

decision and will arrange to conduct such hearing as soon as practicable.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments received subsequent to the 72-hour comment period or at a later scheduled public hearing.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) Relief granted shall not extend for more than nine months.

(4) For matters that may significantly impact the missions of the Department of Homeland Security, FRA consults with the Department of Homeland Security as soon as practicable.

Issued in Washington, DC on August 28, 2006.

**Joseph H. Boardman,**

*Federal Railroad Administrator.*

[FR Doc. 06-7292 Filed 8-28-06; 1:22 pm]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2006-25725]

RIN 2127-AJ92

### Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

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

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to three petitions for reconsideration of our August 2005 final rule amending the Federal motor vehicle safety standard for seat belt assemblies. The amendments redefined and clarified certain requirements and established a new test methodology for emergency-locking retractors. The petitions for reconsideration requested that the agency adopt additional amendments. The petitions are granted in part and denied in part, and, through this document, we are amending the standard accordingly.

**DATES:** *Effective Date:* The amendments made in this final rule are effective October 30, 2006.

*Compliance Date:* The requirements of the August 2005 final rule, as amended by today's rule, become

mandatory for all seat belt assemblies subject to the standard that are manufactured on or after February 22, 2007. Voluntary compliance is permitted before that date.

*Petitions for Reconsideration:* If you wish to submit a petition for reconsideration for this rule, your petition must be received by October 16, 2006.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VI; Rulemaking Analyses and Notices) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Christopher Wiacek, Office of Crashworthiness Standards (Telephone: 202-366-4801) (Fax: 202-493-2290).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

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

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Summary of Decision**

This document responds to three petitions for reconsideration of our August 22, 2005 final rule<sup>1</sup> amending Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. That final rule amended the standard to redefine the requirements and to establish a new test methodology for emergency-locking retractors (ELRs). Specifically, the final rule established a new, more tightly defined acceleration-time (A-T) corridor, added a figure illustrating the new acceleration-time corridor, provided a tolerance on angle measurements, and adopted similar

instrumentation specifications to those currently found in other FMVSSs containing dynamic tests.

Petitions for reconsideration of the August 2005 final rule were submitted by the Automotive Occupant Restraints Council (AORC)<sup>2</sup>, BMW of North America (BMW)<sup>3</sup>, and TAKATA-PETRI AG (TAKATA-PETRI).<sup>4</sup> The petitioners requested additional amendments to Standard No. 209.

The purpose of the August 2005 final rule was to clarify the test procedures for ELRs, while ensuring that those devices continue to perform their important safety function of locking up a seat belt in the event of a crash or emergency braking. These amendments to the standard apply to seat belt assemblies for use in passenger cars, multipurpose passenger vehicles, trucks, and buses.

In general, the petitions for reconsideration requested minor technical modifications to the ELR provisions of Standard No. 209, the most significant of which involved: (1) Modifications to various angle tolerances specified in the final rule, *e.g.*, in the acceleration tests (requested by the AORC) and the tilt lock requirements (requested by all three petitioners), and (2) specification of how to determine the point of ELR lock-up (requested by BMW and TAKATA-PETRI). In addition, all three petitioners sought clarification that the final rule did not overturn the agency's earlier interpretation that Standard No. 209 requires dual-sensing ELRs (*i.e.*, ELRs equipped with both vehicle acceleration-sensitive and webbing-sensitive retractors) to meet the requirements of the standard for either type of retractor, not both. One petitioner (AORC) also sought correction of certain typographical errors identified in the laboratory test procedure for the standard (*see* section IV of this document for a complete discussion of issues raised in the petitions and their resolution). We have decided to grant the petitions in part and to deny them in part.

The following points highlight the amendments to Standard No. 209 that we are adopting in response to the petitions for reconsideration.

- In order to resolve potential interpretation problems that could arise in determining ELR lock-up and to maintain an objective and repeatable test methodology, this final rule amends the standard's test procedures to provide that a belt load measurement of

<sup>2</sup> Docket No. NHTSA-2005-20052-3 and 4.

<sup>3</sup> Docket No. NHTSA-2005-20052-5.

<sup>4</sup> Docket No. NHTSA-2005-20052-7.

<sup>1</sup> 70 FR 48883 (August 22, 2005) (Docket No. NHTSA-2005-22052-1).

35 N or more will indicate ELR lock-up (see S4.3(j)(2)(ii)). This approach is consistent with industry practice and is the one utilized by the testing laboratories with which the agency contracts for the performance of compliance testing.

- This final rule eliminates the  $\pm 0.5$  degree tolerances specified for the acceleration requirements for ELRs stated in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), which ensure adequate occupant restraint in the event of a crash. Because those provisions require ELRs to meet the standard's requirements over a broad range of angles, we have determined that a tight tolerance on those angles is unnecessary.

#### *Lead Time and Compliance Date*

In amending Standard No. 209 in response to the petitions for reconsideration, the agency has decided to retain the mandatory compliance date of February 22, 2007 for the amended ELR provisions, as provided in the August 22, 2005 final rule. Voluntary compliance is permitted before that date.

In the August 2005 final rule, we stated our belief that existing ELRs will continue to meet the requirements of the standard, even though the amendments to the standard's test procedures may result in some minor costs to vehicle manufacturers and testing laboratories to reconfigure existing test equipment and/or purchase new test equipment. However, today's amendments to the standard involve only minor technical modifications in terms of how the test is conducted and how related results are interpreted. Accordingly, we believe that retention of the February 22, 2007 mandatory compliance date will continue to permit manufacturers and testing laboratories to comply with the standard's amended ELR requirements at minimal cost.

## II. Background

On August 22, 2005, NHTSA published a final rule in the **Federal Register** to amend FMVSS No. 209, *Seat Belt Assemblies*, by redefining certain requirements and establishing a new test methodology for ELRs. That final rule established a new A-T (acceleration-time) corridor, added a figure illustrating the new A-T corridor, provided a tolerance on angle measurements, and adopted similar instrumentation specifications to those currently found in other FMVSSs containing dynamic tests. As noted above, the purpose of the amendments to Standard No. 209 was to clarify the test procedures for ELRs, while ensuring

that those devices continue to perform their important safety function of locking up a seat belt in the event of a crash or emergency braking.

The following points highlight the key provisions of the August 2005 final rule.

- The final rule amended FMVSS No. 209 by adopting a specific A-T corridor for test pulses that includes an upper boundary onset rate of 375 g/sec and that permits an acceleration peak of 0.8 g. As amended, the standard sets a lower boundary for the A-T corridor with a minimum onset rate of 21.67 g/sec, and it further sets a steady state tolerance range of 0.65 g to 0.72 g. This new A-T corridor is intended to be sufficiently wide as to allow a range of onset rates to be tested that are more representative of real world crashes and emergency braking events.

- The final rule modified the dynamic test requirements for ELRs so as to specify that each acceleration pulse be recorded using an accelerometer having a full-scale range of  $\pm 10$  g and be processed according to the practices set forth in Society of Automotive Engineers (SAE) Recommended Practice J211-1 rev. December 2003, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," Channel Frequency Class (CFC) 60. (That SAE standard has been incorporated by reference into FMVSS No. 209.) The rule also specified that webbing displacement is measured using a displacement transducer.

- Unless a range of angles is specified or a tolerance is otherwise explicitly provided, the final rule stated that all angles and orientations of seat belt assemblies and components specified in the standard have a tolerance of  $\pm 3$  degrees.

In terms of the rule's impacts, the agency anticipated that the final rule will not result in substantial changes to the performance of ELRs and that current ELRs will continue to comply with FMVSS No. 209 without the need for change. Additionally, we stated that we expect the final rule to clarify the specifications in the standard's test procedures. Furthermore, we stated our expectation that the final rule will result in only a minimal cost burden to vehicle manufacturers. Testing laboratories might need to reconfigure their testing equipment or purchase new equipment, but this one-time cost is likely to be minimal on a cost-per-vehicle basis.

Nevertheless, in implementing these amendments to the standard, NHTSA provided 18 months of lead time, which we believe is adequate to allow vehicle manufacturers and testing laboratories to reconfigure their testing equipment or purchase new equipment so as to be

consistent with the amended standard. Accordingly, manufacturers of seat belt assemblies must comply with the requirements of the final rule commencing on February 22, 2007. Voluntary compliance is permitted prior to the mandatory compliance date.

## III. Petitions for Reconsideration

NHTSA received three petitions for reconsideration submitted in response to the August 2005 final rule. One petition for reconsideration was submitted by the AORC,<sup>5</sup> the organization which submitted the original petition for rulemaking that resulted in the final rule amending the standard.

The other petitions for reconsideration were submitted by BMW, a vehicle manufacturer, and TAKATA-PETRI, a supplier of seat belt assemblies. We note, however, that the petitions submitted by BMW and TAKATA-PETRI are virtually identical. Accordingly, reference to the arguments of either of these petitioners may be presumed to apply to both petitions in the balance of this document. All of these petitions may be found in Docket No. NHTSA-2005-22052.

The petitioners requested further amendments to FMVSS No. 209 regarding issues they deemed either inadequately addressed by our August 2005 final rule or newly arising therefrom. The following discussion provides a general overview of the issues raised in the petitions for reconsideration. Specifically, the AORC asked the agency to amend the standard by increasing the angle tolerance in the standard from  $\pm 0.5$  degrees to  $\pm 3$  degrees for certain identified provisions where the ELR is to be rotated into multiple positions over a wide range of angles, thereby rendering a tight tolerance unnecessary. A wider tolerance in this case would not detract from safety and would presumably facilitate ease of testing. The AORC also sought clarification as to the applicability of angle tolerances to other identified provisions, and it requested correction of certain perceived errors in the Laboratory Test Procedure for Standard No. 209 (TP-209-06).<sup>6</sup>

In addition, the AORC requested that the standard be amended to ensure that the result of a 1981 letter of interpretation remains valid. In that interpretation, the agency addressed manufacturer responsibilities when

<sup>5</sup> The AORC is an industry association of 52 suppliers of occupant restraints, components/materials, and services to the automobile industry.

<sup>6</sup> See <http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP-209-06.pdf>.

“dual-sensing” ELRs are installed (*i.e.*, ones utilizing both vehicle-sensitive and webbing-sensitive designs). The AORC expressed concern that the renumbering effected by the final rule would somehow alter the principle contained in that letter that manufacturers installing dual-sensing ELRs need only meet the requirements for one type of ELR, not both. (BMW’s petition for reconsideration also discussed this issue, asking that the regulatory text of the standard be amended to clarify the requirements for dual-sensing retractors.)

BMW (and TAKATA-PETRI) requested that the standard be amended to specify a tolerance tighter than  $\pm 3$  degrees for the standard’s 15-degree no-lock requirement, because it argued that such a large tolerance on this “single-sided” requirement would not only lead to “nuisance locking,” but it would also result in unnecessary financial costs for manufacturers whose ELRs must comply with both U.S. and European regulations. According to BMW, there is currently no ELR available that could comply with the requirements of both jurisdictions and the  $\pm 3$  degree tolerance.

Furthermore, according to BMW, the final rule’s specification of a CFC 60 Filter results in a time shift of the peak value for the acceleration vs. time curve, as compared to the raw, unfiltered data. Because this time shift could impact a laboratory’s ability to accurately determine the time of ELR lock-up, BMW recommended that the standard be amended to specify that a belt load sensor is to be used to determine when lock-up has occurred (*i.e.*, when a belt load of  $35\text{ N} \pm 5\text{ N}$  is registered).

All of the issues raised in the petitions for reconsideration are addressed in further detail in the section immediately below.

#### IV. Discussion and Analysis

##### A. Angle Tolerances

###### 1. Acceleration Tests

The August 2005 final rule provided under paragraph S5.4, *Tolerances on angles*, that “[u]nless a range of angles is specified or a tolerance is otherwise explicitly provided, all angles and orientations of seat belt assemblies and components specified in this standard shall have a tolerance of  $\pm 3$  degrees.”

In setting requirements for seat belt assemblies manufactured on or after February 22, 2007, the final rule provided specific tolerances for dynamic acceleration tests for retractors sensitive to vehicle acceleration and for retractors sensitive to webbing withdrawal. Specifically, under

S5.2(j)(2)(iii)(A)(2), for a vehicle-sensitive ELR, “[i]f the retractor does not meet the 45-degree tilt-lock requirement of S4.3(j)(2)(i)(D), accelerate the retractor in three directions normal to each other while the retractor drum’s central axis is oriented at angles of 45, 90, 135, and 180 degrees  $\pm 0.5$  degrees from the angle at which it is installed in the vehicle and measure webbing payout.” For a webbing-sensitive ELR, S5.2(j)(2)(iii)(B)(2) provides: “The retractor drum’s central axis shall be oriented at angles of 45, 90, 135, and 180 degrees  $\pm 0.5$  degrees to the horizontal plane. Accelerate the retractor in the direction of the webbing retraction and measure the webbing payout.”

In its petition, the AORC generally welcomed the final rule’s addition of angle tolerances to portions of the standard’s ELR requirements that previously contained no tolerances. The AORC suggested that angle tolerances provide increased clarity in terms of the functional requirements and test procedures for ELRs. However, the AORC argued that the  $\pm 0.5$  degree tolerances in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2) are unnecessarily narrow.

The AORC argued that, under both of these provisions, because the retractor is rotated into multiple positions, a wide range of angular positions is already included as part of these tests, thereby rendering a tight  $\pm 0.5$  degree tolerance unnecessary. In other words, these provisions provide designated test points that allow the agency to ensure that the ELRs function properly over a large range of angles, not to determine whether action precisely tied to one key angle occurs. Therefore, the AORC petition stated that those provisions of the standard should be amended to specify an angle tolerance of  $\pm 3$  degrees. Presumably, a wider tolerance in this case would facilitate ease of testing.

After careful consideration, the agency agrees with the AORC that it would be possible to eliminate the  $\pm 0.5$  degree tolerances in S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), particularly since such modification would not compromise the relevant functional requirements of the standard or have negative safety consequences. That is because the retractor is required to meet those functional requirements of the standard over a broad range of angles. In such case, the multiple test angles specified serve as test points within that range, rather than tying the specific angle values to the triggering of some critical event. Therefore, after

consideration of the petitioners’ arguments, we have decided that the angle tolerance of  $\pm 0.5$  degrees in the provisions in question are unnecessary. Accordingly, we have decided to delete the tolerances specified under S5.2(j)(2)(iii)(A)(2) and S5.2(j)(2)(iii)(B)(2), thereby implicitly providing for a default tolerance of  $\pm 3$  degrees under S5.4.

##### 2. Tilt-Lock Requirements

The August 2005 final rule also set angle tolerances related to the tilt-lock requirements for ELRs, and of these, the petitions for reconsideration requested amendments to the following angle tolerance provisions.

The following provisions apply to seat belt assemblies manufactured before February 22, 2007. Under S4.3(j)(1)(iii), the final rule provided that an ELR “[s]hall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15° or less from its orientation in the vehicle.” Under S5.2(j)(1)(ii), the final rule stated that an ELR sensitive to vehicle acceleration is “[a]ccelerated in three directions normal to each other while the retractor drum’s central axis is oriented at angles of 45°, 90°, 135°, and 180° from the angle at which it is installed in the vehicle, unless the retractor locks by gravitational force when tilted in any direction to any angle greater than 45° from the angle at which it is installed in the vehicle.”

The following provisions apply to seat belt assemblies manufactured on or after February 22, 2007. Under S4.3(j)(2)(i)(D), the final rule provided, “For a retractor sensitive to vehicle acceleration, [the ELR must] lock when tilted at any angle greater than 45 degrees from the angle at which it is installed in the vehicle or meet the requirements of S4.3(j)(2)(ii).” Furthermore, under S4.3(j)(2)(i)(E), the final rule provided, “For a retractor sensitive to vehicle acceleration, [the ELR must] not lock when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle.” Under S5.2(j)(2)(ii), the final rule stated: “Gravitational locking: For a retractor sensitive to vehicle acceleration, rotate the retractor in any direction to an angle greater than 45 degrees from the angle at which it is installed in the vehicle. Apply a force to the webbing greater than the minimum force measured in S5.2(j)(2)(i) to determine compliance with S4.3(j)(2)(i)(D).”

As noted previously, the petitions for reconsideration submitted by the AORC, BMW, and TAKATA-PETRI requested

that the standard be amended with regard to the provisions discussed immediately above. The AORC requested that the agency clarify that the default tolerance provision in S5.4 (*i.e.*,  $\pm 3$  degrees) does not apply to these provisions, because the AORC interprets those provisions as explicitly stating the permissible angle measurement (*e.g.*, “angle of 15 degrees or less,” “angle greater than 45 degrees”).

In their petitions, BMW and TAKATA-PETRI argued that a 3-degree tolerance for the 15-degree no-lock requirement would result in “nuisance locking.” Furthermore, BMW stated that such a large tolerance would also result in unnecessary financial costs for manufacturers whose ELRs must comply with both U.S. and European regulations. According to BMW, there is currently no ELR available that could comply with the requirements of both jurisdictions and the  $\pm 3$  degree tolerance, so manufacturers would be forced to design different retractors for the U.S. and European markets without a demonstrated safety need. Accordingly, BMW and TAKATA-PETRI requested that the standard be amended to specify a tighter tolerance of  $\pm 0.5$  degrees for the standard’s 15-degree no-lock requirement, rather than the tolerance of  $\pm 3$  degrees currently specified.

In response to the petitioners, we clarify that there are no tolerances associated with the tilt-lock requirements specified in S4.3(j)(1)(iii), S4.3(j)(2)(i)(D), S4.3(j)(2)(i)(E), S5.2(j)(1)(ii), and S5.2(j)(2)(ii). Consistent with paragraph S5.4, *Tolerances on angles*, the standard provides for a tolerance of  $\pm 3$  degrees, *unless a range of angles is specified* or a tolerance is otherwise specifically provided. The tilt-lock requirements discussed above set ranges of angles, including everything above or below a specified value (*e.g.*, “angle of 15 degrees or less,” “angle greater than 45 degrees”). Because a range of angles is specified, the  $\pm 3$  degree tolerance is not applicable, and therefore, the petitioners’ concerns regarding “nuisance locking” and differences in products destined for the U.S. and European markets are not pertinent. Accordingly, we find it unnecessary to amend the standard regarding this issue.

#### B. Determination of Lock-Up

In the August 2005 final rule, the agency stated that we understand that there is currently more than one methodology used for determining the point of ELR lock-up. Specifically, some laboratories determine lock-up through observation of a sudden change in the

A–T curve, whereas others utilize a 35 N threshold, consistent with industry practice.

In the final rule, we declined to adopt a specific requirement for determination of ELR lock-up. We stated that, like the observation of change in the A–T curve, the industry load threshold approach is also an indirect measurement of lock-up, and we noted that we were not aware of any problems associated with either of the existing methods for determining ELR lock-up.

BMW and TAKATA-PETRI petitioned the agency to amend the standard to set a specification for determination of ELR lock-up, based upon potential problems in determining lock-up when the CFC 60 Filter is utilized. As an example, the petitioners provided a graph comparing filtered and unfiltered data by plotting the acceleration vs. time curve for each. The data provided by the petitioners demonstrated a time shift in the accelerometer data, which the petitioners argued presents a problem in terms of determining the point of ELR lock-up in the absence of specification in the regulation as to how to interpret these data when determining lock-up (*i.e.*, defining “lock-up”). Although the petitioners support use of the CFC 60 Filter (which helps conform the instrumentation requirements of FMVSS No. 209 to those of other FMVSSs with a dynamic performance component), they stated that if the testing laboratory uses the filtered peak as the time of ELR lock-up, the belt webbing payout measured could be erroneous; furthermore, the petitioners asserted that it is not clear at what point in the peak the laboratory would determine lock-up (onset, absolute peak, or descent) and start measuring belt webbing payout.

BMW and TAKATA-PETRI stated in their petitions for reconsideration that, in light of the information presented, this determination of lock-up is subjective, and, therefore, not acceptable, and does not support the agency’s goal of clarifying the current ELR test procedures. Therefore, they recommended that the agency amend the standard to specify a belt load sensor to be used in the webbing path to indicate ELR lock-up. The petitioners recommended that ELR lock-up be the point at which the load sensor measures a 35 N  $\pm 5$  N belt load. According to the petitioners, this is the best method for evaluating ELR locking behavior, because it has a direct correlation to real world occupant loading and is consistent with standard industry practice.

After careful consideration, the agency agrees that, based upon the

supporting data provided by BMW and TAKATA-PETRI, potential interpretation problems could arise regarding the determination of ELR lock-up, unless additional clarification is provided. In order to maintain an objective and repeatable test methodology, we have decided to amend the current ELR test procedures in response to the petitioners’ request. We note that BMW stated that the standard industry practice is to use a 35 Newton (N) load as indication that ELR lock-up has occurred, and the testing laboratories with which the agency contracts to conduct compliance testing have utilized this same methodology since 2003.

Although the petitioners did not provide any data to support their view that their recommended test directly correlates to actual occupant loading, and even though we continue to believe that this methodology is an indirect means of determining ELR lock-up, we nonetheless believe that it provides an acceptable means of clarifying the ELR test procedures to ensure an objective and consistent determination of lock-up. Accordingly, we have decided to adopt the petitioners’ recommendation and amend the standard’s test procedures to provide that a belt load measurement of 35 N or more will indicate ELR lock-up. Although the agency considered various options, such as adopting a bilateral tolerance (*i.e.*,  $\pm x$  N) on the belt load, the agency feels that it is more appropriate to establish a minimum belt load for determining lock-up, because a minimum belt load provides an objective threshold when the ELR transitions from an unlocked state to a locked state. As the belt load continues to increase above the threshold, the ELR remains locked until the test is completed, so therefore, an upper belt load limit is not necessary. We have selected 35 N as the threshold for determining lock-up because it provides a consistent point of demarcation for lock-up and is also the nominal value recommended by the petitioners consistent with industry practice.

#### C. Requirements for Dual-Sensing ELRs

In addition to the substantive changes to the standard discussed above, the amendments adopted by the August 2005 final rule also resulted in a renumbering of certain ELR-related provisions in FMVSS No. 209, some of which did not change in substance.

The petitions of the AORC, BMW, and TAKATA-PETRI all requested that the agency clarify the responsibilities for manufacturers in terms of the standard’s requirements for dual-sensing ELRs (*i.e.*, retractors that are sensitive to both

vehicle acceleration and webbing withdrawal). According to the petitioners, the agency issued a letter of interpretation dated February 19, 1981 to Mr. Frank Pepe<sup>7</sup> which effectively resolved the issue of what requirements would apply to dual-sensing ELRs (stating that manufacturers must meet the requirements for either vehicle-sensitive ELRs or webbing-sensitive ELRs, not both).

However, in its petition, the AORC suggested that the agency's August 2005 final rule may have added confusion in this area by renumbering the relevant provisions of the standard. The AORC argued that direct traceability between the 1981 letter of interpretation and the relevant provisions of the standard will be lost under the amended standard. In order to clarify the requirements for dual-sensing ELRs after the final rule's amendments to the standard, the AORC asked the agency to provide an explicit statement that manufacturers of dual-sensing ELRs continue to be required to comply with only one of the permitted options (*i.e.*, either vehicle-acceleration-sensitive or webbing-withdrawal-sensitive ELRs), but not both. BMW and TAKATA-PETRI also addressed this point, although their petitions went a step further, asking the agency to clarify this matter by amending the standard's regulatory text to incorporate a manufacturer's compliance option in the case of dual-sensing ELRs.

In light of the petitioners' requests, we clarify that our renumbering of certain provisions in Standard No. 209 does not impact the validity or ongoing effect of our 1981 letter of interpretation. Our August 2005 final rule renumbered but did not make any substantive modifications to the applicable requirements for dual-sensing ELRs, so the interpretation letter to Mr. Pepe remains valid, despite such numbering changes. The agency will continue to treat dual-sensing ELRs as either vehicle-sensitive or webbing-sensitive retractors. We believe that such numbering changes are unlikely to result in any significant confusion. Therefore, we do not find it necessary to incorporate additional language in the standard, as recommended by BMW and TAKATA-PETRI.

#### D. Other Issues

In its petition for reconsideration, the AORC stated that it identified two typographical errors in the laboratory test procedure that the agency released concurrently with the final rule on August 22, 2005 (TP-209-06).

Specifically, the AORC argued that a decimal point had inadvertently been omitted.

The agency has already revised TP-209-06 to remedy these errors. While we will also make additional modifications to the test procedure to reflect the amendments arising from today's final rule responding to petitions for reconsideration, we note that issues related to the agency's test procedures are not resolved through the rulemaking process. Those procedures do not vary from or add to the requirements of the FMVSS, but instead provide directions to be followed by the laboratories doing compliance testing for the agency. Any concerns related to a test procedure should be directed to NHTSA's Office of Vehicle Safety Compliance.

#### V. Benefits and Costs

Section V of the August 22, 2005 final rule stated that NHTSA did not estimate benefits for the rulemaking because we anticipated that it would not result in substantial changes to the performance of emergency-locking retractors. The final rule stated that it is expected that all current ELRs will continue to comply with FMVSS No. 209 without change under the final rule's amendments. The reason for this determination was that the amendments to FMVSS No. 209 in the final rule more directly affect test procedure specifications and are intended only to clarify the test specifications.

NHTSA anticipated only minimal cost burden to vehicle manufacturers from the final rule. Testing laboratories might have to develop new specifications for the instrumentation used to generate the acceleration pulses and may be required to obtain the specified accelerometer. However, the agency stated that we anticipate that only a small number of businesses will need to purchase new equipment as a result of the final rule, and for those that do, this would result in a one-time, minimal cost to the test laboratory.

The agency has determined that the technical amendments resulting from this final rule responding to petitions for reconsideration will not appreciably change the analysis of costs and benefits reported in the final rule. Accordingly, the agency has determined that that analysis remains valid and that additional analysis is not required.

#### VI. Rulemaking Analyses and Notices

##### A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is

responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.<sup>8</sup> These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.<sup>9</sup> When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.<sup>10</sup> The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.<sup>11</sup> The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.<sup>12</sup>

In developing the August 22, 2005 final rule to further clarify the test procedures of FMVSS No. 209, *Seat Belt Assemblies*, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301. Since that time, the agency received three petitions for reconsideration of the final rule, which requested technical modifications and corrections to the standard. In this final rule responding to petitions for reconsideration, the agency has once again carefully considered the statutory requirements of 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in the petitions for reconsideration. In responding to the issues raised in these petitions, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available research, testing results, and other information related to various ELR technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the ELR requirements remain practicable, the agency evaluated the potential impacts of the petitions' requested actions on the form and functionality of currently compliant ELRs, consistent with our safety objectives and the statutory requirements. We note that ELRs are already required on light vehicles, and

<sup>8</sup> 49 U.S.C. 30111(a).

<sup>9</sup> 49 U.S.C. 30102(a)(9).

<sup>10</sup> 49 U.S.C. 30111(b).

<sup>11</sup> *Id.*

<sup>12</sup> 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

<sup>7</sup> See <http://isearch.nhtsa.gov/gm/81/nht81-1.14.html>.

we believe that it will be practicable to adopt the technical modifications to the standard's requirements and test methodology in response to the petitions for reconsideration without necessitating redesigns on the part of ELR manufacturers. We expect that vehicle manufacturers will continue to have a number of technological choices available for meeting the requirements of FMVSS No. 209 for ELRs. As noted above, most of the changes resulting from this final rule involve relatively minor modifications. In sum, we believe that this final rule responding to petitions for reconsideration is practicable and will maintain the benefits of Standard No. 209.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, this final rule makes minor modifications to the performance requirements and test procedures for operation of the ELRs, in terms of determining when ELR lock-up occurs and by modifying certain angle tolerances. The standard's test procedures continue to carefully delineate how testing will be conducted. Thus, the agency continues to believe that this test procedure is sufficiently objective and would not result in uncertainty as to whether a given seat belt assembly satisfies the requirements of FMVSS No. 209.

Fourth, we believe that this final rule responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will better define the acceleration pulse that will be utilized in testing ELRs, mechanisms which serve the critical function of ensuring that seat belts are properly locked up in the event of sudden deceleration or a crash.

Finally, we believe that this final rule responding to petitions for reconsideration is reasonable and appropriate for seat belt assemblies subject to the applicable requirements. As discussed elsewhere in this notice, the agency is addressing the petitioners' requests for additional amendments to the standard to better define the ELR requirements and test procedures, actions which we do not expect will increase the present stringency of the standard or cause compliance problems for existing ELRs. Accordingly, we believe that this final rule responding to petitions for reconsideration is appropriate for the seat belt assemblies in covered vehicles that are subject to these provisions of FMVSS No. 209

because it furthers the agency's objective of preventing deaths and serious injuries by ensuring that ELRs in seat belt assemblies function properly.

#### *B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The August 22, 2005 final rule was not reviewed by the Office of Management and Budget under Executive Order 12866. Furthermore, that rule was not considered to be significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (February 26, 1979)). In that final rule, we stated that we do not expect the amendments to the standard to require substantial changes in the performance of ELRs. Testing laboratories might need to develop new specifications for the instrumentation used to generate the acceleration pulses, but it is not expected to result in more than a minimal cost burden for manufacturers.

We have likewise considered the impact of this final rule responding to petitions for reconsideration under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. This rulemaking document is also not considered to be significant under the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated

that the incremental costs associated with the minor technical modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 209.

#### *C. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present final rule responding to petitions for reconsideration only makes technical modifications and corrections to the safety standard for seat belt assemblies. As discussed in detail in the August 22, 2005 final rule's Regulatory Flexibility Act analysis (see section VI.C), we do not anticipate that the amendments to FMVSS No. 209 will have a significant economic impact on a substantial number of small entities, and nothing in this final rule would change either that assessment or its underlying reasoning.

#### *D. Executive Order 13132 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism, and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will 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. However, under 49 U.S.C. 30103, 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 to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

#### *E. Executive Order 12988 (Civil Justice Reform)*

This rule will not have any retroactive effect. As noted above in the discussion of Executive Order No. 13132, 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 to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 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 proceedings before parties may file a suit in court.

#### *F. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)*

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule responding to petitions for reconsideration is not subject to E.O. 13045 because it is not an economically significant regulatory action under Executive Order 12866 and because it does not involve decisions based on

environmental, health, or safety risks that disproportionately affect children.

#### *G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104-13), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule responding to petitions for reconsideration does not contain any collection of information requirements requiring review under the PRA.

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

The amendments to Standard No. 209 adopted in the August 2005 final rule incorporated voluntary consensus standards promulgated by the Society of Automotive Engineers. This final rule responding to petitions for reconsideration makes additional, minor technical amendments to FMVSS No. 209. Accordingly, this final rule is in compliance with Section 12(d) of the NTTAA.

#### *I. 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 annually (adjusted for inflation with base year of 1995 (so currently about \$112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency 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 the agency 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 of why that alternative was not adopted.

As was the case with the August 2005 final rule, this final rule responding to petitions for reconsideration is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of \$112 million annually. Because the present final rule responding to petitions for reconsideration only makes technical modifications to the standard, we do not believe that this final rule will appreciably change the costs of compliance with FMVSS No. 209. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

#### *J. 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 will not have any significant impact on the quality of the human environment.

#### *K. Regulatory Identifier Number (RIN)*

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.

#### *L. Privacy Act*

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

**List of Subjects in 49 CFR Part 571**

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ 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, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.209 is amended by revising S4.3(j)(2)(ii), S5.2(j)(2)(iii)(A)(2), and S5.2(j)(2)(iii)(B)(2) to read as follows:

**§ 571.209 Standard No. 209; Seat belt assemblies.**

\* \* \* \* \*

S4.3 *Requirements for hardware.*

\* \* \* \* \*

(j) \* \* \*  
(2) \* \* \*

(ii) Shall lock before the webbing payout exceeds the maximum limit of 25 mm when the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(2)(iii)(A) or (B). The retractor is determined to be locked when the webbing belt load tension is at least 35 N.

\* \* \* \* \*

S5.2 *Hardware.*

\* \* \* \* \*

(j) \* \* \*  
(2) \* \* \*  
(iii) \* \* \*  
(A) \* \* \*

(2) If the retractor does not meet the 45-degree tilt-lock requirement of S4.3(j)(2)(i)(D), accelerate the retractor in three directions normal to each other while the retractor drum's central axis is

oriented at angles of 45, 90, 135, and 180 degrees from the angle at which it is installed in the vehicle and measure webbing payout.

(B) \* \* \*

(2) The retractor drum's central axis is oriented at angles of 45, 90, 135, and 180 degrees to the horizontal plane. Accelerate the retractor in the direction of the webbing retraction and measure the webbing payout.

\* \* \* \* \*

Issued: August 23, 2006.

**Nicole R. Nason,**

*Administrator.*

[FR Doc. E6-14479 Filed 8-29-06; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[I.D. 081006A]

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General category should be adjusted to allow for a reasonable opportunity to harvest the General category September time-period subquota. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category fishing opportunities

in all areas while minimizing the risk of an overharvest of the General category BFT quota.

**DATES:** The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Mark Murray-Brown, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2006 BFT fishing year began on June 1, 2006, and ends May 31, 2007. The final initial 2006 BFT specifications and General category effort controls were published on May 30, 2006 (71 FR 30619). These final specifications divided the General category quota among three subperiods (June through August, September, and October through January) in accordance with the Highly Migratory Species Fishery Management Plan (1999 FMP) published in 1999 (May 29, 1999; 64 FR 29090), and implementing regulations at § 635.27. A three-fish general category retention limit was set for the first subperiod (June through August) due to the large amount of available quota and the low catch rate at the opening of the season.

**Daily Retention Limits**

Pursuant to this action and the final initial 2006 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General category are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	June 1, 2006, through August 31, 2006, inclusive	All	*COM041*Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	September 1, 2006, through September 30, 2006, inclusive	All	Three BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	October 1, 2006, through January 31, 2007, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger

**Adjustment of General Category Daily Retention Limits**

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General

category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to

allow for a reasonable opportunity to harvest the quota for BFT. As part of the final specifications on May 30, 2006 (71 FR 30619), NMFS adjusted the