

because the DFARS changes address procedural matters that apply only when a contractor is authorized to use Government supply sources. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D045.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 251 and 252

Government procurement.

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR parts 251 and 252 as follows:

1. The authority citation for 48 CFR parts 251 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

2. Section 251.102 is revised to read as follows:

#### 251.102 Authorization to use Government supply sources.

(e) When authorizing contractor use of Government supply sources, follow the procedures at PGI 251.102.

(3)(ii) The contracting officer may also authorize the contractor to use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(f) The authorizing agency is also responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor that is indebted to DoD and has failed to pay proper invoices in a timely manner.

#### 251.105 [Removed]

3. Section 251.105 is removed.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.251-7000 is amended as follows:

a. By revising the clause date to read “(XXX 2004)”;

b. In paragraph (c)(4) by revising the second sentence; and

c. In paragraph (c)(4) by adding a new sentence after the second sentence. The revised and added text reads as follows:

#### 252.251-7000 Ordering From Government Supply Sources.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \* For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice. The Contractor shall annotate each invoice with the date of receipt. \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2003-16920]

### Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** NHTSA is denying a petition for rulemaking from the Insurance Institute for Highway Safety (IIHS) to amend current seating position procedures for Federal Motor Vehicle Safety Standard (FMVSS) Nos. 208, “Occupant crash protection,” and 214, “Side impact protection.” IIHS had petitioned to adopt procedures based upon the University of Michigan Transportation Research Institute (UMTRI) Seating Accommodation Model.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

*For non-legal issues:* Mr. Philip Oh, Office of Crashworthiness Standards, NVS-112, telephone (202) 493-0195, facsimile (202) 493-2290, electronic mail: [philip.oh@nhtsa.dot.gov](mailto:philip.oh@nhtsa.dot.gov)

*For legal issues:* Ms. Rebecca MacPherson, Office of the Chief Counsel, NCC-112, telephone (202) 366-2992, facsimile (202) 366-3820, electronic mail: [rebecca.macpherson@nhtsa.dot.gov](mailto:rebecca.macpherson@nhtsa.dot.gov)

## SUPPLEMENTARY INFORMATION:

### Summary of Petition

On December 19, 2002, the agency received a petition from IIHS to amend the requirements of FMVSS No. 214 (S6.3 and S6.4) and FMVSS No. 208 (S8.1.2 and S8.1.3), which specify the positioning of adjustable seats and adjustable seat backs during vehicle testing. Currently, the standards require the seat to be positioned at the full-forward position for the 5th percentile female dummy (FMVSS No. 208 only) and the midtrack position for the 50th percentile male dummy. Also, adjustable seat backs are set to the manufacturers’ recommended adjustment angle. IIHS contends that the seating positions used in FMVSS Nos. 208 and 214 do not represent real-world occupant behavior. The petition referred to a study<sup>1</sup> where the mean-selected seating positions of more than 600 adult volunteers were compared with the midtrack positions in 26 vehicles. Results showed that mean-selected seat positions were 46 mm rearward of midtrack for 50th percentile males, and 42 mm rearward of full-forward for 5th percentile females. In addition, IIHS contends that 44 percent of the vehicles tested in the IIHS crashworthiness evaluation program had chest-to-air-bag-module clearance measures of less than 250 mm. They believe this is an inappropriate seating position based on the NHTSA recommended clearance measure of 250 mm. As a result, IIHS petitioned to amend the standards by incorporating a new procedure to set the seat track and seat back adjustment based on the UMTRI Seating Accommodation Model. This model is based upon driver posture and position data collected in 36 different vehicles, each with measurements for 60-120 driver subjects. IIHS stated that the proposed amendments would assure that the dummy test positions more accurately reflect real-world seating positions for all NHTSA-regulated crash tests that are not intended to address specific crash injury risks (*e.g.* out-of-position air bag injuries). Therefore, IIHS also petitioned to incorporate the UMTRI procedure in the New Car Assessment Program (NCAP) crash tests. In addition, IIHS suggested that the agency conduct a study of passenger seating positions to determine the most appropriate dummy placement. NHTSA denies this petition for the reasons described below.

<sup>1</sup> Manary, M.A. *et al.*, “ATD Positioning Based on Driver Posture and Position.” SAE Technical Paper Series 983163. Warrendale, PA, Society Of Automotive Engineers, 1998.

## Analysis and Conclusion

NHTSA recognizes that current procedures do not replicate all real-world seating positions of occupants similar in size to the 5th and 50th percentile dummies. However, the agency believes that the current procedure appropriately represents positions where 5th and 50th percentile occupants may sit. NHTSA believes the full-forward position is appropriate for the 5th percentile female dummy because it best represents the worst-case scenario for air bag-induced injuries in high severity crashes. Although the full forward position does not replicate all real-world seating positions for small females, the agency believes that some drivers will position their seat full-forward, making it a realistic seating position. Likewise, the agency believes the mid-track positioning of the 50th percentile male dummy is an acceptable position that represents where an adult-sized occupant may sit. A further rearward displacement of the dummy reduces the likelihood that the dummy will significantly interact with the interior of the vehicle, particularly since braking dynamics in most real-world crashes will move the occupant forward of the pre-braking seating position. At present, the 5th and 50th percentile dummies are used in FMVSS No. 208 to assess safety protection for all sizes of occupants.

IIHS does not give compelling evidence to conclude that the UMTRI seating procedure is more reflective of real-world behavior compared to the current agency procedure. Because many results in Appendix D of the petition<sup>2</sup> would place the seat outside the physical limitation of the seat track, the agency believes that the UMTRI results do not accurately depict real-world behavior in many cases. Appendix D shows eight of the fifteen vehicles having seat positions that do not physically exist on the vehicle seat track. For example, according to the UMTRI results, the seating position for a midsize male in a 2001 Dodge Grand Caravan is 64 mm and -10 mm aft and above the reference positions, respectively. This seating position would place the seat vertically below the full-down position, which physically does not exist within the range of seat motion.

Furthermore, in Appendix D, IIHS presents data on the results of the UMTRI seating procedure for fifteen different vehicles. The results are shown solely as a relationship to horizontal and vertical seating reference positions,

which is full-forward and down for small females, mid-track and down for midsize males, and full-rear and down for large males. IIHS does not provide any data on real-world occupant seating preferences for these specified vehicles. Therefore, without existing occupant seating preferences for the fifteen vehicles, there is no basis upon which to compare the accuracy of the UMTRI procedure to the current agency procedure.

NHTSA believes that the regression analysis used by UMTRI is an appropriate tool to observe trends in data, but is not by itself sufficient to define a procedure that will affect all vehicles under FMVSS Nos. 208 and 214. Several points support this agency belief. First, the formula representing the regression is based on a finite number of vehicles. Although different sizes of vehicles were included in the study, the formula would change as other vehicle seating positions are studied. Also, the regression formula would change as the fleet characteristics change over time. There is no guarantee that equations derived from data collected in the past would apply to vehicles in the future. Outlying data points in the data today may become more frequent, causing additional practicability issues. Lastly, using the UMTRI regression analysis as the basis for all seating procedures produces a best-fit line through all the vehicles' actual seating preference mean collected by UMTRI. Inherently, a margin of error is produced in the regression line as the actual data set becomes non-linear (scattered). This method does not necessarily provide the most accurate position for each individual vehicle.

Finally, IIHS argues that many vehicles do not meet the NHTSA recommended minimum 250 mm steering wheel hub-to-chest clearance with the current seating procedure. However, the agency has found that IIHS measurement data do not necessarily correspond to measurements taken from NHTSA's NCAP tests. For example, as described in the NCAP frontal report for the model year 2000 Ford Taurus,<sup>3</sup> the steering wheel hub-to-chest measurement is recorded as 298 mm. The IIHS measurement was 228 mm. According to NHTSA's NCAP test reports, the agency has not found any vehicles listed in Appendix B of the petition that have less than 250 mm of clearance, and therefore believes the current procedure is consistent with agency recommendations. Furthermore, the agency believes that some occupants may position themselves closer than the

250 mm steering wheel hub-to-chest clearance, regardless of NHTSA's recommendation.

In conclusion, NHTSA denies this petition for rulemaking based on a lack of compelling beneficial evidence supporting the UMTRI procedure and the agency's views about the adequacy of the current seating procedure. Also, NHTSA declines the suggestion to use the UMTRI procedure in its NCAP testing. The agency has no immediate plans to conduct research on an alternative seating method for either the driver or passenger positions. However, NHTSA may revisit the seat position issue at a later time depending on the agency's future research needs and priorities.

**Authority:** 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: February 17, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH93

#### Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act

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

**ACTION:** Proposed rule; reopening of comment period.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed rule to revise our regulations pertaining to permits issued under the Endangered Species Act. Apparent confusion on the part of the public regarding the scope of this proposed rule has prompted us to reopen the comment period to allow for additional comment. Comments previously submitted need not be resubmitted, as they will be incorporated into the public record and considered in the preparation of the final rule.

**DATES:** Comments and information will be accepted from all interested parties until 5 p.m. on March 9, 2004. No comments will be accepted after this date.

**ADDRESSES:** (1) You may submit comments on the proposed rule to Chief, Division of Conservation and

<sup>2</sup> See Docket Number NHTSA-2002-11398-9.

<sup>3</sup> See Docket Number NHTSA-1999-4962-67.