provided after August 15, 1994, with certain models of Kolcraft's child restraints in its effort to comply with S5.6 of FMVSS No. 213. Kolcraft's instructions provided the appropriate warning against using rear-facing restraints at seating positions equipped with air bags, as well as the reason for the warning and the consequences of not following it. However, Kolcraft's instructions did not include a statement expressly referring owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions. The noncompliances began August 15, 1994, the effective date of S5.6.1.8. The following models of child restraints were affected by the noncompliance: Rock'n Ride (until April 1996); Auto-Mate (until June 1997); Traveler 700 (until December 1995); Performa (until June 1997); and Secure Fit (until June 1997). The total number of child restraints involved is 706,068. In response to an April 17, 1997, letter from us concerning miscellaneous compliance issues,

Kolcraft has subsequently revised its instructions to conform to S5.6.1.8.

Kolcraft supports its application for inconsequential noncompliance with the following:

S4.5.1(f) of FMVSS No. 208 requires owner's manuals to provide information regarding "proper positioning of occupants, including children, at seating positions equipped with air bags." (Emphasis supplied.) It does not, however, require a vehicle manufacturer to include "child restraint installation instructions" in general. Indeed, for rear-facing infant restraints such as Kolcraft's Rock 'n Ride, there should be no child restraint installation instructions for "seating positions equipped with air bags," because rear-facing restraints should not be used in air bag equipped seats. And not surprisingly, no owner's manual we reviewed contains installation instructions for rear-facing infant seats at "seating positions equipped with air bags"; rather, they consistently warn against installation of a rear-facing restraint at an air bag equipped seating position. While some owner's manuals contain child restraint installation instructions for other (non-air bag) seating positions, not all owner's manuals contain such information. Thus, since the vehicle owner's manual will not always yield the "child restraint installation" information apparently contemplated by S5.6.1.8 of FMVSS No. 213, the inadvertent omission from the Kolcraft instruction sheets of a reference to the vehicle owner's manual is not consequential to motor vehicle safety.

Moreover, although Kolcraft does not question the usefulness of a statement directing vehicle owners to their owner's manual for "complement[ary]" (59 FR at 7646) information relating to the positioning of occupants—especially children—at seat positions equipped with air bags, Kolcraft's inadvertent failure to include such a statement in its instructions is inconsequential because Kolcraft's instructions set forth in detail the very information about child restraint installation and the proper positioning of children that is contemplated in S5.6.1.8 and the final rule promulgating the regulation, and, in many cases, exceed that information. In short, the omission of the statement directing owners of vehicles with front passenger side air bags to their owner's manual would not deprive vehicle owners using Kolcraft child restraints from any information germane to the safe installation of child restraints in vehicles equipped with air bags.

For example, Kolcraft's instructions include warnings not to place a rear-facing child restraint in a seat equipped with air bags, as well as a statement explaining the reason for the warning and the consequences of ignoring it. The instructions provide information regarding appropriate seating positions. The instructions also provide elaborate information about how to install child restraints with a variety of seat belts, and they illustrate a number of different seat belt configurations, explaining which are and which are not appropriate for use in installing child restraints. The instructions also explain why certain configurations are

inappropriate and what vehicle owners should do if a seat belt will not hold a child restraint tightly. Thus, Kolcraft's instructions provide all the information concerning installation and positioning of children that S5.6.1.8 apparently contemplates would be provided in owner's manuals, and, in many respects, exceed the information described in S5.6.1.8. Accordingly, Kolcraft's inadvertent noncompliance with S5.6.1.8's requirement of a statement referring to the vehicle owner's manual is inconsequential as it relates to motor vehicle safety.

Kolcraft does not question the usefulness or importance of S5.6.1.8's requirement that the instructions for child restraints direct owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions. As soon as it learned of its noncompliance with the requirement, Kolcraft revised its instructions to conform exactly to S5.6.1.8. However, because Kolcraft's noncompliant instructions provide detailed information relating to the installation of child restraints with a variety of seat belt configurations, as well as information concerning the proper positioning of children in vehicles equipped with air bags, the omission of a statement referring to the owner's manual in Kolcraft's instructions was inconsequential with respect to vehicle safety.

We are denying Kolcraft's application for the following reasons.

By way of background, upon conducting dynamic testing in 1991 that indicated air bags generally produce substantial increases in the values for the head injury criterion (HIC) and chest acceleration of dummies seated in rear-facing child restraints (compared to dummies in rear-facing restraints tested with no air bag), we sought to inform consumers about the adverse interaction of rear-facing child restraints and air bags as quickly as possible. We issued a "Consumer Advisory" (December 10, 1991) which warned parents about using rear-facing child seats in vehicle seats equipped with an air bag. Subsequently, we initiated actions in two separate areas to ensure that consumers would be provided important safety information about the effect of air bags on rear-facing child restraints.

First, on December 14, 1992, we published a Notice of Proposed Rulemaking (NPRM) which proposed to amend FMVSS No. 208, "Occupant Crash Protection," to (1) specify that vehicle manufacturers must install air bags as the means to provide the automatic crash protection required by the standard, and (2) require that labels bearing specified information about air bags be placed in vehicles equipped with air bags, and that additional, more detailed information about air bags be provided in the vehicle owner's manual (57 FR 59043). The proposed labeling

requirements were intended to ensure that consumers will have access to important safety information with respect to the air bags installed in their vehicles, including specific warnings against installing rearward-facing child restraint systems in front passenger seating positions equipped with an air bag. We published a final rule adopting these amendments on September 2, 1993 (58 FR 46551). The owner's manual requirements became effective on March 1, 1994, and the vehicle label requirements became effective on September 1, 1994.

Second, on April 16, 1993, we supplemented these actions by publishing an NPRM which proposed to amend labeling and other requirements of FMVSS No. 213 for rear-facing infant restraint systems (58 FR 19792). We proposed to require that (1) warning labels for these systems include a warning against using the restraint in any vehicle seating position equipped with an air bag, and (2) printed instructions for rear-facing restraints include safety information about air bags. We published a final rule adopting these requirements on February 16, 1994 (59 FR 7643). In response to a suggestion from Volkswagen, we also included the requirement at question in Kolcraft's application, namely, that the written instructions provided with child restraint systems that can be used in a position so that it is facing the rear of the vehicle must include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions. The vehicle owner's manual would include precautions specific to the vehicle that should be heeded for the safety of occupants, including children. These would include information on where to place a child restraint system in the air-bag equipped vehicle, which is an item of vehicle-specific information that only the vehicle manufacturer—and not the child restraint manufacturer—can provide. These requirements became effective on August 15, 1994.

We firmly believe that strict adherence to the requirements addressing warning labels, printed instructions, and information in the owner's manual as outlined above will maximize to the extent practicable the implementation of precautionary measures to preserve the safety of infants and young children traveling in motor vehicles equipped with air bags. Each of these warnings was developed with care to ensure that the specific content and location of the labels and instructions clearly and concisely convey the hazards of placing of rear-

facing child restraints in air bag-equipped seating positions. In addition, the requirements help ensure that consumers are provided information about where a rear-facing child restraint can appropriately be placed in the vehicle.

In the years since these amendments were adopted, we have continued to work very closely with both vehicle and child restraint manufacturers and others in the child passenger safety community to reduce the likelihood that a rear-facing infant restraint would be placed in a vehicle seating position that has an air bag. Through media advisories, consumer information fact sheets, revisions to the vehicle and restraint labeling and information requirements noted above, and other means, the entire child passenger safety community has taken measures to educate the public regarding the detrimental effects of a quickly deploying air bag when it strikes the seat back of a rear-facing infant restraint.

However, between 1995 and 1998, and despite the concerted efforts detailed above, we have confirmed that 15 children have been fatally injured in crashes where their rear-facing child restraints were installed in a seating position that was equipped with an air bag that had deployed, and another nine have sustained serious, but nonfatal, injuries.

The statement missing from Kolcraft's product conveys important safety information. Kolcraft contends that, while (1) S5.6.1.8 of FMVSS No. 213 requires written instructions for child restraints to include a statement "that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint *installation instructions*," (emphasis added), and (2) the corresponding requirements of S4.5.1(f) of FMVSS No. 208 requires vehicle owner's manuals to provide information regarding "proper positioning of occupants, including children, *at seating positions equipped with air bags*," (emphasis added), there, in fact, should be no child restraint "installation instructions" for "seating positions equipped with air bags," because rear-facing restraints should not be used in air bag equipped seats. We believe that Kolcraft is too narrowly interpreting the phrase "installation instructions" in the S5.6.1.8 requirement of FMVSS No. 213 as it relates to the S4.5.1(f) requirements of FMVSS No. 208.

In the final rule addressing installation of air bags and associated information to appear on labels and in owner's manuals (58 FR 46551), we specified that the vehicle owner's manual must provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. In commenting on our proposal to adopt this requirement, SafetyBeltSafe U.S.A. stated that it felt:

Complete information on the positioning of infants in cars with passenger side air bags would be essential in the vehicle owner's manual. It should include these points: (1) Children riding in a rear-facing restraint must never ride in the front seat if a passenger air bag is installed, because the air bag could hit the leading edge of the child restraint with great force if it deploys; (2) therefore, children under 20 pounds (and about one year of age) must always ride in a child restraint that faces the rear (or in a car bed that meets FMVSS 213) and must be placed in the rear seat, so they will not be hit by the air bag. If a child uses a car bed, this advice also applies, because current car beds have not been accepted for use in an air bag position. A child under this size must never be turned to face forward in the front or rear seat, due to the risk of neck and spinal cord injury; and (3) If there is no rear seat, this vehicle is not suitable for children under 20 pounds and one year, given the current state of the art of child restraints." (Docket 74-14-N79-005)

We adopted the requirement without incorporating the SafetyBeltSafe recommendations, explaining that "the agency believes that a requirement specifying that the owner's manual must provide any necessary precautions regarding the proper positioning of children at seating positions equipped with air bags to ensure maximum safety protection for those occupants is sufficient to ensure that information along the lines identified by SafetyBeltSafe U.S.A. will be provided." (58 FR 46557.) From this, it is clear that we did not intend to limit the information included in the vehicle owner's manual to specific "installation instructions" for child restraints per se, but rather, for the owner's manual to detail all necessary precautions to ensure safety, such as identification of which seating positions are appropriate, and which are not, for positioning child restraints depending upon the orientation of the child restraint, forward or rear facing. We consider this information to be "installation instructions," and in fact, most vehicle manufacturers now include specific

warnings against the use of rear-facing child restraints in air bag-equipped seating positions in their owner's manuals similar to those suggested by SafetyBeltSafe USA. Kolcraft's argument that the subject noncompliance is inconsequential on the theory that rear-facing child restraints should not be used in seating positions equipped with air bags, and as such, no "installation instructions" for such seating positions need be provided in the vehicle's owner's manual, is incorrect.

Further, in an issue as sensitive as air bags and infants, Kolcraft's failure to fully comply with the requirements of Standard No. 213—specifically, by not including the statement required in S5.6.1.8 referring owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions for supplemental information in 706,068 of its child restraints between 1994 and 1997—should not be excused. We do not accept Kolcraft's explanation as an indication that it exercised reasonable care in developing its product and associated documentation when Kolcraft states that "Kolcraft believes that the S5.6.1.8 requirement was overlooked because the NPRM did not propose the requirement \* \* \* thus, because it (Kolcraft) was already in compliance with the requirement contemplated in that subsection of the NPRM, Kolcraft believes that its personnel did not check that subsection in the final rule and, therefore, did not discover that the requirement of a statement referring to the owner's manual had been added in the final rule." We cannot condone Kolcraft's approach given the grave potential consequences should a parent mistakenly place a child in a rear-facing child restraint in a seating position equipped with an air bag that subsequently deploys in a crash.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

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

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**L. Robert Shelton,**

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