

§ 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:

(1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and § 40.245(b)(8) for the breath tube ASD).

(2) The saliva ASD does not activate (see § 40.245(a)(7); or

(3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-2001-10916, Notice 2]

RIN 2127-AI55

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Final rule.

SUMMARY: NHTSA has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints. This rule amends the requirements for child restraint labels and the written instructions that accompany child restraints. This rule makes changes to the format, location, and content of some of the existing requirements.

DATES: This final rule is effective October 1, 2003. Child restraints may be certified to the new requirements prior to this date. If you wish to submit a petition for reconsideration of this rule, your petition must be received by December 2, 2002.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety

Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mary Versailles of the NHTSA Office of Planning and Consumer Programs, at 202-366-2057.

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.

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I. Overview

The National Highway Traffic Safety Administration (NHTSA) has been mandated by Congress to consider whether to prescribe clearer and simpler labels and instructions for child restraints (Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106-414, 114 Stat. 1800). Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002.

On November 2, 2001 (66 FR 55623), NHTSA published a notice of proposed rulemaking (NPRM) proposing changes

to the format, location, and content of some of the existing labeling requirements of the Federal motor vehicle safety standard for child restraint systems (49 CFR 571.213). Specifically, NHTSA proposed (1) a requirement that some information be molded into or heat embossed to the shell to improve durability, (2) changes to existing location requirements for some labels, (3) a uniform font specified for all labels on all child restraints, (4) a requirement that most labels be white with black text, and (5) color-coding of installation information to distinguish forward-facing from rear-facing information. In addition, with regard to content, NHTSA proposed (6) a reworded warning statement, (7) a requirement that all mandated statements related to use be arranged below that statement in a bulleted form, (8) rewording of some of these statements to simplify their language, and (9) a new diagram showing the child restraint using a new child restraint anchorage system (see 49 CFR 571.213). With regard to written instructions, NHTSA proposed (10) conforming changes with those proposed for labels and (11) a new requirement for information to assist owners in determining the meaning of the term "snugly" used on child restraint labels. Last, NHTSA proposed (12) a new labeling requirement for harness slots.

After reviewing the comments received in response to the NPRM, and research conducted subsequent to the NPRM by Transport Canada, this final rule amends the current requirements for child restraint labels and the written instructions that accompany child restraints. Specifically, the agency is changing the existing location requirements for some labels (number 2 above), requiring most labels to be white with black text (number 4 above), rewording some label statements to simplify their language (number 8 above), requiring mandated statements on labels to be in a bulleted list headed by the statement "WARNING! DEATH or SERIOUS INJURY can occur" (number 6 and 7 above), requiring a new diagram showing the child restraint using the new child restraint anchorage system (number 9 above), and requiring some additional information defining the term "snugly" to be in the written instructions (number 11 above). The other changes proposed by the NPRM have not been adopted by this final rule.

II. Current Requirements

A. Labels

Federal Motor Vehicle Safety Standard (FMVSS) No. 213 (49 CFR 571.213) requires that all currently manufactured add-on child restraint systems¹ must be labeled with the following information (S5.5.2): the model name or number, the manufacturer's (or distributor's) name, the statement "manufactured in (*month, year*)," the place of manufacture (or location of the distributor's principal office), a certification statement, a statement concerning the manufacturer's recommendations for maximum mass and height of children who should use the child restraint, a warning statement concerning the consequences of failing to follow the instructions, statements about proper use of belts or other restraints as appropriate, an air bag warning label if the child restraint can be used rear-facing, an installation diagram, a registration statement for recalls, and a statement about use in motor vehicles and/or aircraft as appropriate.² This information must be in English, lettered not smaller than 10 point type, and on contrasting background, except the air bag warning label has very specific requirements for location and size.³ The warning statement to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning must also be visible when the restraint is installed in a vehicle.

B. Written Instructions

Each add-on child restraint system must have printed installation instructions (an owner's manual) that includes a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child (S5.6). The installation instructions must include information on attaching the child restraint to a tether anchorage or a child restraint anchorage system⁴ if

¹ Please note that the requirements for built-in child restraint systems are not summarized here. Factory-installed built-in's are required to have some, but not all, of the information required for add-on's, primarily due to the lack of need for warnings about proper installation. While this preamble will only discuss requirements in terms of add-on's, this final rule is also making conforming changes to the built-in labeling requirements. These changes can be found in the regulatory text for paragraphs S5.5.5, and S5.5.5(f) through (i).

² The use statement must be in red lettering and placed after the certification statement.

³ These requirements can be found in S5.5.2(k)(4).

⁴ See 49 CFR § 571.225.

appropriate. The owner's manual must also include a statement that children are safer in rear seating positions; information about the types of vehicles, seats and seat belts with which the restraint can or cannot be used; a statement about the consequences of not following the warnings; a statement that the restraint should be secured in the vehicle even when not occupied, an air bag warning statement, and a registration statement for recalls. There are also some specific statements about proper use required for various types of restraints. Finally, the child restraint must have a location on the restraint for storing the owner's manual.

III. Summary of Comments and Transport Canada Research

NHTSA received 14 comments on the proposal, from child restraint and automobile manufacturers, child restraint and automobile trade groups, and child safety consumer groups. In general, commenters were supportive of efforts to improve labels, and felt that overall the proposal would make existing labels simpler and easier to read. However, there were a number of comments about specific aspects of the proposal that will be discussed in the remainder of this notice.

The Alliance of Automobile Manufacturers objected to any changes in label and instruction requirements for built-in child restraints (other than simpler required wording and a bullet format). They asserted that requirements for built-ins would be unnecessary and burdensome without any safety benefit. The only additional changes to the requirements for built-in child restraints being adopted in this rule are black text on white background and the definition of "snugly." For required information, a requirement for black text on a white background is just as effective at improving readability of built-in restraint labels as it is for add-on restraint labels. In addition, NHTSA is not aware of any information that there is less risk from improperly adjusting the straps on a built-in child restraint as there is on an add-on child restraint. Therefore, where built-in child restraints have the same current requirements as add-on child restraints parallel changes have been adopted.

Subsequent to the publication of the NPRM, Transport Canada conducted research on child restraint labels. The report for this research will be placed in the docket for this notice as soon as it is available. As part of that research, participants were asked to install a child restraint into a vehicle and then to install and secure a 6-month infant dummy and a 18-month child dummy.

The order of the dummies was randomized. The child restraint was equipped with one of four label configurations. These configurations were:

- (1) No labels,
- (2) Existing manufacturer labels,
- (3) Labels based on NHTSA's proposed changes to FMVSS 213, and
- (4) Labels developed by Transport Canada based on a review of the human factors literature and an analysis of the tasks necessary to operate the seat chosen for the study.

After reviewing the Transport Canada study, NHTSA has concerns about some aspects of our proposal. Specifically, the study raised concerns about font, color-coding and harness slot labeling. Based on their review of the literature, Transport Canada concluded sans serif fonts were more readable, the opposite of NHTSA's research. Transport Canada's research shows that child restraints with color-coded instructions were oriented forward- or rear-facing correctly more often than child restraints without labels or with existing labels, but were still oriented incorrectly at least half of the time. The child restraint used in the Transport Canada study had an adjustable harness, rather than separate harness slots and therefore NHTSA's proposal was inappropriate for the design. Because of these findings, NHTSA believes that it would be advisable to conduct further research and then to repropose those issues in another rulemaking.

In discussing Transport Canada's research with us, Transport Canada has indicated that other research they are conducting on a performance requirement for label permanence is also promising and they expect to be able to propose a performance requirement when they begin their rulemaking. NHTSA would like to be able to review this research before making a final decision on the permanence and therefore will also repropose that issue in another rulemaking.

Therefore, this final rule will only address the following issues from the NPRM: location, background color, capital letters, height and weight statement, warning regarding the consequences of not following instructions, belt use statement, installation diagram, and voluntary labels. NHTSA plans to work with Transport Canada on a future proposal regarding further changes to the labels. NHTSA will consider any comments on those issues when it is developing that proposal.

IV. Changes to the General Label Requirements

The following sections discuss new format requirements for mandatory labels.

A. Location

NHTSA currently requires the warning statement about failure to follow the instructions, the statements about proper use of belts and other restraints, and the air bag warning to be visible when the restraint is installed in a vehicle. Location is not specified for other mandatory information. NHTSA proposed that all required information, other than model name or number, manufacturer name, manufacturing date, and place of manufacture, be labeled on the child restraint so that it is visible when the restraint is installed in a motor vehicle. This would have been a change for the requirements for the certification statement, height and weight labeling, the installation diagram, the registration statement, and the statement about use in motor vehicles and/or aircraft, which are not currently required to be visible by FMVSS No. 213.

Commenters sought clarification as to what the agency meant by "visible." For example, must the label be visible from both sides of the vehicle? NHTSA did not intend to change what is currently meant by "visible" in S5.5.3, only to broaden the list of labels that needed to meet this requirement. The specified information must be visible from either side when the child restraint is installed as specified on the standard bench seat.

Commenters also argued that only information regarding installation and securing the child needed to be visible when the child restraint was installed in a vehicle. After reviewing the comments, NHTSA agrees that only information related to installation and securing the child needs to be visible once the restraint is installed. NHTSA's purpose in proposing changes to the existing requirements is to reduce misuse of child restraints. The certification statement and registration statements are not related to proper use and therefore would not decrease misuse by being visible. The statement about use in aircraft is used when boarding aircraft, not when the seat is installed in a vehicle. Therefore, the language of this section has been modified so that only the statement regarding height and weight and the installation diagrams have been added to the visibility requirement.

B. Background

NHTSA currently requires the information to be labeled "on a

contrasting background." NHTSA proposed to require all information to be in black text on a white background, except for the heading of the warnings which would be in black text on a yellow background.

Many commenters objected to this proposal, either because they felt that the current requirement for a contrasting background was sufficient, or because they felt that "white" was not specific enough to be enforceable. The Juvenile Products Manufacturers Association (JPMA) asked NHTSA to allow dark blue text to reduce costs.

As discussed in the NPRM, experience with existing labels shows that the current requirements are not sufficient. NHTSA is also not convinced that the use of the term "white" will cause problems. NHTSA has had a similar requirement for air bag labels for over five years and vehicle manufacturers have not had problems complying with the requirement for "white." NHTSA believes that JPMA's comment was related to the proposal to color-code rear-facing information with blue. Because that proposal is not adopted by the final rule the cost issue should be moot. For these reasons, NHTSA is adopting the proposed requirement.

C. All Capital Letters

NHTSA proposed to delete the current requirement for block letters, and proposed that capital letters only be required in the heading for the warnings.

Commenters generally supported these proposals, but asked that the capitalization in the heading be changed to be consistent with the capitalization in the air bag warning label. This suggestion has been adopted in the final rule.

To clarify the capitalization requirements, NHTSA is amending S5.5.2(h) through (j), S5.5.5(h) and (i), and S5.6.1.10 so that the regulation is not written in all capitals. NHTSA has interpreted the requirements so that capital letters were not required. However, this change will clarify that normal sentence capitalization shall be used in labels and instructions, unless Standard No. 213 shows a word as all capital letters.

V. Changes to Label Contents

In the following subsections, NHTSA discusses changes and additions to mandated language for child restraint labels.

A. Statement Regarding Height and Weight

NHTSA proposed minor changes to simplify the language in the required statement regarding height and weight, so that it would read, "Use only with children * * *" NHTSA asked for comments on deleting the height references in these statements to further simplify them.

While only one commenter explicitly supported the simplified language, no commenter objected to it. Therefore, NHTSA is adopting the simplified language in this final rule.

With regard to deleting the height reference, only one commenter disagreed. Other commenters that supported deleting this reference noted that the important measures are seated height, which parents don't generally know, or the relative position of the child's head to the child restraint. One commenter suggested that the agency require a label with functional wording such as, "This child seat should not be used rear-facing if the top of the child's head is above the red line." (see comment of National SAFE KIDS Campaign, NHTSA-2001-10916-14)

Despite the widespread support for deleting the reference to standing height, NHTSA is not doing so at this time. None of the commenters suggested that height was irrelevant to proper use, only that there may be better ways to convey this information. NHTSA plans to explore requirements for more functional wording, such as that suggested in these comments, in future research. In the interim, NHTSA believes that while standing height may not be a perfect indicator of proper fit, it is better than no information.

NHTSA has also added an option for seats that can only be used as belt-positioning seats to be labeled only with the maximum height the seat can be used for. NHTSA believes that by allowing manufacturers the option of labeling these seats only with the maximum height for which they can be used, we will more clearly convey the appropriate information to parents and caregivers. This will also allow manufacturers of these seats to label them consistent with NHTSA's policy that children who have outgrown child safety seats should use a booster seat until they are at least 8 years old, unless they are 4'9" tall, regardless of weight.

B. Warning Regarding the Consequences of Not Following Instructions

NHTSA proposed to replace the current statement about the consequences of not following the instructions on child restraints with the following statement:

WARNING! DEATH OR SERIOUS INJURY CAN OCCUR

• Follow all instructions on this child restraint and in the written instructions located _____

This would be followed with additional bullets for any additional mandated statements, including the statement about maximum height and weight, and the statements about use of belts or other restraints. As discussed earlier, NHTSA also proposed to require the heading to be in black text on a yellow background and requested comments on whether it should require or allow the alert symbol used on the air bag warning label (see Figure 10 in FMVSS No. 213).

Generally commenters supported this proposal and the use of the alert symbol, but had some questions and suggestions. One commenter asked that only the alert symbol and the word "warning" be on a yellow background, consistent with the vehicle air bag warning label on the sun visor. One commenter objected to the proposed label, speculating that the proposed heading might lead parents to believe that the child restraint itself is a source of potential harm.

Because of the universal support for the alert symbol, NHTSA is requiring it in this final rule. NHTSA is not removing the phrase "death or serious injury can occur" from the heading. The commenter offered no evidence that this phrase would discourage child restraint use. NHTSA's research for other labels indicates that this statement is more likely to get the user's attention and cause them to read the warnings that follow than the word "warning" alone. This is particularly true for parents that are being provided information related to their children. However, NHTSA will explore this phrase in future research to ensure that it is not interpreted differently in this context. Because of the similarity between the new heading required for child restraint label warnings and the air bag warning label in vehicles, NHTSA is allowing manufacturers the option of having the phrase "death or serious injury can occur" on either a yellow or white background.

The Alliance of Automobile Manufacturers requested a minor change to the first bullet for built-in child restraints to read, "Follow all instructions on this child restraint and in the vehicle's owner's manual." NHTSA agrees that this is simpler than language that would have been likely under the proposal (* * * in the written instructions located in the vehicle's owner's manual). Therefore, the

requirements for built-in child restraints are modified to reflect this comment.

Graco, a child restraint manufacturer, asked if the label had to be one label or could be multiple labels as long as they were applied in the correct order. NHTSA is not requiring that the mandated warnings be on a single label, so long as the separate components are attached to the child restraint in the correct order and without any intervening labels.

C. Belt Use Statement

Because of concerns about the vagueness of the term "snugly," NHTSA proposed requiring the following information to be included in the written instructions. This information is used in NHTSA's Standardized Child Passenger Safety Training Curriculum.

- A snug harness should not allow any slack. A snug harness should not, however, be so tight as to press into the child's body.
- A "snug" strap lies in a relatively straight line without sagging, but neither does it press on the child's flesh or push the child's body into an unnatural position.

Commenters did not strongly support this proposal, noting that the proposed language is fairly complicated. Some commenters suggested requiring a picture, though no specific pictures were suggested. One commenter noted that the information is not needed on self-adjusting harnesses.

NHTSA is not aware of a commonly used picture that could be used to illustrate how snugly to adjust a harness. Since further research will be required on other issues in light of the Transport Canada study, NHTSA could also develop and test one or more illustrations that could be required. In the interim, NHTSA is requiring a modified statement be included in the written instructions. In reviewing the comments NHTSA noted that the second half of the first statement was duplicated in the second statement.

The new statement is:

- A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's flesh or push the child's body into an unnatural position.

NHTSA is also modifying the language of the regulation requiring the "snugly" statement on child restraints and the explanatory statement in the written instructions to exclude belts that automatically adjust to fit the child.

D. Installation Diagram

NHTSA proposed to require an additional installation diagram showing

the child restraint installed in a seating position with a child restraint anchorage system, and requested comments on whether the current requirement for a diagram showing the child restraint installed in a seating position equipped with a lap belt can be deleted.

Commenters uniformly support requiring a diagram showing a child restraint installed in a seating position with a child restraint anchorage system, and this proposal has been adopted.

Commenters were mixed in their opinions about whether NHTSA should delete the diagram of a child restraint installed in a seating position equipped with a lap belt. Commenters who disagreed with deleting this diagram noted that there are still a number of vehicles in use that have lap belts only at one or more seating positions. Ford stated that NHTSA should delete this requirement because in some vehicles the only position with a lap belt only is the center front position and some users may interpret this diagram to require them to install a rear-facing child restraint in this position.

With regard to the Ford comment, child restraints are required to have three different diagrams—lap belt only, lap/shoulder belt and a child restraint anchorage system. In addition there are numerous warnings against putting a rear-facing child restraint in the front seat of a vehicle with an air bag. Thus NHTSA believes there is sufficient contradictory information to prevent the interpretation Ford suggests.

In addition, NHTSA notes that in addition to all the vehicles currently in use with seating positions that have only a lap belt, lap/shoulder belts are also not required at all seating positions in vehicles being produced today. Therefore, there will be many instances where a child restraint user needs to know how to install the child restraint in a seating position with only a lap belt. Accordingly, NHTSA has not deleted the requirement for the lap belt only diagram.

VI. Language

In the NPRM, NHTSA requested comments on whether Spanish should be required on child restraint labels. While all commenters would have supported allowing other languages, many were critical of mandating another language. Those who were against mandating Spanish language labels noted that, combined with the visibility requirement, this could limit the amount of information a manufacturer could label on a child restraint. One commenter suggested requiring a statement both labeled on the child restraint and in the written instructions

directing the user to the availability of Spanish language instructions unless a manufacturer voluntarily used Spanish language labels and instructions.

While NHTSA encourages manufacturers to provide Spanish language labels and instructions, or labels and instructions in other languages if warranted by the target sales population, NHTSA is not convinced that it should mandate that manufacturers provide labels or instructions in any additional languages. NHTSA will continue to allow additional labels in languages other than English, however language has been added to the standard to specify that information in additional languages must be an accurate translation of the required information.

VII. Voluntary Labels

NHTSA requested comment on whether voluntary labels should be required to meet the same requirements as mandatory labels. Some commenters noted that this question was vague, but assumed that it referred to the requirements regarding visibility, font and color. These were indeed the types of requirements NHTSA was referring to. Most commenters, while noting that most manufacturers would use the same font or background colors, felt that this should not be required. Some of the concerns noted were space with the visibility requirement or effect on corporate logos.

NHTSA is not requiring voluntary labels to comply with any of the requirements for mandatory labels in this rule. NHTSA is sensitive to some of the possible concerns raised by the commenters and has decided that its current position that voluntary information is permitted as long as it does not distract from mandatory information is sufficient. However, to reinforce this NHTSA has added language to the standard that voluntary labels cannot distract from mandatory information. Such distraction could be caused by color, size, font or other visual attributes, not just content.

VIII. Other Issues

In the NPRM, NHTSA requested comment on mandating a minimum reading level for labels and written instructions in lieu of mandating specific language. One of the commenters on the NPRM, Uniformed Services University of the Health Sciences, stated that they had conducted readability tests on written instructions and found that they required a 10th grade reading level on average. NHTSA will reconsider mandating a minimum reading level for

labels and written instructions after conducting more research.

NHTSA also asked for comments on the availability of on-line registration. Commenters supported this idea, as long as mail-in registration cards were still available for those who do not have access to the internet. In the next rulemaking NHTSA will propose changes to the registration card to make it easier for manufacturers to inform child restraint purchasers of such an option.

Commenters also raised issues not addressed in the NPRM. The Alliance of Automobile Manufacturers asked NHTSA to specify that metric measurements be listed first in the height and weight statements to harmonize with Canadian requirements. Because metric measurements are not the most commonly used in the United States, NHTSA is not considering such a mandate. However a 1996 interpretation letter to General Motors has stated that manufacturers have this option if they chose. Ford stated that there were still statements that were not in plain English. One suggested change regarding the statements about placing certain child restraints in a rear-facing position has been made since it parallels the proposed changes for the height/weight statements. Other suggestions will be considered in the next rulemaking. Any other suggestions for issues not raised in the NPRM, such as formats for dates, will be considered prior to issuing the next proposal.

IX. Effective Date

While NHTSA didn't propose a specific effective date, a couple of commenters addressed this issue. The Alliance of Automobile Manufacturers asked NHTSA to allow either the current or new requirements for several years because there is no safety need for changes for built-in child restraints. The Alliance also asked NHTSA to coordinate the effective date with rulemaking Transport Canada plans to do in the future. Evenflo, a child restraint manufacturer, asked for a one year leadtime, but noted that they could implement the proposed changes in 180 days if the molding requirement were dropped.

NHTSA is requiring all child restraints to comply with these new requirements within one year of the date of publication of this final rule. As discussed earlier, to the extent that built-in child restraints have requirements similar to add-on child restraints, there is no indication that the safety need to understand the required information is different. NHTSA cannot wait until an unspecified time in the

future when Transport Canada will conduct rulemaking to coordinate effective dates because we have a statutory mandate to conduct rulemaking now. However, NHTSA hopes to coordinate the next rulemaking with Transport Canada, including effective dates. Since Evenflo indicated that it could comply within 180 days if there were no molding requirement and automobile manufacturers have complied with other labeling requirements within the same time frame, allowing a year should not impose an unreasonable burden. Manufacturers will be allowed to comply with either the existing requirements or the new requirements prior to that date.

X. Future Research

In the NPRM, NHTSA stated that it intended to conduct further passive evaluation,⁵ at a minimum, prior to issuance of a final rule to verify that the changes have reduced the reading level necessary to comprehend the labels. NHTSA has not conducted this research prior to issuing this final rule. NHTSA intends to do this and other research prior to beginning the next rulemaking on child restraint labels. While the changes made in this final rule include recommendations made during the initial passive evaluation and therefore should improve readability, NHTSA anticipates that the changes made at this stage are modest and would result in only a minor change to the reading level required to comprehend child restraint labels. Therefore, we have decided that it would be a better use of agency resources to conduct further passive evaluation as part of the research NHTSA will be conducting for the next rulemaking, which will further improve the labels and are more likely to achieve the level of reduction in reading level that the agency would ultimately like to achieve. NHTSA expects to conduct additional research within the next year and begin another rulemaking after the completion of that research.

Prior to issuing this final rule, NHTSA has discussed which issues are covered with Transport Canada to ensure that they agree that these issues are not contraindicated by their research. Prior to beginning further research, NHTSA will work with Transport Canada to coordinate our research efforts to ensure that the efforts of both agencies are consistent.

⁵ Passive evaluation refers to an evaluation based on the characteristics of the language, vocabulary and visual presentation of the information using standard readability measures, rather than an evaluation based on consumer feedback.

XI. Rulemaking Analyses and Notices

A. 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. In the "Final Economic Assessment, FMVSS No. 213, FMVSS No. 225, Child Restraint Systems, Child Restraint Anchorage Systems," February 1999, the agency estimated that there were 68 fatalities and 874 injuries caused annually by misuse of child restraints. We are unable to estimate the effectiveness of these proposals on this target population, but by providing clearer instructions we expect to reduce misuse.

NHTSA anticipates that the cost of changing the location and text of the labels to be minor. There is a cost for adding color, estimated to be \$.01 to \$.03 per label.

B. Regulatory Flexibility Act

The agency has considered the effects of this final rule under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as amended. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the agency does not anticipate any significant economic impact from this final rule.

C. Paperwork Reduction Act

The Department of Transportation has not submitted an information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). The affected public is 10 child restraint manufacturers and 6 vehicle manufacturers. This rule does not impose any new information collection requirements on manufacturers. NHTSA does not anticipate a significant change to the hour burden or costs associated with child restraint labels and written instructions.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule has been analyzed in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this final rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The final rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. 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.

F. Executive Order 12778 (Civil Justice Reform)

This final rule would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except if the state requirement imposes a higher level of performance and applies only to vehicles procured for the States' use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards.

That section does not require submission of a petition for reconsideration or other administrative proceeding before parties may file suite in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards when they become available.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure of more than \$100 million annually.

I. Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Child restraint systems, Motor vehicle safety.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by revising the introductory text of S5.5.2, S5.5.2(f), S5.5.2(g), S5.5.2(h), S5.5.2(i), S5.5.2(j), S5.5.2(k), S5.5.2(l), S5.5.3, the introductory text of S5.5.5, S5.5.5(f), S5.5.5(g), S5.5.5(h), S5.5.5(i), S5.6.1.10(a) and S5.6.1.10(b); redesignating existing S5.6.3 as S5.6.2.4 and existing S5.6.4 as S5.6.2.5; adding new introductory text to sections S5.5 and S5.6; and adding new section S5.6.3 to read as follows:

§ 571.213 Standard No. 213; Child Restraint Systems.

* * * * *

S5.5 Labeling.

Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation of English labels or written instructions.

* * * * *

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type. Unless otherwise specified, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

* * * * *

(f) One of the following statements, inserting the manufacturer's

recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg and seats that can only be used as belt-positioning seats may delete the reference to weight:

(1) Use only with children who weigh _____ pounds (____ kg) or less and whose height is (*insert values in English and metric units; use of word "mass" in label is optional*) or less; or

(2) Use only with children who weigh between _____ and _____ pounds (*insert appropriate English and metric values; use of word "mass" is optional*) and whose height is (*insert appropriate values in English and metric units*) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between _____ and _____ pounds (*insert appropriate English and metric values; use of word "mass" is optional*) and whose height is (*insert appropriate values in English and metric units*) or less.

(g) The statements specified in paragraphs (1) and (2):

(1) A heading as specified in S5.5.2(k)(4)(i), with the statement "WARNING! DEATH or SERIOUS INJURY can occur," capitalized as written and followed by bulleted statements in the following order:

(i) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.2(g)(1) in the following order: 5.5.2(k)(1) or 5.5.2(k)(2), 5.5.2(f), 5.5.2(h), 5.5.2(j), and 5.5.2(i).

(ii) Secure this child restraint with the vehicle's child restraint anchorage system if available or with a vehicle belt.

(iii) Follow all instructions on this child restraint and in the written instructions located (*insert storage location on the restraint for the manufacturer's installation instruction booklet or sheet*).

(iv) Register your child restraint with the manufacturer.

(2) At the manufacturer's option, the phrase "DEATH or SERIOUS INJURY can occur" in the heading can be on either a white or yellow background.

(h) In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i)(1) For a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt

assembly, one of the following statements, as appropriate:

(i) Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(ii) Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(2)(i) Except as provided in paragraph (i)(2)(ii) of this section, for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement: Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*), and only the vehicle's lap and shoulder belt system when using the booster without the (*insert above description*).

(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.5.2(i)(2)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, such a booster shall be labeled with a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(j) In the case of each child restraint system equipped with a top anchorage strap, the statement: Secure the top anchorage strap provided with this child restraint.

(k) (1) In the case of each rear-facing child restraint system that is designed for infants only, the statement: Use only in a rear-facing position when using it in the vehicle.

(2) In the case of a child restraint system that is designed to be used rearward-facing for infants and forward-facing for older children, the statement: Use only in a rear-facing position when using it with an infant weighing less than (*insert a recommended weight that is not less than 20 pounds*).

(3) Except as provided in (k)(4) of this section, each child restraint system that can be used in a rear-facing position shall have a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(3)(i) through S5.5.2(k)(3)(iii) of this standard 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 easily readable.

(i) The heading area shall be yellow with the word "warning" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(4) If a child restraint system is equipped with a device that deactivates the passenger-side air bag in a vehicle when and only when the child restraint is installed in the vehicle and provides a signal, for at least 60 seconds after deactivation, that the air bag is deactivated, the label specified in Figure 10 may include the phrase "unless air bag is off" after "on front seat with air bag."

(l) An installation diagram showing the child restraint system installed in:

(1) A seating position equipped with a continuous-loop lap/shoulder belt;

(2) A seating position equipped with only a lap belt, as specified in the manufacturer's instructions; and

(3) A seating position equipped with a child restraint anchorage system.

* * * * *

S5.5.3 The information specified in S5.5.2(f) through (l) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1.

* * * * *

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers using a not smaller than 10 point type. Unless specified otherwise, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg and seats that can only be used as belt-positioning seats may delete the reference to weight:

(1) Use only with children who weigh ___ pounds (___ kg) or less and whose height is (insert values in English and metric units; use of word "mass" in label is optional) or less; or

(2) Use only with children who weigh between ___ and ___ pounds (___

and ___ kg) and whose height is (insert appropriate values in English and metric units; use of word "mass" in label is optional) or less and who are capable of sitting upright alone; or

(3) Use only with children who weigh between ___ and ___ pounds (___ and ___ kg) and whose height is (insert appropriate values in English and metric units; use of word "mass" in label is optional) or less.

(g) The heading and statement specified in paragraph (1), and if appropriate, the statements in paragraph (2) and (3). If used, the statements in paragraphs (2) and (3) shall be bulleted and precede the bulleted statement required by paragraph (1) after the heading.

(1) A heading as specified in S5.5.2(k)(4)(i), with the statement "WARNING! DEATH or SERIOUS INJURY can occur" capitalized as written and followed by the bulleted statement: Follow all instructions on this child restraint and in the vehicle's owner's manual. At the manufacturer's option the phrase "DEATH or SERIOUS INJURY can occur" in the heading can be on either a white or yellow background.

(2) In the case of each built-in child restraint system which is not intended for use in motor vehicles in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturers restrictions regarding those positions or circumstances.

(3) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.5(g)(1) in the following order: 5.5.5(g)(2), 5.5.5(f), 5.5.5(h) and 5.5.5(i).

(h) In the case of each built-in child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i) In the case of each built-in child restraint which can be used in a rear-facing position, the following statement: Place an infant in a rear-facing position in this child restraint.

* * * * *

S5.6 Printed Instructions for Proper Use.

Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation

of English labels or written instructions. Unless written in all capitals, the information required by S5.6.1 through S5.6.3 shall be stated in sentence capitalization.

* * * * *

S5.6.1.10(a) For instructions for a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate, and the reasons for the statement:

(1) Warning! Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(2) Warning! Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(b)(1) Except as provided in S5.6.1.10(b)(2), the instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor: Warning! Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)), and only the vehicle's lap and shoulder belt system when using this booster without the (insert above description).

(2) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.6.1.10(b)(1) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, the instructions for such a booster shall include a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

* * * * *

S5.6.3 Add-on and built-in child restraint systems.

In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child, the printed instructions shall include the following statement: A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's

flesh or push the child's body into an unnatural position.

* * * * *

Issued on September 26, 2002.

Annette M. Sandberg,

Deputy Administrator.

[FR Doc. 02-24936 Filed 9-30-02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF30

Endangered and Threatened Wildlife and Plants; Amended Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On May 22, 2001, the U.S. Fish and Wildlife Service adopted special regulations governing take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*), which provide exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and perfected water rights. On August 30, 2001, the Service published a proposal to amend those regulations to provide additional exemptions. This action amends the regulations to exempt certain noxious weed control and ditch maintenance activities from the section 9 take prohibitions.

DATES: This amendment will be effective from October 1, 2002 through May 22, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service's Colorado Field Office, Ecological Services, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: In Colorado, contact LeRoy W. Carlson at the above address or telephone (303) 275-2370. In Wyoming, contact Mike Long, Field Supervisor, Cheyenne, Wyoming, at telephone (307) 772-2374.

SUPPLEMENTARY INFORMATION:

Background

The final rule listing the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) as a

threatened species under the Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 9 of the Act prohibits take of endangered wildlife. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. We, the Fish and Wildlife Service, have issued regulations (50 CFR 17.31) that generally apply to threatened wildlife the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. Our regulations for threatened wildlife also provide that a "special rule" under section 4(d) of the Act can be tailored for a particular threatened species. In that case, the general regulations for some section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions, and exemptions, necessary and advisable to conserve that species.

On December 3, 1998, we proposed a section 4(d) rule (63 FR 66777) to define conditions under which certain activities that could result in incidental take of Preble's would be exempt from the section 9 take prohibitions. We held two public meetings, attended by 129 people. We also received 614 comment letters. On May 22, 2001, we published a final rule (66 FR 28125) adopting certain portions of this proposal. Some comments received on the proposed rule suggested additional exemptions to promote conservation of the Preble's. On August 30, 2001, we published a proposed rule (66 FR 45829) to amend the section 4(d) rule to add special provisions providing exemptions from section 9 prohibitions for certain noxious weed control and ditch maintenance activities. We are now adopting the amendment providing these additional exemptions.

Summary of Comments and Recommendations

In the August 30, 2001, proposed amendment and associated notifications, we asked all interested parties to submit comments on the proposed amendment. We received nine comment letters in response to the proposed amendment to the 4(d) rule.

The State of Wyoming sent comments from two of their State agencies under one cover letter. One Colorado and one Wyoming county submitted comments, as did a Colorado municipality. Two letters came from water and irrigation-related organizations or companies, one letter came from a real estate interest in the development community, and two letters came from ranching/agriculture-related groups.

Most of the comment letters acknowledged the need for the proposed exemptions. Many stated that the exemptions are necessary to allow citizens and companies to comply with State laws in both Colorado and Wyoming, and to improve landowner and ditch owner cooperation in conservation of the mouse and its habitat. The comments also generally recognized that the exemptions are necessary for the long-term maintenance of the ditches and the adjacent mouse habitat that is dependent upon those ditches.

Several of the comment letters expressed general concerns or questions about the validity of the Preble's listing and its scientific foundation, questions about uncertainty in distinguishing Preble's from similar species and the need for genetic testing, and requests that the listing be withdrawn or that the Service delist the Preble's. These issues are not germane to the proposed amendment and, therefore, are not discussed here.

Written comments received during the comment period that are specific to the proposed amendment are addressed in the following summary. Comments of a similar nature are grouped under a number of general issues.

Issues and Discussion

Issue 1—Two letters expressed confusion regarding the timeframe that the proposed amendment would be in place, believing that it extended or continued beyond the 36-month timeframe of the existing 4(d) rule.

Response—The amendment should run concurrently with the existing 4(d) rule that became effective on May 22, 2001 (66 FR 45829). Therefore, this rule should expire on May 22, 2004, at the same time as the existing 4(d) rule.

Issue 2—One commentor felt that the definition of noxious weeds is unclear and seems to apply only to plants designated on the State lists of noxious weeds as defined by Colorado and Wyoming. This letter suggests that the term "noxious" should be replaced with the term "undesirable" wherever it occurs in the rule.

Response—State statutes in both Colorado and Wyoming require noxious