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Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2008-0149]

RIN 2127-AK25

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to remove the sunset of a requirement in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," that a vehicle's lap belt must be lockable to tightly secure a child restraint system. Under FMVSS No. 208, the requirement ceases to apply to designated seating positions that are equipped with a child restraint anchorage system on vehicles manufactured on or after September 1, 2012. This NPRM proposes to amend the standard such that the requirement will continue to apply after September 1, 2012, even when a child restraint anchorage system is present. Data indicate that motorists are still using vehicle belts to attach child restraint systems to a large degree, so the agency is seeking to ensure that lap belts continue to be lockable in vehicles manufactured on or after September 1, 2012.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than November 12, 2008.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: 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 (65 FR 19477-78).

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Cuentas, Office of Crashworthiness Standards, Light Duty Vehicle Division (telephone 202-366-4583, fax 202-493-2739). For legal issues, contact Ms. Deirdre Fujita, Office of Chief Counsel (telephone 202-366-2992, fax 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 1999, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 225, "Child restraint anchorage systems" (49 CFR 571.225) (64 FR 10786; Docket No. 98-3390, Notice 2). The final rule required motor vehicle manufacturers to install "LATCH" child restraint anchorage systems in their vehicles,¹ and required child restraint

¹ "LATCH" stands for "Lower Anchors and Tethers for Children," a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required to be installed in vehicles by FMVSS No. 225. The LATCH system is comprised of two lower anchorages and one top tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be attached. The bars are located at the intersection of the vehicle seat

manufacturers to attach components to child restraints that enable the child restraint to connect to a LATCH system on a vehicle.²

The final rule also amended FMVSS No. 208, "Occupant crash protection" (49 CFR 571.208), by rescinding the "lockability" requirement for vehicles manufactured on or after September 1, 2012, with respect to vehicle seating positions that are equipped with a LATCH system. FMVSS No. 208 requires passenger vehicles to be equipped with seat belts and frontal air bags for the protection of vehicle occupants in crashes. Since September 1995, the standard requires the lap belt to be lockable to tightly secure child restraint systems, without the need to attach a locking clip³ or any other device to the vehicle's seat belt webbing. This requirement, in S7.1.1.5 of FMVSS No. 208, is called the "lockability" requirement.⁴ A lockable lap belt is best for securing CRSs if seat belts must be used because it cinches the seat belt tightly and thus allows for a more secure installation.

FMVSS No. 208 requires vehicles to be equipped with an emergency locking retractor (ELR) for Type 2 (lap/shoulder) seat belt assemblies. An ELR is a seat belt retractor that locks only in response to the rapid deceleration of the vehicle or rapid spooling out of the seat belt webbing from the retractor, and increases the comfort of the seat belt assembly as compared to an automatic locking retractor (ALR).⁵ To meet the

cushion and seat back. The top tether anchorage is a fixture to which the tether of a child restraint system can be hooked. FMVSS No. 225 required the 3-point LATCH system at two rear seating positions, and a top tether anchorage at a third rear seating position when a third rear seating position is provided in the vehicle.

² The final rule amended FMVSS No. 213, "Child restraint systems" (49 CFR 571.213), to require the components on the child restraints, and to set performance requirements that child restraints must meet when attached to a vehicle seat assembly using the LATCH system. The requirements applied to child restraints manufactured on or after September 1, 2002. (This document uses the term "LATCH-equipped" to refer to a child restraint system equipped with the components that attach to a vehicle's LATCH system.) In addition, the rule required all child restraints to continue to be capable of being attached to a vehicle by way of the vehicle's belt system.

³ A locking clip is a flat H-shaped metal clip intended to fasten together belt webbing (lap and shoulder portion) at a sliding latch plate, to prevent the webbing from sliding through.

⁴ The procedure for demonstrating compliance with the lockability requirement is in S7.1.1.5(c) of FMVSS No. 208. The lockability requirement applies to vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less.

⁵ An ALR is a seat belt retractor that locks when the continuous motion of spooling the belt out is stopped. From that point, the seat belt cannot be pulled out further without first letting the belt retract into the retractor housing.

lockability requirement, vehicle manufacturers commonly use a switchable seat belt retractor (“ELR/ALR”) that can be converted from an ELR to an ALR. The retractor is converted from an ELR to an ALR by slowly pulling all of the webbing out of the retractor and then letting the retractor wind the webbing back up.

While switchable seat belt retractors and other devices used to lock the lap belts enable child restraints to be installed without use of a locking clip, motorists still found installation of child restraints using a lockable seat belt to be difficult.⁶ NHTSA required LATCH so that motorists could use the LATCH system instead of the lockable seat belt to install child restraints. Since the LATCH system was to replace the vehicle belt system as the means of installing child restraints, the agency believed there would be a time when lockable lap belts would no longer be needed at vehicle seating positions equipped with LATCH.

That time was estimated to be in 2012 (64 FR at 10804). In 1999, NHTSA believed that all child restraints “in use” would be LATCH-equipped by September 1, 2012, since new child restraints would have then been subject to the requirement to be LATCH-equipped for ten years. We believed that by 2012, child restraints in use would be using the LATCH system and not a lockable vehicle seat belt to attach to the vehicle seat, and so the lockability requirement would no longer be needed in positions with LATCH. Accordingly, the LATCH final rule rescinded the lockability requirement for those positions, in vehicles manufactured on or after September 1, 2012.

II. Current Information Indicates Need for Lockability

Notwithstanding the agency’s projections in 1999, current information available to NHTSA indicates a need to retain the lockability requirement of FMVSS No. 208. Current data indicate that many motorists are continuing to use the vehicle’s belt system to install child restraints, even when attaching a LATCH-equipped child restraint. To assess consumer response to LATCH, NHTSA conducted a survey⁷ from April

⁶ Even with lockability, the vehicle belt system still depended on the user knowing enough and making the effort to manipulate the belt system. Also, the vehicle belt must be routed correctly through the child restraint, which may not be an easy task in all cases. Further, the lockability requirement did not address the effects of forward-mounted seat belt anchorages on slightly reduced child restraint effectiveness. 64 FR at 10792.

⁷ Decina, L.E., Lococo, K.H., and Doyle, C.T., *Child Restraint Use Survey: LATCH Use and Misuse*, DOT HS 810 679, National Highway Traffic

to October 2005 on the types of restraint systems being used to keep children safe while riding in passenger vehicles, i.e., whether drivers of vehicles with LATCH were using LATCH to secure their LATCH-equipped child restraints to the vehicle, and if so, whether they were properly installing the restraints. The survey found that in 13 percent of the LATCH-equipped vehicles in which there was a child restraint, the restraint was placed in a seat position not equipped with lower anchors (the vehicle seat belt was used to secure the restraint to the vehicle). Among the 87 percent who placed the child restraint at a position equipped with lower anchors, only 60 percent used the lower attachments to secure the restraint to the vehicle.⁸ While the LATCH survey found that consumers who have experience with LATCH like the system and that LATCH is helping to reduce the insecure installation of child restraints, the report also indicated that proper use of LATCH is not inherently evident to parents. Many parents do not use LATCH; they may not know about it or understand its importance, or may have difficulties using it.

In light of the findings of the LATCH survey, we are reassessing the assumption made in the 1999 LATCH final rule that by 2012 LATCH will replace seat belts as the means of attaching child restraints. The agency held a February 8, 2007, public meeting discussing the LATCH survey and related issues,⁹ including whether the lockability requirement should be retained given the survey results showing that vehicle belts are still being widely used to attach child restraints. In response to the LATCH survey and as discussed at the public meeting, NHTSA has initiated a comprehensive consumer education campaign about LATCH.

Safety Administration, Washington, DC, 2006. http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Communication%20&%20Consumer%20Information/Articles/Associated%20Files/LATCH_Report_12-2006.pdf

⁸ Of the child restraints located in a seating position equipped with an upper tether anchor, 55 percent were attached to the vehicle using the upper tether. 61 percent of upper tether nonusers and 55 percent of lower attachment nonusers cited their lack of knowledge—not knowing what the anchorages were, that they were available in the vehicle, the importance of using them, or how to use them properly—as the reason for not using them.

⁹ 72 FR 3103; Docket NHTSA–2007–26833. Following up on the findings of the LATCH survey, NHTSA held the public meeting to bring together child restraint and vehicle manufacturers, retailers, technicians, researchers and consumer groups to discuss ways to improve the design and increase the use of child restraint systems. The meeting focused on improving LATCH system designs and educating the public about LATCH. A transcript of the meeting can be found in Docket No. NHTSA–07–26833–025. See page 28 of meeting transcript.

However, since the LATCH survey indicated that consumers are drawn to using the vehicle seat belt system to attach child restraints even when LATCH is available, we tentatively conclude that the lockability requirement should not sunset in 2012 as scheduled. We tentatively conclude that for consumers who use the lap/shoulder belts, the belt system should be made as easy-to-use as reasonably possible in attaching their child restraints, and that extending the lockability requirement is the most reasonable way to make the belt system easy-to-use.¹⁰ We are issuing this NPRM to propose keeping the lockability requirement in effect past September 1, 2012, and to provide notice to vehicle manufacturers that the lockability requirement might not sunset in 2012 and that product plans may have to be adjusted.

This decision to proceed with an NPRM is supported by other information received by the agency. On January 22, 2007, SafetyBeltSafe U.S.A. (SafetyBeltSafe) and Safe Ride News petitioned the agency to remove the sunset clause in the lockability requirement.¹¹ The petitioners believed that rescission of the requirement in 2012 could have “deleterious effects on the safety of children.” According to the petitioners, parents and caregivers of special needs children would like the continuation of the lockability requirement because the belt provides a way of restraining children who find it difficult to sit still or upright. According to the petitioners, the parents and caregivers believe that the lockability feature of lap belts prevents these children from manipulating the seat belt or introducing slack into the belt. The petitioners also stated there are child restraints recommended for children weighing more than 40 pounds and that a lockable lap belt is needed to secure these systems to the vehicle, because such a child restraint may exceed a maximum 40 to 48 pound weight limit for LATCH set by some vehicle manufacturers. SafetyBeltSafe and Safe Ride News also believed that the lockability feature of ELR/ALR retractors can be used to lock the unused belt when the CRS is anchored with LATCH so that children cannot

¹⁰ We do not believe that a viable alternative to lockable lap belts is a return to locking clips. When locking clips were prevalent (before the lockability requirement) a study found that locking clips were misused or not used in 72% of the cases observed. NHTSA, *Observed Patterns of Misuse of Child Safety Seats*, Traffic Tech, No. 133, Washington, DC, September 1996.

¹¹ A “Supporters of Lockability Petition” signed by 177 supporters was attached to the petition.

pull the shoulder portion of the belt out and play with it inappropriately (e.g., wrapping it around the neck and activating the retractor unintentionally). The petitioners also stated that a lockable lap belt could be used where the vehicle LATCH anchorage locations are not compatible with the child restraint (i.e., where the anchorages are deep in the seat cushion or above the seat bight).¹² The agency granted the petition on June 20, 2007. Several comments made in the context of the February 8, 2007, public meeting also supported retaining the lockability requirement past September 1, 2012 (Advocates for Highway and Auto Safety, NHTSA-2006-26735-0003; Ms. Julie Robbins, Chicco USA, transcript page 219 of the transcript, supra.).

III. Proposed Effective Date

NHTSA proposes that a final rule on this rulemaking, assuming one is issued, would be effective 120 days after publication of the rule in the **Federal Register**. The effective date is the date on which the **Federal Register** would be amended to reflect the changes made by the final rule.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This NPRM proposes to remove the sunset of a requirement which is currently in effect. The agency is seeking to ensure that lap belts continue to be lockable in vehicles manufactured on or after September 1, 2012. The rulemaking would not affect current costs of manufacturing lap belt systems. The minimal impacts of

¹² The petitioners also suggested that the lockability feature of lap belts can be used for purposes such as restraining equipment or other objects to the vehicle seat or restraining arrestees transported in police vehicles. The agency is not issuing this NPRM based on those suggestions. The petition also argued that in vehicle rear seats with three designated seating positions (three sets of lap/shoulder belts) and only two seats of LATCH, manufacturers might move lower anchors inboard "to lessen exposure to intrusion in side impacts." The petitioners believed that in such a vehicle, to accommodate three child restraints in the rear seat the belts would have to be used and thus lockability needed. No data was presented to support the supposition that LATCH anchors might move inboard or on the frequency of the occurrence of the described situation (three child restraints simultaneously accommodated in the second row seat). The agency does not consider this suggestion as a petition for rulemaking or as part of the petition for rulemaking addressed by this NPRM.

today's amendment do not warrant preparation of a regulatory evaluation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this action on small entities. I hereby certify that this proposed rule would not have a significant impact on a substantial number of small entities. The NPRM would affect motor vehicle manufacturers, multistage manufacturers and alterers, but the entities that qualify as small businesses would not be significantly affected by this rulemaking because they are already required to comply with the lockability requirements and have been since 1995. This NPRM proposes to remove the sunset of the requirement to ensure that lap belts continue to be lockable in vehicles manufactured on or after September 1, 2012. The rulemaking would not affect current costs of manufacturing lap belt systems.

Executive Order 13132

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have federalism implications because a final rule, if issued, would not 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."

Further, no consultation is needed to discuss the preemptive effect of today's rulemaking. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that preempts State law, not today's rulemaking, so consultation would be inappropriate.

Second, in addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle

manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not discerned any conflict in today's rulemaking. However, in part because such conflicts can arise in varied contexts, the agency cannot rule out the possibility that such a conflict may become clear through subsequent experience with the proposed standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. See *Id.* at 883-86.

National Environmental Policy Act

NHTSA has analyzed this NPRM 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.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, 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 NPRM would not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." There are no voluntary consensus standards pertaining to the lockability requirements addressed today.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden

reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires 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). This NPRM would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation 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.

Privacy Act

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).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

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 571.208 is amended by:
 - A. Revising the introductory paragraph of S7.1.1.5, and
 - B. Removing S7.1.1.5(d).
 The amendments read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S7.1.1.5 Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).

* * * * *

Issued on September 5, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-21026 Filed 9-11-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 402

[FWS-R9-ES-2008-0093]

RIN 1018-AT50

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[0808011023-81048-01]

RIN 0618-AX15

Interagency Cooperation Under the Endangered Species Act

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, "we") are extending the comment period for proposed regulations governing interagency cooperation under the Endangered Species Act of 1973, as amended.

DATES: We must receive your comments by October 14, 2008 to ensure their full consideration in the final decision on this proposal.

ADDRESSES: Submit your comments or materials concerning this proposed rule in one of the following ways:

(1) Through the Federal eRulemaking Portal at www.regulations.gov. Follow the instructions on the Web site for submitting comments.

(2) By U.S. mail or hand-delivery to Public Comment Processing, Attention: 1018-AT50, Division of Policy and