## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–99–6271; Notice 2]**

### Safeline Corporation; Denial of Applications for Decision of Inconsequential Noncompliance

Safeline Corporation, of Denver, Colorado, has determined that a number of child restraint systems fail to comply with sections of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and has filed appropriate reports pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' Safeline 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 noncompliances are inconsequential to safety.

Safeline has identified two noncompliances, and has filed separate applications for each of these conditions. Notice of receipt of the applications was published on October 7, 1999, in the **Federal Register** (64 FR 54727). We received one comment, from the Center for Auto Safety (CAS), which opposed granting the applications.

*Condition No. 1: Omission of Air Bag Warning Label.* FMVSS No. 213 has required rear-facing child restraints to be labeled with an air bag warning since August 1994 (59 FR 7643). Beginning on August 15, 1994, S5.5.2(k) of FMVSS No. 213 required all rear-facing child restraint systems to have a label warning the consumer not to place the rear-facing child restraint system in the front seat of a vehicle that has a passenger side air bag, and a statement describing the consequences of not following the warning. These statements were required to be on a red, orange, or yellow contrasting background, and placed on the side of the restraint designed to be adjacent to the front passenger door of a vehicle, visible to a person installing the rear-facing child restraint system in the front passenger seat.

This labeling requirement was revised in 1996 (61 FR 60206) to require an enhanced, larger, and much more prominent warning on a distinct label. In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, S5.5.2(k)(4) of FMVSS No. 213 requires this label to be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and readable. The text portion of this label consists of a heading reading ''WARNING'', with the following messages under that heading:

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under.

Opposite the text, the warning label has a pictogram showing an inflating air bag striking a rear-facing child seat, surrounded by a red circle with a slash across it. The label must also conform to size and color requirements specified in S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii).

Safeline has notified us that between June 14, 1997 and September 15, 1997, it sold between 750 and 900 Sit'n'Stroll Child Restraints, Model 3240, that do not have the revised air bag warning label required by S5.5.2(k)(4) of FMVSS No. 213. The noncompliance occurred because the seat cover assemblies for the affected units were manufactured prior to May 27, 1997, consistent with Safeline's normal production cycle and prior to the effective date of the new requirement. These work in progress seat cover assemblies were then used in final assembly subsequent to May 27, 1997.

Safeline supports its application for inconsequential noncompliance with the following:

> Because of the significant lapse in time since the noncompliance, the products are no longer being used in the rear facing seating configuration. The purpose of the air bag warning statement is to prevent children from being placed rear facing in the front seat of a vehicle equipped with a passenger side air bag. Since it is recommended children remain rear facing for at least 12 months, and it has been 24 months since the products have been sold, it is likely these units are no longer being used in the rear facing position.
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> Seat cover subassemblies were manufactured prior to May 27, 1997.
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> Quantity of units not complying with amended rule is small. Between 750 and 900 units were sold that do not comply with the requirements.
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> Because existing warning statements are found on the labels of the product and in the instruction manual. While Safeline Corporation strongly concurs the new air bag warning statement is an effective enhancement in the proper usage of child restraint systems, the previously existing warnings clearly state the hazards of placing a rear facing child restraint in a seating position with an air bag. Additionally, the exposure provided by the widespread national media campaign has been effective in educating parents of the dangers regarding the placement of rear facing child restraint systems in vehicles with air bags.
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> The probability of a second hand owner receiving information through a recall notification is unlikely. Thus, the likelihood is small that a second hand owner, using the product in the rear facing position, would actually receive the recall notification.

**Discussion**

We are denying Safeline's application for the following reasons:

In an issue critical to safety as air bags and infant seating, Safeline's failure to incorporate the air bag warning label required in S5.5.2(k) cannot be deemed as inconsequential to safety. The potential danger of passenger-side air bags and children restrained in rear-facing child restraints placed in the front seat of vehicles has been of utmost concern to the agency. To address this concern, in 1994 we amended both FMVSS No. 213 and FMVSS No. 208 to require manufacturers of child restraints and motor vehicles to warn owners against placing rear-facing child restraints in front seats of vehicles equipped with passenger-side air bags. The requirements addressing warning labels, printed instructions, and information in the vehicle owner's manual pertaining to air bags and child restraints are necessary to maximize 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 rear-facing child restraints in air bag-equipped seating positions.[1]

We have also worked 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, and other means, the child passenger safety community has taken measures to educate the public regarding the detrimental effects of an air bag when it strikes the seat back of a rear-facing infant restraint.

Despite these concerted efforts, between 1995 and March 1, 2001, 19 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. We are aware of another eight children who have

[1] As noted above, FMVSS No. 213 has required rear-facing child restraints to be labeled with an air bag warning since August 1994 (59 FR 7643). The labeling requirement was revised in 1996 (61 FR 60206) to require an enhanced and much more prominent warning on a distinct label. The noncomplying units have labels that conform to the earlier requirements.

sustained serious, but nonfatal, injuries. These numbers might have been even higher had an enhanced warning label not been provided. We cannot excuse Safeline's acknowledged noncompliance of using seat pads without the required air bag warning label, given the grave potential consequences should a parent, failing to be warned 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.

While Safeline acknowledges that the noncompliance has the potential to reduce the likelihood of a parent correctly installing the product, and concurs that the new air bag warning statement is an effective enhancement in the proper usage of child restraint systems, it contends that ''given the small number of units without the airbag warning statement, the redundancy of the warning on the product, the overall nationwide media campaign on child restraint/airbag interaction, and time elapsed since the product was first used by the consumer, this noncompliance does not create a significant risk or any potentially negative consequences to the public.'' Safeline's contention that the ''small number'' of noncomplying units supports granting its inconsequentiality petition is without merit. In ruling on inconsequentiality petitions, we consider the potential consequences of the noncompliance, rather than the number of vehicles or items of equipment that are affected. In the case of this noncompliance, the consequence of a parent not knowing of the dangers of placing a rear-facing child restraint at a seating position equipped with an air bag are potentially fatal. Thus, we do not accept the argument that this noncompliance is inconsequential for safety because of the relatively small number of units involved.

In its comments, the Center for Auto Safety (CAS) disagreed with Safeline's claim that ''because of the significant lapse in time since the noncompliance, the products are no longer being used in the rear-facing seating configuration.'' CAS noted that:

> Safeline fails to take into account the fact that several families may have had subsequent births in the past twenty-four months and choose to use the Sit'n'Stroll for these infants. Nor does Safeline consider other real life scenarios, in which infants under the age of twelve months are potentially using the Sit'n'Stroll in its rear-facing configuration. For instance, persons who are child care providers may be using the Sit'n'Stroll to transport multiple infants. Also, several families using the Sit'n'Stroll may have sold the child safety seat or donated it to a state agency or organization for another family to use. Therefore, the fact that twenty-four months have elapsed since the distribution of the nonconforming child seats onto the market is an insignificant fact.

We believe that the points raised by CAS are valid. Accordingly, we are not convinced that Safeline's claim that the nonconforming Sit'n'Strolls ''likely * * * are no longer being used in the rear facing position.'' For the aforementioned reasons, this aspect of the petition is denied.[2]

*Condition No. 2: Certification of Child Restraint to 25 Pounds in Rear-Facing Position.* S7.1(c) of FMVSS No. 213 states that:

> A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg but not greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2, provided, however, that the 9-month-old test dummy is not used to test a booster seat.

Safeline recommends use of its Sit'n'Stroll rear-facing for children weighing up to 25 lbs. In October 1998, we requested that Safeline identify the dummy that was utilized to evaluate the Sit'n'Stroll child restraint, and provide a copy of each test report and any engineering analysis that formed the basis of its certification of the Sit'n'Stroll to the performance requirements of FMVSS No. 213 for recommended usage greater than 22 pounds in the rear-facing seating configuration. In response, Safeline submitted test data from Calspan Corporation (now Veridian Engineering) and the University of Michigan which reflected failures of seat back angle requirements and/or structural integrity requirements in every instance where a 3-year-old dummy was positioned in the rear-facing position. However, passing test results were achieved for these requirements with a 20-pound TNO dummy weighted to 25 pounds and positioned in the rear-facing position. Safeline concluded that the Sit'n'Stroll child restraint model ''could safely be used in the rear-facing position at a weight not to exceed 25 pounds.''

In June 1999, we notified Safeline that the Sit'n'Stroll child restraint does not appear to meet the applicable requirements of FMVSS No. 213 with the 3-year-old dummy in the rear-facing position. All Sit'n'Stroll child restraints, model 3240, manufactured by Safeline between November 1996 and June 1999 have been recommended for use for up to 25 pounds in the rear-facing position. A total of 21,759 units are affected by this noncompliance.

Safeline supports its application for inconsequential noncompliance with the following:

> The Sit'n'Stroll meets all rear facing testing criteria using a 20-pound TNO dummy weighted to 25 pounds. Our testing has shown that an infant dummy weighted to 25 pounds had minimal additional affects on the seat back rotation angle results relative to the dummy specified in FMVSS No. 213. The maximum seat back rotation angle we have experienced in dynamic testing is significantly less than the allowable 70-degree maximum. These results provided the confidence to previously recommend the usage of the Sit'n'Stroll for children weighing no more than 25 pounds in the rear facing seating position. Safeline Corporation is aware of no incidents, claims, reports, injuries, fatalities or warranty issues of children 22 to 25 pounds being injured or harmed in any way by the extended use of the Sit'n'Stroll.
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> The large surface area of the base of the Sit'n'Stroll reduces the protrusion of the child restraint into the automobile's seat. The Sit'n'Stroll's unique design—the wide, uninterrupted base surface area—relative to other convertible child restraints, produces seat back rotation angle results well below the maximum allowable criteria by more effectively distributing the dynamic forces.

**Discussion**

We are denying Safeline's application for the following reasons:

FMVSS No. 213 specifies performance requirements that a child restraint must meet when tested with dummies representing the range of children for which that child restraint is recommended. Under FMVSS No. 213's requirements, child restraints recommended for use by children weighing over 22 lb are tested with a test dummy representing a 3-year-old child. So tested, they must meet all performance requirements of the standard, including limits on how far they allow the rear-facing dummy's head to extend beyond and above the

[2] Safeline also suggests that its petition should be granted because ''[t]he probability of a second hand owner receiving information through a recall notification is unlikely. Thus, the likelihood is small that a second hand owner, using the product in a rear facing position, would actually receive the recall notification.'' We reject this argument. The argument implies that even the most egregious noncompliance or defect should be inconsequential if the item of equipment is owned ''second hand.'' Such an argument has no merit and has no bearing on whether a noncompliance is inconsequential to safety. Further, Safeline can make careful effort to ensure that as many owners as possible receive notice of a recall. Safeline would be required to directly notify Sit'n'Stroll owners of the recall (even second hand owners) who have registered themselves with Safeline pursuant to the owner registration program which FMVSS No. 213 requires manufacturers to implement.

top of the child restraint in a 30-mph dynamic test. (This document refers to these limits as the head excursion limits.) The head excursion limits are set forth in S5.1.3.2 of FMVSS No. 213, as follows:

S5.1.3.2. Rear-facing child restraint systems. In the case of each rear-facing child restraint system, all portions of the test dummy's torso shall be retained within the system and neither of the target points on either side of the dummy's head and on the transverse axis passing through the center of mass of the dummy's head and perpendicular to the head's midsagittal plane, shall pass through the transverse orthogonal planes whose intersection contains the forward-most and top-most points on the child restraint system surfaces.

The standard permits manufacturers to recommend rear-facing child restraints for children weighing more than 10 kg (22 lb). However, in making its certification of compliance with the standard, a manufacturer must ensure that the restraint meets the requirements of FMVSS No. 213 when tested with the appropriate test dummy (i.e., in the case at hand, the 3-year-old dummy). The test procedure incorporating the dummy has been determined to be a reliable and repeatable method for objectively determining a system's performance in an actual crash. The test procedure meets the need for motor vehicle safety by ensuring that rear-facing child restraints are able to maintain structural integrity when restraining heavy infants and safely limit head excursion of the children in a crash.[3]

Safeline knew that its product had to meet FMVSS No. 213 when tested with the 3-year-old dummy. On August 18, 1992, in response to a letter from Safeline, the agency sent the manufacturer an interpretation of FMVSS No. 213 affirming that the 3-year-old test dummy must be used to test Safeline's rear-facing restraints. Other agency interpretation letters and **Federal Register** rulemaking documents issued before and after the August 1992 letter have also affirmed use of the 3-year-old test dummy to test child restraints designed for children weighing more than 22 lb (*e.g.,* April 22, 1992 letter to Century Products Company; April 29, 1999 denial of petition for rulemaking from SafetyBelt Safe USA (64 FR 23037)). NHTSA's 1992 letter to Safeline called Safeline's attention to the possibility that the restraint's seat back might be too low to enable the restraint to meet the head excursion limit when dynamically tested rear-facing with the 3-year-old dummy, and suggested that Safeline consider raising the height of the seat back to avoid any potential compliance problem with the excursion limit. Safeline's decision to forego testing with the 3-year-old dummy following our letter and the test failures led to its noncompliance.

As noted above, in October 1998 we requested that Safeline identify the dummy that was utilized to evaluate the Sit'n'Stroll child restraint and provide a copy of each test report and any engineering analysis that formed the basis of Safeline's certification of the Sit'n'Stroll for recommended usage greater than 22 pounds in the rear-facing configuration. Safeline provided copies of five test reports that documented a series of 12 tests performed at the Calspan Corporation and at the University of Michigan. During these tests, the Sit'n'Stroll was tested seven times in the rear-facing configuration with the 3-year-old dummy conforming to part 572 subpart C as prescribed in FMVSS No. 213. In each instance, there was a structural failure of the lap belt anchor tabs on the child restraint. Because the vehicle lap belt disengaged from the anchor tabs, there was excessive seat back rotation during the dynamic test. These results would have clearly constituted failure of the Sit'n'Stroll to meet the performance criteria of FMVSS No. 213 if they had been conducted as compliance tests.[4]

Given that meeting FMVSS No. 213 is based upon testing conducted with a 3-year-old dummy for child restraints recommended for use by children weighing more than 22 pounds but less than 40 pounds, and that Safeline provided test results showing that the Sit'n'Stroll failed to meet the performance requirements of FMVSS No. 213 in each of seven tests conducted with the Sit'n'Stroll positioned rear-facing, Safeline had a compelling basis upon which to decide that there was a noncompliance and to file a Part 573 report. There are unknown safety consequences at this time in using a weighted 20-pound test dummy to determine the suitability of a restraint for infants weighing up to 25 pounds. The consequences, should the Sit'n'Stroll fail structurally resulting in excessive seat back rotation as was shown in Safeline's own testing, are potentially serious. The noncompliance engenders concern as to whether the Sit'n'Stroll can maintain structural integrity or adequately limit the head excursion of children weighing up to 25 lb or otherwise protect them. For the aforementioned reasons, we cannot find the noncompliance to be inconsequential to safety.

In consideration of the foregoing, we have decided that the applicant has not met its burden of persuasion that the noncompliances it describes are inconsequential to safety. Accordingly, its applications are hereby denied. Further, Safeline must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

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

Issued on: September 20, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

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[3] There are a number of rear-facing restraints on the market today that are recommended for children weighing 25 lb, and sometimes up to 30 lb. The 3-year-old dummy is used to test these restraints.

[4] The Sit'n'Stroll was tested only three times with a 9-month-old dummy weighted to 25–28 pounds (the 9-month-old dummy typically weighs 20 pounds), twice in the rear-facing configuration and once in the forward-facing configuration. In each of these three tests, the restraint performed acceptably when evaluated in accordance with the procedures of FMVSS No. 213.

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Cooperative Agreement DTRS656–00–H–0004]**

### Quarterly Performance Review Meeting on The Cooperative Agreement ''Better Understanding of Mechanical Damage in Pipelines''

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of meeting cancellation.

As a result of the tragic events of last week, the uncertainty of air travel, and the travel restrictions many companies have placed on their employees, the quarterly performance review meeting to report on progress with research titled ''Better Understanding of Mechanical Damage in Pipelines,'' scheduled for September 27, 2001, is canceled. This work is being managed by the Gas Research Institute (GTI) and performed by Battelle Memorial Institute along with the Southwest Research Institute. The meeting was previously announced in the **Federal Register** (66 FR 39392; July 30, 2001) and was to be held at the Sheraton Buckhead Hotel, 3405 Lenox Road, NE., Atlanta, GA beginning at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** Lloyd W. Ulrich, Agreement Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–