commission, or other form of direct payment to any employee from all companies with guarantees under the Act as reported to the Internal Revenue Service for any fiscal year.

(viii) Acquire any fixed assets other than those required for the maintenance of the Company's existing assets, including normal maintenance and operation of any vessel or vessels owned or chartered by the Company;

(ix) Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six months or more) for the payment of charter hire and rent on all such charters and leases which have annual payments aggregating in excess of an amount specified by the Secretary;

(x) Pay any indebtedness subordinated to the Obligations or to any other Title XI obligations;

(xi) Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short term loans, incurred or assumed in the ordinary course of business as such business presently exists;

(xii) Make any investment whether by acquisition of stock or indebtedness, or by loan, advance, transfer of property, capital contribution, guarantee of indebtedness or otherwise, in any Person, other than obligations of the United States, bank deposits or investments in securities of the character permitted for monies in the Title XI Reserve Fund; and,

(xiii) Create, assume, permit or suffer to exist or continue any mortgage, lien, charge or encumbrance upon, or pledge of, or subject to the prior payment of any indebtedness, any of its property or assets, real or personal, tangible or intangible, whether now owned or thereafter acquired, or own or acquire, or agree to acquire, title to any property of any kind subject to or upon a chattel mortgage or conditional sales agreement or other title retention agreement, except loans, mortgages and indebtedness guaranteed by the Secretary under Title XI of the Act or related to the construction of a vessel approved for Title XI by the Secretary, and liens incurred in the ordinary course of business as such business presently exists.

**§ 298.36 [Amended]**

23. Section 298.36 is amended as follows:

a. By removing the word ''Annual'' from the heading of the section.

b. By amending paragraph (a) by removing the words in the first sentence ''Secretary shall charge the Obligor an annual fee (Guarantee Fee)'' and adding in their place the words ''the Guarantee Fee rate shall be set''.

c. By removing the third and fourth sentences of paragraph (e) and adding one sentence in their place to read as follows: ''In calculating the present value used in determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board annual rates.''

24. Section 298.38 is revised to read as follows:

**§ 298.38 Partnership and limited liability company agreements.**

Partnership and limited liability company agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basic areas:

(a) Duration of the entity,

(b) Adequate partnership or limited liability company funding requirements and mechanisms,

(c) Dissolution of the entity and withdrawal of a general partner or member and

(d) The termination, amendment, or other modification of the entity without the prior written consent of the Secretary.

**§ 298.41 [Amended]**

25. Section 298.41 is amended by removing paragraph (c)(1) and redesignating existing paragraphs (c)(2) through (c)(6) as new paragraphs (c)(1) through (c)(5).

Dated: August 6, 1999.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 99–20757 Filed 8–12–99; 8:45 am]

BILLING CODE 4910–81–P

---

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 575

**[Docket No. 99–5100]**

**RIN 2127–AG49**

## Consumer Information Regulations; Seat Belt Positioners

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

**ACTION:** Grant of petition for rulemaking; notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to amend our consumer information regulations to require seat belt positioners to be labeled as not suitable for children of a certain age, e.g., under 6 years old, or a certain height. Seat belt positioners alter the positioning of vehicle lap and shoulder belts on children. We found in tests of some of the devices that they inadequately restrained a 3-year-old child dummy and reduced the performance of vehicle belts restraining a 6-year-old child dummy. We are also requesting information on the alternative of establishing a minimum performance standard for seat belt positioners. We have issued this document in response to a petition for rulemaking from the American Academy of Pediatrics.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than October 12, 1999.

**ADDRESSES:** You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202–366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:**

### Overview

This document grants a petition for rulemaking from the American Academy of Pediatrics (AAP) requesting that NHTSA amend Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213) (Standard 213), to include performance requirements applicable to aftermarket, add-on seat belt positioners. These devices alter the positioning of vehicle lap and shoulder belts. The statements on the packaging for some of these devices indicate that they are suitable for improving the fit of the belts on children, which in some cases includes 3- to 6-year-olds, and small adults.

The agency dynamically tested three types of belt positioning devices in 1994, using 3-year-old and 6-year-old dummies. We tested the dummies by restraining them in lap/shoulder belts

with, and without, the devices. When we compared the results, we found that in many of the tests with the 3-year-old dummy, the positioners reduced belt performance and contributed toward excessive head injury criterion (HIC) measurements (HICs were greater than 1000). The devices generally performed adequately with the 6-year-old dummy, in that the performance criteria of our child restraint standard were not exceeded, although there was some reduction in the performance of the vehicle belt system restraining the dummy.

In this document, we propose to amend our consumer information regulations (49 CFR Part 575) to require seat belt positioners to be labeled as not suitable for children of a certain age, e.g., 6 years, and younger. We also request information on the alternative, or additional, approach of establishing a minimum performance standard for seat belt positioners. Further, we also seek information on whether there is a real-world safety problem of sufficient magnitude to merit the agency's taking action.

## Petition for Rulemaking

On January 31, 1996, AAP petitioned NHTSA to amend Standard 213, ''Child Restraint Systems,'' to regulate aftermarket seat belt positioners. Aftermarket seat belt positioners, which are designed to improve the fit of the lap and shoulder belt system on a child or small adult, are not currently subject to any Federal motor vehicle safety standard. Standard 213 applies to ''any device except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 50 pounds or less.'' (S4) A seat belt positioner that does not restrain, seat or position children is not a device regulated by Standard 213. Safety Standard No. 208, ''Occupant Crash Protection'' (49 CFR 571.208) and Standard 210 (571.210), ''Seat Belt Assembly Anchorages,'' apply to new, completed vehicles. Standard 209 (571.209), ''Seat Belt Assemblies,'' applies to new seat belt assemblies. Because an aftermarket seat belt positioner is not installed as part of a completed vehicle or a seat belt assembly, Standards 208, 209 and 210 do not apply.[1]

AAP states that, because seat belt positioners are generally marketed as child occupant protection devices, the products should be subject to the same scrutiny and testing that child restraint systems undergo. AAP's concern is that some seat belt positioners ''appear to interfere with proper lap and shoulder harness fit by positioning the lap belt too high on the abdomen, the shoulder harness too low across the shoulder, and by allowing too much slack in the shoulder harness.'' Accordingly, AAP believes that the devices should be subject to a safety standard so that they are required to meet a minimum level of performance. AAP believes that this would be especially appropriate because, AAP contends, some parents decide to have their older children sit directly on the vehicle seat and use a combination of vehicle seat belts and seat belt positioners instead of having those children sit in booster seats certified to Standard 213. (As explained below, NHTSA recommends that children weighing over 40 pounds (lb) be restrained in a booster seat until they are tall enough so that they can, without the aid of a booster seat: (1) Wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, *and* (2) bend their legs over the front of the seat when their backs are against the vehicle seat back.)

## NHTSA's Previous Consideration of Seat Belt Positioners

We previously raised the question of whether seat belt positioners should be regulated by Standard 213 several years ago. In a rulemaking proceeding initiated in response to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act), we issued an NPRM seeking comment on, among other issues, the question of whether the standard should be applied to those devices, and if so, what requirements would be appropriate. We later issued a final rule amending Standard 213 in areas unrelated to seat belt positioners, but in that rule we discussed the public comments on this issue and announced our decision (60 FR 35126; July 6, 1995) not to propose applying the standard to these devices:

> Six commenters responded to this issue. All believed the devices need to be subjected to safety standards to ensure that they provide occupants with proper safety protection. UM–CPP [University of Michigan Child Protection Program] stated that the primary problem with these devices is that there are ''no formal test procedures and criteria for determining whether a given deflector is effective and/or better than nothing for certain vehicle belt/occupant combinations.'' IIHS [Insurance Institute for Highway Safety] strongly urged that these restraint devices to improve belt fit, be subject to Standard 213, as are booster seats. It said these devices are targeted to those children who have outgrown toddler seats but are too small to be appropriately restrained by adult seatbelts. Redlog, a manufacturer of belt adjustment devices, recommended that these devices be included in the definition of child restraints in FMVSS No. 213. Redlog recommended creating a sub-category within the existing definition of child restraints to accommodate these devices. It concluded by saying that dynamic crash testing and labeling for appropriate usage are essential requirements. Advocates [Advocates for Highway and Auto Safety] expressed its concern with the safety of these devices and said the agency has an obligation to test them to determine if they interfere with the safety performance of the restraint system. Safety BeltSafe said that ''standards are essential for the new category of product which purports to reconfigure the shoulder lap belt to respond to the differing seated heights of passengers and drivers in vehicles.'' It, however, said at this time, it does not recommend use of such products if the passenger is able to use a belt-positioning booster. CompUTence said that FMVSS 213 should address all child and small adult safety devices relating to occupant restraint and that, currently, these devices are sold without knowledge of whether they provide the safety claimed by their manufacturers.
>
> While commenters supported regulating the aftermarket devices, the agency is not prepared to undertake rulemaking at this time. NHTSA needs to better assess the safety benefits of such rulemaking, and the feasibility of a test procedure and practicability of performance requirements. (60 FR at 35137)

## Agency Review of Petition

In reviewing AAP's petition, we were guided by a number of considerations. First, we believe that children's crash protection will be maximized if parents follow the recommendations we developed on what type of restraint should be used for children of particular sizes. One question for us was whether the positioners themselves, or the statements in their marketing and packaging, might encourage parents to use child restraints in a manner inconsistent with those recommendations. Second, we believe that use of belt positioners must not degrade the safety of children whose child restraint usage is consistent with the recommendations.

### *NHTSA Recommendations Regarding Child Restraint Usage*

Our usage recommendations, which were published in November 1997 as part of an information brochure concerning on-off switches for air bags, are as follows:

[1] While seat belt positioners are not subject to the standards, they are items of motor vehicle equipment. Accordingly, their manufacturers are subject to the requirements in 49 U.S.C. 30119 and 30120 concerning the recall and remedy of products with safety related defects.

What Restraint Is Right For Your Child?

| Weight or size of your child | Proper type of restraint (Put your child in back seat, if possible) |
|---|---|
| Children less than 20 pounds,* or less than 1 year | Rear-facing infant seat (secured to the vehicle by the seat belts). |
| Children from about 20 to 40 pounds* and at least 1 year | Forward-facing child seat (secured to the vehicle by the seat belts). |
| Children more than 40 pounds* | Booster seat, plus *both* portions of a lap/shoulder belt (except only the lap portion is used with some booster seats equipped with front shield). |
| Children who meet both criteria below: | *Both* portions of a lap/shoulder belt. |
| (1) Their sitting height is high enough so that they can, without the aid of a booster seat: wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, *and* (2) Their legs are long enough to bend over the front of the seat when their backs are against the vehicle seat back. | |

* To determine whether a particular restraint is appropriate for your child, see restraint manufacturer's recommendations concerning the weight of children who may safely use the restraint.

We believe that it is important that seat belt positioners and other child passenger devices, and the statements in their marketing and packaging, not induce parents and other care givers to restrain children in a way that may be appropriate for a larger child, but not for that child. For example, children who cannot meet the sitting height and leg length criteria in the agency's recommendations should not be placed directly on a vehicle seat, restrained by the vehicle seat belts.

We believe that if seat belt positioners are marketed for children under 6 years old, they can induce people to act contrary to this advice. The 50th percentile 3-year-old male child weighs 33 lb. Under our recommendations, a 3-year-old child should be restrained by a forward-facing child restraint (a convertible or toddler seat) rather than by the vehicle's seat belts. When the child outgrows a forward-facing convertible or toddler seat, he or she should use a child booster seat, which lifts and positions the child to fit a vehicle's belt system. The booster seat should be used until the child is tall enough to wear the vehicle's lap and shoulder belts properly without an accessory, and can sit comfortably on the vehicle seat with knees bent over the front of the seat when the child's back is against the vehicle seat back.

We note that it is uncertain whether seat belt positioners are now generally marketed for use with 3-year-old children. We believe that the positioners are usually advertised in both their promotional materials and in statements on their packaging as being suitable for children who weigh 50 lb or more, which is approximately the weight of the 50th percentile 6-year-old male (48 lb). A positioner that, several years ago, had been advertised in packaging as suitable for use by children as young as 3 years old,[2] no longer is so recommended. Now, it is instead marketed as suitable for children weighing over 50 lb. Further, it is uncertain whether or to what extent seat belt positioners are being used with children 3- to 6-years old. State child restraint use laws requiring the use of child safety seats would indirectly prohibit use of a positioner alone in combination with vehicle seat belts (with no child safety seat), for restraining very young children (e.g., under the age of 4).

*NHTSA's Dynamic Testing of Seat Belt Positioners*

Following the issuance of the July 1995 rule, NHTSA published a report on an evaluation by our Vehicle Research and Test Center (VRTC) of three types of seat belt positioners. ''Evaluation of Devices to Improve Shoulder Belt Fit,'' DOT HS 808 383, Sullivan and Chambers, August 1994.[3] The three devices were the ChildSafer, a plastic strip that attaches to the lap belt and that has three different openings through which the shoulder belt can be routed; the SafeFit, a pouch design through which the lap/shoulder belt is routed; and the Seatbelt Adjuster, a plastic clip that attaches to the lap belt, which has a flange through which the shoulder belt is rerouted. The ChildSafer was then recommended for occupants between the heights of 38 inches (the standing height of the average 3-year-old male child) to 60 inches. VRTC conducted a series of 35 sled tests using a dynamic test procedure to evaluate seat belt positioners using the standard frontal condition specified in Standard 213[4], as well as modified conditions to simulate oblique (15 degree offset) impacts. VRTC used test dummies representing a 3-year-old and 6-year-old child, and a 5th percentile adult female. In the test representing a 15 degree offset impact, the test seat assembly was placed in two different positions, rotated clockwise (occupant faces toward shoulder portion of seat belt) and rotated counterclockwise (occupant faces away from shoulder portion of seat belt).

VRTC found that injury criteria measurements were generally higher when a seat belt positioner was used in restraining the 3-year-old dummy than when the child dummy was restrained without a belt positioner. (The latter case is referred to as the ''baseline'' configuration. In the baseline tests conducted using the 3-year-old dummy, the dummy was positioned such that the shoulder belt was positioned across the shoulder and away from the neck area as best as possible.) When tested in the baseline configuration, i.e., with no positioner, the HIC values were less than 1000 for all tests. (However, the HIC value for the three-year-old dummy

[2] This positioner, the Child-Safer, was included in NHTSA's test program, infra, and tested with the 3-year-old dummy.

[3] While the study was conducted in 1994, preparation of the report for publication was not completed until 1995. The report is available from the National Technical Information Service, Springfield, VA 22161.

[4] Standard 213's dynamic test uses a standard vehicle seat assembly to which a child restraint system is attached by means of a vehicle seat belt. The seat assembly, along with the child restraint system, is subjected to a frontal 30 mph change of velocity over a duration of about 80 milliseconds.

in the baseline/clockwise orientation was marginal at 995.) When tested with the positioners, HIC levels, for the most part, exceeded the 1000 HIC limit of Standard 213.

In all of the tests (with and without seat belt positioners) with the 3-year-old dummy, the dummy's head hit his forearms. In some tests, these head impacts were more severe than in others. In some tests with a seat belt positioner, the forehead would hit one forearm and then bounce to the other forearm. These contacts contributed to the increase of the HIC measurements. However, although removing the effect of the head contact reduced the HIC values by about 6 percent, the HIC values were still above the Standard 213 criterion of 1000.

In other tests with a seat belt positioner, the shoulder belt portion of the lap/shoulder belt slipped off the shoulder, allowing the 3-year-old dummy to slip around the belt. In tests of the 3-year-old dummy in the frontal crash configuration with a seat belt positioner, the increased chest g's and head and knee excursions were still within the limits of the standard. One positioner lowered chest g measurements in the frontal and 15 degree offset crash configurations.

In tests with the 6-year-old dummy, when using a seat belt positioner, the dummy tended to ''roll-out'' of the seat belt positioner and around the shoulder belt. The HIC, chest g's, and head and knee excursions increased in some cases but were generally within the limits for all the tests (with and without seat belt positioners), except one of the seat belt positioners had chest g measurements exceeding the limit of Standard 213 in the frontal and 15 degree offset clockwise tests. That device introduced slack in the shoulder belt during the test. In some of the tests, the positioners resulted in injury criteria values that were lower than or approximately the same as those obtained in the baseline tests.

The complete test results are set forth in Tables 1 and 2 below. Those results should be compared to the requirements of Standard 213, which specifies testing in the frontal crash condition and limits HIC to 1000; chest acceleration to 60 g's; head excursion to 813 mm; and knee excursion to 915 mm.

TABLE 1.—INJURY CRITERIA AND EXCURSION FOR 3-YEAR-OLD DUMMY

| | Fit device | HIC | Chest clip (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|
| | Limits of Standard 213 | 1000 | 60 | 813 | 915 |
| 3-Year-Old | Baseline (No Device) | 874 | 48.7 | 477 | 553 |
| Frontal | Child Safer | 1309 | 55.1 | 560 | 615 |
| | SafeFit | 1095 | 56.5 | 496 | 618 |
| | Seatbelt adjuster | 999 | 48.1 | 551 | 583 |
| 3-Year-Old | Baseline (No Device) | 995 | 48.5 | 411 | 535 |
| 15° Offset Clock-wise | Child Safer | 1565 | 52.3 | 564 | 665 |
| | SafeFit | 1435 | 62.1 | 486 | 639 |
| | Seatbelt adjuster | 1238 | 45.4 | 452 | 580 |

TABLE 2.—INJURY CRITERIA AND EXCURSION FOR 6-YEAR-OLD DUMMY

| | Fit device | HIC | Chest clip (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|
| | Limits of Standard 213 | 1000 | 60 | 813 | 915 |
| 6-Year-Old | Baseline (No Device) | 657 | 50.4 | 481 | 628 |
| Frontal | Child Safer | 769 | 65.2 | 567 | 674 |
| | SafeFit | 427 | 49.1 | 566 | 649 |
| | Seatbelt adjuster | 634 | 50.8 | 473 | 604 |
| 6-Year-Old | Baseline (No Device) | 595 | 54.3 | 435 | 602 |
| 15° Offset Clockwise | Child Safer | 947 | 67.1 | 540 | 661 |
| | SafeFit | 621 | 57.7 | 461 | 580 |
| | Seatbelt adjuster | 794 | 55.1 | 493 | 640 |
| 6-Year-Old | Baseline (No Device) | 409 | 48.5 | 516 | 607 |
| 15° Offset Counter-clockwise | Child Safer | 509 | 50.1 | 628 | 605 |
| | SafeFit | 386 | 42.8 | 577 | 589 |
| | Seatbelt adjuster | 374 | 45.7 | 554 | 559 |

**Agency Decision Regarding AAP's Petition**

NHTSA is granting AAP's petition and is proposing to amend our labeling regulation to require seat belt positioners to be labeled with a warning against using the devices with children under the age of 6.[5] We also request comment on whether the requirements proposed in this NPRM should also apply to seat belt positioners installed as original equipment in a motor vehicle, in addition to seat belt positioners sold directly to consumers in the ''aftermarket.'' We are also asking for information on other possible courses of action we could take with regard to the devices.

*Issue 1: Is There a Safety Need for This Rulemaking Action?*

A real-world safety problem has not been quantified thus far. There are no complaints in our crash files concerning seat belt positioners. AAP did not submit any information indicating that positioners are actually causing or exacerbating injuries.

The VRTC study found that there could be a potential safety problem. The study found that three types of positioners generally degraded the performance of the lap/shoulder belt system when tested with the 3-year-old dummy, by increasing the head and chest injury criteria measurements, and head and knee excursion measurements, over the measurements made in the baseline tests. One positioner slightly decreased chest clip values measured in the frontal and 15 degree offset tests. HIC levels for the positioners were at or exceeded the 1000 HIC limit of Standard 213 in all tests. When tested with the 6-year-old dummy, the positioners generally performed adequately, by keeping the injury criteria measurements within the limits of the standard. In some of the tests, the positioners resulted in injury criteria values that were lower than or approximately the same as those obtained in the baseline tests.

However, although HIC values generally exceeded the limit of Standard 213 in tests with the 3-year-old dummy, seat belt positioners might not be typically used with 3-year-old children. As noted above, the devices are typically marketed (in advertising literature and on packaging) for children who weigh 50 lb or more, which is approximately the weight of the 50th percentile 6-year-old male (48 lb). In view of the current marketing of seat belt positioners for use by children weighing 50 lb or more, we request comments on whether regulating the devices is warranted.

While the VRTC study compared the performance of the various seat belt positioners to a baseline configuration of the test dummy restrained without the positioner (i.e., positioned directly on the test seat and restrained by a lap/shoulder belt), we also compared the performance of the seat belt positioners (as measured in the VRTC study) to Standard 213 compliance test results of convertible child restraints and belt-positioning seats. We compared the VRTC test results of the seat belt positioning devices to compliance tests that were conducted by the agency between 1993 and 1998, using the 3-year-old dummy in convertible child restraints and the 6-year-old dummy in belt-positioning booster seats. The average HIC value in 363 compliance tests conducted on convertible child restraints using the 3-year-old dummy is 483.6, as compared to an average HIC of 1,134.3 for the three seat belt positioners tested (using the frontal crash scenario results only). This is a 57.3 percent reduction of HIC values when using the convertible-type child restraint. Test results also indicate that chest acceleration values are reduced to an average of 46.9 g's in the 363 compliance tests using the 3-year-old dummy in a convertible child restraint, from an average of 53.2 g's using the seat belt positioning devices.

The average head and knee excursion in the compliance tests of the convertible seats was found to be 28.9 inches and 32.5 inches, respectively. These values are somewhat greater than the 21.1 inches and 23.8 inches for head and knee excursion found for the belt positioning devices during the VRTC study, but still well within the limits of 32 inches and 36 inches prescribed in Standard 213. It should also be noted that beginning in September of this year, child restraints will be required to meet more stringent requirements with respect to the allowable head excursion in dynamic testing. Convertible child restraints manufactured on or after September 1, 1999 will be required to limit head excursion of the test dummy to a maximum of 28 inches (the restraints may incorporate a tether to meet this requirement).

The average values for each of the injury criteria measured with the 6-year-old dummy in compliance tests of belt-positioning booster seats are below those measured using the seat belt positioning devices in the VRTC study. HIC values in 17 compliance tests of belt-positioning booster seats using the 6-year-old dummy have averaged 464, as compared to 610 for the seat belt positioning devices in the VRTC study, and chest acceleration values have averaged 48.8 g's for belt-positioning booster seats, as compared to 55 g's for the seat belt positioning devices. Head and knee excursion are also reduced by an average of 1 inch each when using a belt-positioning seat.

The data above indicate that children are typically afforded greater levels of protection when using convertible-type and belt-positioning booster seats than when using the seat belt positioning devices tested in the VRTC study. These data indicate that a 3-year-old child should not be restrained using a seat belt positioning device. Children of this age should typically be restrained in a convertible-type child restraint, which often offers a 5-point harness for added protection in the event of a crash. Further, the data show that a 6-year-old child restrained in a belt-positioning booster seat is provided a greater level of safety protection than when using a seat belt positioning device.

*Issue 2: Should We Require a Warning Label for the Devices?*

Our tests of seat belt positioners indicate that they generally performed adequately with the 6-year-old dummy, but did not do so in tests with 3-year-old dummy. (The devices increased the latter dummy's HIC values to unacceptable levels.) In view of this, we are proposing to require that the devices be labeled with a warning that they must not be used with children under a certain age, e.g., 6 years. Alternatively, a child's height might be a better predictor of whether a positioner would perform adequately than a child's age. Thus, we also are requesting comments on whether the label should include a warning against using the devices with children under a certain height, e.g., the height of a 50th percentile 6-year-old male (47.5 inches, or 1206 mm), as an alternative or in addition to the warning referencing the child's age.

We are proposing that seat belt positioners be labeled with information that would maximize the correct positioning of the belts on the child. The lap and shoulder belt needs to be positioned so as to maximize the

[5] In November 1998, NHTSA Administrator Ricardo Martinez, M.D., formed a ''Blue Ribbon Panel,'' consisting of representatives from the auto and child restraint safety communities, to examine ways to ensure the proper protection of children ages 5 to 16 in motor vehicles. On March 15, 1999, the panel released a set of recommendations, including a number in the areas of product design and research that directly address the issue of seat belt positioning devices. NHTSA will consider the recommendations of the panel in conjunction with those comments received in response to this notice in determining the appropriate course of action regarding the regulation of belt positioning devices.

distribution of the crash forces to the child's skeletal structure. The lap belt and the shoulder belt should not be positioned such that they would increase the loading of the soft tissues and organs of the child's abdomen. The shoulder belt should not be aligned so that the child might twist toward the middle of the vehicle in a crash, or adjusted with excessive slack in the belt. We thus propose that seat belt positioners be labeled with the statement: ''Make sure that this device positions the lap belt low across the child's hips and not on the stomach. The shoulder belt must be snug and on the child's shoulder, not near the neck or off the shoulder.'' Comments are requested on this issue.

The regulatory text provided in this NPRM proposes a permanent label that includes the information, noted above, as to how the lap and shoulder belt should be properly fitted, and information as to the model name or number of the system, the manufacturer's name, and the place of manufacture. The latter information would be required to assist in identifying the equipment for purposes of a finding of a safety defect or a recall. Is there enough room on these devices for a permanent label which incorporates all of this information in a readable size? If not, are there alternative means to convey the same information, e.g., a permanent label warning ''Do not use for children under 6'' on the device, in conjunction with a requirement that the remaining information be provided with the packaging material?

*Issue 3: Should the Devices Be Regulated by Standard 213?*

The agency tentatively believes that it would not be appropriate for seat belt positioners to be regulated by Standard 213. Standard 213 does not apply to devices recommended for children weighing over 50 lb, which, NHTSA believes, is the recommended weight range for the users of most, if not all, positioners. Further, even if the current requirements of Standard 213 were extended to such devices, there is some question of whether those requirements could effectively assess belt positioners.

If the current test procedure and injury criteria of Standard 213 were used to test and evaluate the devices, it appears that belt positioners would generally pass Standard 213 when tested in accordance with the standard, i.e., with the 6-year-old dummy. This conformance would leave unaddressed and even obscure the question of whether the standard would be able to distinguish between acceptable and unacceptable performance of belt positioners. Belt positioning devices can cause the lap belt to rise above the hips in a crash and press into the soft abdominal area instead of staying lower and lying across the child's hips, thereby increasing the potential for abdominal injury. Currently there are no abdominal sensors on the child dummies used by NHTSA in compliance testing, or injury criteria developed, and thus no way to evaluate the potential for abdominal injury using the existing test protocols of Standard 213.[6]

If Standard 213 were applied to belt positioners, some consumers might erroneously conclude that a belt positioner certified to the Federal standard would provide the same level of protection as a child restraint system. Some parents might respond to the certification of belt positioners by prematurely moving their child out of a child safety seat into the vehicle seat belt system, believing that the ''certified'' belt positioner renders the vehicle belt system adequate for the child. The premature ''graduation'' of a child to the vehicle belt system would be contrary to NHTSA's recommendations on restraining children and could degrade the child's crash protection.

NHTSA believes that children who cannot properly wear the vehicle shoulder belt without a positioning device should still be using a child restraint system, such as a toddler seat or a belt-positioning booster, rather than the vehicle belt system. A toddler seat provides a high back for neck support and typically has side supports that cushion and protect the child in frontal and side impacts. Seat belt positioners do not provide such protection. In addition, toddler seats have an internal restraint system (a harness system which may include a shield or shelf) which fits the child better than vehicle belts and which does not allow direct contact of a vehicle lap belt with the child. Thus, the child restraint diverts and distributes dynamic crash forces away from vulnerable parts of the child's body. Further, a toddler or booster seat is more comfortable for children whose legs are too short to allow them to bend their knees when sitting upright against the vehicle seat back. These children will slouch down when seated directly on the vehicle seat cushion, so as to bend their knees, and in doing so are likely to reposition the vehicle's lap belt over the soft abdominal area.[7] The more comfortable fit of the child restraint system's platform seat therefore results in a safer fit of the lap restraint, compared to the fit of the lap belt on a child sitting directly on the vehicle cushion.

Older children who can fit in a belt-positioning booster seat would be safer in such seats than seated on a vehicle seat using the vehicle seat belts and a seat belt positioning device of the types discussed in this document. The main object of belt positioning devices is to adjust the shoulder belt portion of a Type II (lap and shoulder) belt so as not to cross the child's face or neck. Booster seats achieve this objective by raising the child in relation to the belts—rather than vice versa, as with belt positioning devices—and thereby make it less likely, than when using a positioning device, that the lap belt would be positioned over the child's abdomen. Boosters provide a seating platform that enable children to bend their knees without slouching, which may occur when the child is seated directly on the vehicle seat. As noted in the previous paragraph, slouching can result in the repositioning of a lap belt over the child's soft abdominal area. Booster seats also hold the child more securely and reduce the likelihood that excessive slack will be introduced into the belt system. Again, however, these differences would be obscured by the fact that both the seat belt positioner and the booster seat would be certified as complying with ''all applicable Federal motor vehicle safety standards.'' Thus, consumers might mistakenly assume that both offer comparable levels of protection when they would not.

To avoid this misunderstanding, NHTSA tentatively believes seat belt positioners should not be considered as the same type of device as a child restraint system, or regulated by Standard 213. Comments are requested on this issue. (We also note, however, that use of booster seats for children weighing more than 40 pounds has been

[6] Similarly, belt positioning devices increased neck load and moments in the VRTC tests when used with the 5th percentile female dummy compared to baseline conditions (no device). No neck injury assessment was performed using child dummies because child dummies equipped with a neck load cell were not available at the time that the VRTC test program was conducted. On September 18, 1998, NHTSA proposed to amend Standard 208 to require the use of new 12-month-, 3-year-, and 6-year-old dummies that are instrumented with load cells to measure neck forces and moments when evaluating air bags in frontal crashes (63 FR 49957). The proposal also included neck injury criteria. If a procedure and criteria are adopted, seat belt positioners and other child safety devices may be evaluated for potential child neck injury.

[7] ''Study of Older Child Restraint/Booster Seat Fit and NASS Injury Analysis,'' Klinich, Pritz, Welty, et al., DOT HS 808 248, November 1994.

documented to be very low. The availability of belt positioning devices may encourage some people to use the shoulder portion of a lap/shoulder belt who otherwise would put the shoulder belt behind their back due to physical discomfort. Putting the shoulder belt behind the back dramatically decreases restraint effectiveness.)

*Issue 4: Should the Devices Be Subject to Performance Requirements? If Yes, What Requirements Would Be Appropriate?*

Despite the tentative conclusion above, comments are requested regarding a performance requirement, in lieu of or in addition to, a labeling requirement. Comments are requested on the feasibility of developing a practical procedure to dynamically test the performance of these devices when used alone with the vehicle's belt system, and also in conjunction with a child restraint system. If commenters are supportive of performance requirements for seat belt positioners, NHTSA requests that they provide methods by which to assess the injury potential for areas of identified concern, such as abdominal and neck loading. As noted above in this document, NHTSA issued a September 18, 1998 proposal to amend Standard 208, to require the use of new child dummies that are instrumented with load cells to measure neck forces and moments when evaluating air bags in frontal crashes. The proposal included neck injury criteria. Comments are requested on the appropriateness of using the proposed procedure and criteria for evaluating neck injury potential using various child dummies restrained in seat belt positioners.

## Rulemaking Analyses and Notices

*Executive Order 12866 (Federal Regulation) 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 prepared a preliminary regulatory evaluation (PRE) for this document which discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. The PRE is available in Docket No. 99–5100 and may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, ''How can I read the comments submitted by other people?'' The PRE will be listed in the docket summary, along with the comments from other people.

The PRE notes that labeling positioners as proposed in this NPRM could be beneficial in helping assure that young children are restrained in the most appropriate manner for their size or age. This would help prevent the degradation of safety benefits that occurs when seat belts are not properly fitted across occupants' shoulders and hips. However, we cannot currently quantify these benefits because no data exist to determine the target population. The PRE estimates that labeling costs resulting from the proposed labeling requirements of this NPRM could be $0.05 to $0.08 for the manufacturer's cost, depending on the type of label used, and between $0.12 and $0.19 per positioner for the consumer. The cost to label the roughly 1.7 million positioners sold annually is expected to be between $204,000 and $323,000.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (Public Law 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment a preliminary regulatory flexibility analysis (PRFA) describing the impact of proposed rules on small entities. NHTSA has included a PRFA in the PRE for this proposal.

Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration assistance. One of the criteria for determining size, as stated in 13 CFR 121.601, is the number of employees in the firm. To qualify as a small business in the Motor Vehicle Parts and Accessories category (SIC 3714), the firm must have fewer than 750 employees. The agency has considered the small business impacts of this proposed rule based on this criterion.

The PRFA discusses the possible impacts of this action on small businesses that manufacture belt positioning devices and requests information that would assist NHTSA in further analyzing those impacts. As noted above, possible labeling costs resulting from the labeling provisions of this NPRM are estimated to be $0.05 to $0.08 for the manufacturer's cost. Added consumer costs could be from $0.12 to $0.19. The agency tentatively believes that the cost increase would not significantly raise the price of seat belt positioners, and would not have a significant economic impact on a substantial number of small entities.

*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 proposal 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 would not have any significant impact on the quality of the human environment.

*Executive Order 12778 (Civil Justice Reform)*

This proposed rule would not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This proposed rule would not preempt the states from adopting laws or regulations on the same subject, except that it would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

## Comments

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

*How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

*Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on ''search.''

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**List of Subjects 49 CFR Part 575**

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles.

## PART 575—[AMENDED] CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 575 as set forth below.

1. The authority citation for Part 575 would continue 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 575.4(a) would be revised to read as follows:

### Subpart A—General

* * * * *

**§ 575.4 Application**

(a) General. Except as provided in paragraphs (b) through (d) of this section, each section set forth in subpart B of this part applies, according to its terms, to motor vehicles, tires and items of motor vehicle equipment manufactured after the effective date indicated.

* * * * *

3. Section 575.101 would be added to read as follows:

**§ 575.101 Seat belt positioners**

(a) *Scope.* This section requires manufacturers of seat belt positioners to provide information about the correct use of the devices and warn against the use of the devices with small children.

(b) *Purpose.* The purpose of this section is to provide purchasers information related to the performance of seat belt positioners with small children.

(c) *Application.* This section applies to seat belt positioners that are not an integral part of a motor vehicle.

(d) *Definitions. Seat belt positioner* means a device, other than a belt-positioning seat, that is manufactured to alter the positioning of Type I and/or Type II belt systems in motor vehicles.

(e) *Requirements.* Each manufacturer of a seat belt positioner shall permanently label the device with the following information:

(1) The model name or number of the system.

(2) The manufacturer's name, or a distributor's name, if the distributor assumes responsibility for all duties and liabilities imposed on the manufacturer with respect to the device by 49 U.S.C. 30101 *et seq.*

(3) The place of manufacture (city and State, or foreign country), or the location (city and State, or foreign country) of the principal offices of the distributor, if the distributor's name is used instead of the manufacturer's name.

(4) A statement warning that the device must not be used with children under the age of six [alternatively, or additionally, under the height of 47.5 inches (1206 mm).]

(5) The statement: ''Make sure that this device positions the lap belt low across the child's hips and not on the stomach. The shoulder belt must be snug and on the child's shoulder, not near the neck or off the shoulder.''

Issued on August 9, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99–20950 Filed 8–11–99; 8:45 am]

BILLING CODE 4910–59–P

---

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AF57**

## Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Scaleshell Mussel as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the scaleshell mussel (*Leptodea leptodon*). This species historically occurred in 13 states in the eastern United States. Currently, the species is known from a few scattered populations within the Mississippi River Basin in Missouri, Oklahoma, and Arkansas. Scaleshell inhabits medium-sized to large rivers with stable channels and good water quality. The abundance and