Commodity	Parts per million
Peppermint, tops	0.20
Spearmint, tops	0.20

* * * * *

[FR Doc. E8–26875 Filed 11–10–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA–08–0168]

RIN 2127–AK02

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: NHTSA is amending Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' to update many of the child restraint systems (CRSs) listed in Appendix A of the standard. The CRSs in Appendix A are used by NHTSA to test advanced air bag suppression or low risk deployment systems, to ensure that the air bag systems pose no reasonable safety risk to infants and small children in the real world. The amendments replace the CRSs listed in Appendix A with CRSs that are more available and more representative of the CRS fleet currently on the market.

DATES: If you wish to petition for reconsideration of this rule, your petition must be received by December 29, 2008.

Effective date: The date on which this final rule amends the CFR is January 12, 2009.

This final rule adopts a one-year phase-in of the requirement to test with the child restraints in the revised Appendix A. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 must be certified as meeting FMVSS No. 208 when tested with the CRSs on the revised Appendix A, and all vehicles manufactured on or after September 1, 2010 must be so certified.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents 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).

FOR FURTHER INFORMATION CONTACT: Carla Cuentas, Office of Crashworthiness Standards, Light Duty Vehicle Division (telephone 202–366–4583, fax 202–493–2739). For legal issues, contact 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.

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This final rule amends FMVSS No. 208 to update the child restraint systems (CRSs) listed in Appendix A of the standard. The notice of proposed rulemaking (NPRM) preceding this final rule was published on September 25, 2007 (72 FR 54402; Docket 2007–28710).

I. Background

FMVSS No. 208 (49 CFR 571.208) requires passenger cars and trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,856 kilograms (kg) (8,500 pounds (lb)) or less and an unloaded vehicle weight of 2,495 kg (5,500 lb) or less to be equipped with seat belts and frontal air bags for the protection of vehicle occupants in crashes. While air bags have been very effective in protecting people in moderate and high speed frontal crashes, there have been instances in which they have caused serious or fatal injuries to occupants who were very close to the air bag when it deployed. On May 12, 2000, NHTSA published a final rule to require that air bags be designed to create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (''Advanced Air Bag Rule,'' 65 FR 30680, Docket No. NHTSA 00–7013). Under the Advanced Air Bag Rule, to minimize the risk to infants and small children from deploying air bags, manufacturers may suppress an air bag in the presence of a CRS or provide a low risk deployment (LRD) system.[1]

[1] The LRD option involves deployment of the air bag in the presence of a Child Restraint Air Bag Interaction (CRABI) test dummy, representing a 12-month-old child, in a rear-facing child restraint.

To minimize the risk to children, manufacturers relying on an air bag suppression or LRD system must ensure that the vehicle complies with the suppression or LRD requirements when tested with the CRSs specified in Appendix A of the standard. As part of ensuring the robustness of automatic air bag suppression and LRD systems, NHTSA made sure that the appendix contained CRSs that represented a large portion of the CRS market and CRSs with unique size and weight characteristics. NHTSA also planned regular updates to Appendix A.

On November 19, 2003, in response to petitions for reconsideration of the May 2000 Advanced Air Bag Rule, the agency published a final rule that revised Appendix A by adding two CRSs that were equipped with components that attach to a vehicle's LATCH [2] system (68 FR 65179, Docket No. NHTSA 03–16476). The appendix has not been updated since then.

CRSs in Appendix A

Appendix A is made up of four (4) subparts, subparts A through D. There are one (1) car bed, seven (7) rear-facing child restraint systems, nine (9) forward-facing toddler and forward-facing convertible CRSs and four (4) forward-facing toddler/belt positioning booster systems currently listed and deemed ''effective'' (i.e., may be used in compliance testing) in Appendix A.

- Subpart A lists a car bed that can be used by the agency to test the suppression system of a vehicle that is manufactured on or after the effective date specified in Appendix A and that has been certified as being in compliance with 49 CFR 571.208, S19.
- Subpart B lists rear-facing CRSs that can be used by the agency to test the suppression system or the LRD capabilities of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the appendix and that has been certified as being in compliance with 49 CFR 571.208, S19.
- Subpart C lists forward-facing toddler and forward-facing convertible [3] CRSs that can be used by the agency to test the suppression system or the LRD capabilities of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the appendix and that has been certified as being in compliance with 49 CFR 571.208, S19 or S21.
- Subpart D lists forward-facing toddler/belt positioning booster systems and belt positioning booster systems that can be used by the agency to test the suppression system capabilities of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the appendix and that has been certified as being in compliance with 49 CFR 571.208, S21 or S23.

II. Factors for Decision-Making

a. Guiding Factors

The November 2003 FMVSS No. 208 final rule discussed factors that the agency considers in deciding whether Appendix A should be updated (68 FR at 65188). NHTSA reviews the appendix to: Maintain a spectrum of CRSs that is representative of the CRS population in production, ensure that only relatively current restraints will be used for compliance testing, determine the availability of the CRSs and determine any change in design, other than those that are purely cosmetic. (If a change to a CRS were clearly cosmetic, such as color scheme or upholstery, the list would not be modified.) [4] In considering whether a particular restraint should be in Appendix A, the agency considers whether the restraint—

—Has mass and dimensions *representative* of many restraints on the market,
—Has mass and dimensions representing *outliers,* and
—Has been a *high sales volum*e model.

In developing the 2007 NPRM, NHTSA evaluated data, discussed below, and systematically evaluated the CRSs in Appendix A. We assessed child restraint system dimensions, weight (mass) and sales volumes (based on confidential manufacturers' data) to identify which CRSs have dimensions that were representative of the average restraint in today's market, and which were possible outliers, with dimensions, weight [5] and/or footprints [6] markedly outside of those of the ''average'' CRS. In addition, the agency identified which CRSs had high production totals and, therefore, likely to have the greatest market share (highest sales volume).

b. Child Restraint Data

The data used for the NPRM were obtained from CRS manufacturers and NHTSA's Ease-of-Use (EOU) consumer information program. The agency's EOU program started in 2002 in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, which directed NHTSA to issue a notice to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. The EOU program provides information about child restraints with features that are easier for consumers to use and install correctly. The EOU program seeks to evaluate all CRSs available for sale at retail outlets.

The 2006 EOU program assessed 99 different CRSs (including carryover seats from the previous year that were not changed), selected from 14 different manufacturers (Docket No. NHTSA–2006–25344). In addition to those 99 CRSs, data for the CRSs currently listed in Appendix A were also collected during the 2006 EOU program. These EOU data were used to determine whether any changes to the appendix were warranted.

c. Additional Considerations

The agency believes that Appendix A should include CRSs with a gamut of features that would robustly assess advanced air bag technologies. Automatic air bag suppression systems suppress the air bag when a small child or a child in a CRS is placed on the seat, and enable the air bag's deployment when most adults occupy the seat. With

[2] ''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 that vehicle manufacturers must install pursuant to FMVSS No. 225, Child Restraint Anchorage Systems (49 CFR § 571.225). The LATCH system is comprised of two lower anchorages and one tether anchorage. Each lower anchorage is a rigid round rod or bar onto which the connector of a CRS can be attached. FMVSS No. 225 does not permit vehicle manufacturers to install LATCH systems in front designated seating positions unless the vehicle has an air bag on-off switch meeting the requirements of S4.5.4 of FMVSS No. 208. Since September 1, 2002, CRSs have been required by FMVSS No. 213, *Child Restraint Systems* (49 CFR § 571.213), to have permanently attached components that enable the CRS to connect to a LATCH system on a vehicle.

[3] A convertible CRS is one that converts from a rear-facing seat to a forward-facing seat. A combination CRS is one that converts from a forward-facing seat to a booster seat or a CRS that is a convertible that can also be used as a booster.

[4] We also stated in the rule that, in considering whether to amend the appendix, we assess whether a variety of restraint manufacturers are represented in the appendix, and whether a combination of restraints are in the appendix. *Id.* These considerations bear on our assessment of the degree to which the CRSs in the appendix are representative of child restraints in the real world and assess the robustness of advanced air bag systems.

[5] Since the CRSs are used to test air bag suppression systems, it was important to identify which CRSs were the lightest and heaviest, and those that are representative of the average restraint in today's market in terms of weight.

[6] Some air bag suppression systems may have trouble sensing a CRS if the footprint is shaped in a way that loads the air bag suppression system sensors or load cells differently than the CRSs for which the suppression system was designed to recognize.

respect to CRSs in Appendix A, LRD systems deploy the air bag in the presence of a CRABI dummy in a rear-facing CRS. The design and calibration of the advanced air bag system used must perform satisfactorily with a wide range of CRSs that could be installed in the vehicle. With that in mind, the NPRM considered the following factors in choosing CRSs for inclusion in Appendix A.

First, with LRD systems for infants already being used in some vehicles, the agency sought to include rear-facing child restraints of varying seat back heights. On the one hand, rear-facing CRSs with relatively low seat back heights could in some circumstances present a more challenging test of an LRD system, especially one consisting of an air bag mounted on the top of the instrument panel, since the back of the CRS presents less of a reaction surface (resistance). With a low back, the air bag could fully pressurize and interact in a fully energized state with the child's head as the bag comes over the top of the CRS seat back. However, recent agency testing indicates that CRSs with high backs provide significant performance challenges to infant LRD systems. Therefore, we sought to include in Appendix A rear-facing and convertible CRSs with seat back heights that range from 12.75 to 27 in [7] [8] to diversify the spectrum of seat back heights.

Second, features such as handles and sunshields of a rear-facing CRS may complicate and challenge the sensing operation of certain advanced air bag systems relying on future technologies such as vision-based advanced air bag systems. To ensure that advanced air bags perform well with all types of rear-facing CRSs, the agency purposefully includes in Appendix A rear-facing CRSs that have handles and sunshields. NHTSA compliance test procedures specify adjustments of the handles and sunshields to the positions specified in the standard to ensure the robustness of the advanced air bag system.

Third, since CRSs have been required to have LATCH components since September 1, 2002, the agency has decided to replace many of the older non-LATCH CRSs in Appendix A with new equivalent LATCH-equipped CRSs from the same manufacturer.[9] On the other hand, when the LATCH requirement became effective in 2002 for child restraints, CRS manufacturers did not significantly change CRS structures or designs. Accordingly, we expect that suppression and LRD systems will react to LATCH and non-LATCH CRSs similarly. In addition, very few vehicles will have lower anchors in the front outboard passenger seat.

III. Proposed Changes

After considering the factors for decision-making discussed in the previous section of this preamble, NHTSA proposed to delete certain CRSs from Appendix A and to add others.[10] The agency noted that some CRSs undergo annual cosmetic changes that result in different model numbers for the new version, and that some of the model numbers of the CRSs in the NPRM could thus be different in the final rule to reflect the latest model number. The agency docketed a document entitled, ''Technical Assessment of Child Restraint Systems for FMVSS No. 208, Occupant Crash Protection, Appendix A,'' that includes dimensional information, pictures, and statistical data on the current CRSs in the appendix and the CRSs proposed for inclusion in the appendix (Docket No. 2007–28710–0002) (hereinafter referred to as the 2007 Technical Assessment).

The agency proposed to delete six (6) existing CRSs and to add five (5) new CRSs (see Table 1 below, which reproduces Table 1 of the NPRM). The reasons for each proposed deletion or addition were discussed in detail in the NPRM and readers may refer to the NPRM for that information (72 FR at 54405–54407). Our proposed deletions were based generally on CRSs that did not offer any unique characteristics, those that were produced in the smallest quantities, or those that have not been in production for some time. If we proposed eliminating a CRS that offered a unique characteristic, we proposed to replace it with a similar CRS. Our proposed additions also sought to include more LATCH-equipped CRSs in the appendix.

In addition, comments were requested on cosmetic replacements of other CRSs in Appendix A (see Table 2 below, which reproduces Table 2 of the NPRM). The reasons for the updates were discussed in detail in the NPRM (72 FR at 54407–54408). These changes primarily would update the older CRSs in the appendix with newer model CRSs that have the same main physical features as the older restraints. To obtain information on whether CRSs in Appendix A could be replaced by newer, more available models with the same relevant physical features as the Appendix A child restraints, we contacted each manufacturer of the listed CRS and asked which of their more recently-produced CRSs could be considered an equivalent replacement for the Appendix A CRS. With one exception related to the Cosco Dream Ride car bed, manufacturers were able to suggest a possible replacement.[11] We decided that the CRSs in the Appendix that have been out of production the longest (i.e., the hardest CRSs to acquire for testing purposes) should be replaced with newer-model CRSs.

TABLE 1—SUMMARY OF PROPOSED DELETIONS AND ADDITIONS TO APPENDIX A

Name	Type	Appendix subpart
Deletions		
Britax Handle With Care #191	Rear-Facing	B.
Century Assura #4553	Rear-Facing	B.
Century Encore #4612	Convertible	C.
Cosco Olympian #02803	Convertible	C.

[7] The upper end of the spectrum (27 in) represents convertible CRSs, which have higher seat back heights than rear-facing-only CRSs.

[8] The height measurement used for the rear-facing CRSs is the height with their base.

[9] The newly added car bed is the only CRS replacement that came from a different manufacturer.

[10] We noted in the November 2003 FMVSS No. 208 final rule that our periodic review of the child restraints in the appendix may cause the number of CRSs contained therein to change slightly as we identify different trends in the use of CRSs from prior periods. We said then that the number of CRSs should not vary by more than 10–20 percent absent any dramatic changes in the design of restraints.

[11] Subpart A of the appendix lists the Cosco Dream Ride car bed which is no longer being manufactured for retail sale. Cosco was unable to suggest a replacement for this CRS because the manufacturer no longer sells car beds to the general public (the CRS is manufactured and sold mainly for special needs accounts). After consulting with the major CRS manufacturers, we only found one car bed that is being manufactured, the Angel Guard Angel Ride. We proposed the Angel Guard Angel Ride as our replacement choice because the CRS is available to the general public.

TABLE 1—SUMMARY OF PROPOSED DELETIONS AND ADDITIONS TO APPENDIX A—Continued

Name	Type	Appendix subpart
Safety 1st Comfort Ride #22–400	Convertible	C.
Britax Expressway ISOFIX	Forward-Facing	C.
Additions		
Graco Snugride	Rear-Facing	B.
Peg Perego Viaggio #IMCC00US	Rear-Facing	B.
Cosco Summit DX #22–260	Forward-Facing	C.
Evenflo Generations #352	Convertible	C.
Graco Safeseat (Step 2)	Combination	C.

TABLE 2—CRSS THAT COULD BE REPLACED WITH SIMILAR, MORE RECENTLY PRODUCED RESTRAINTS, AND WHAT THOSE REPLACEMENTS SHOULD BE

Appendix A subpart	CRS in Appendix A	Type of CRS	Replacement
A	Cosco Dream Ride	Car bed	Angel Guard Angel Ride #AA2403FOF.
B	Cosco Arriva 02–727	Rear-facing	Cosco Arriva #22–013.
C	Britax Roundabout	Convertible	Britax Roundabout #E9L02.
C	Century Encore [12]	Convertible	Graco ComfortSport.
C	Evenflo Horizon V	Convertible	Evenflo Tribute 5 Deluxe #379.
D	Century Next Step	Combination	Graco Cherished Cargo.
D	Cosco High Back Booster	Booster	Cosco Hi Back Booster #22–209.

IV. Comments and Agency Responses on CRSs in Appendix A

The agency received comments on the proposal from the Alliance of Automobile Manufacturers (Alliance),[13] Porsche Cars North America, Inc. (Porsche), TRW Automotive (TRW), Ferrari, General Motors (GM), the Automotive Occupant Restraints Council (AORC), and from community interest groups Safe Ride News and Traffic Safety Projects. Commenters overwhelmingly supported the deletions identified in Table 1 and Table 2 and generally supported the proposed additions identified in the tables, with many suggesting further amendments to Appendix A. Several commenters raised concerns about the effective date. For example, the Alliance stated that it believes that as many as possible of the unavailable CRSs in Appendix A should be replaced with respect to new vehicle models, but manufacturers should be allowed to continue to certify previously certified models using the existing version of the appendix for at least three years.[14] In contrast, Safe Ride News expressed concern that the proposed lead time ''could stretch out the wait before these new CRSs are introduced for testing to Model Year 2010 or later.'' Some commenters asked for clarification of testing issues, and there were a number of ideas suggested for improving the ease and timeliness of future amendments to Appendix A and for selecting the CRSs that should be included in the appendix. These and other issues are addressed in this and the following sections.

Accompanying this final rule is an updated Technical Assessment of Child Restraint Systems that we have placed in the docket for this final rule (''2008 Technical Assessment''). The assessment contains dimensional information and pictures of the CRSs adopted into Appendix A by this final rule, and statistical data of past EOU data.

To improve the clarity of the appendix, we have reformatted the tables of Appendix A and have set forth an Appendix A–1 which incorporates the revisions adopted by this final rule.

a. Deletions

All commenters supported the proposed deletion of the six CRSs from Appendix A (described in Table 1, above). No commenter opposed the deletions. Several commenters suggested that we refresh all the CRSs in the appendix.

Agency Response: We are adopting the proposed deletions for the reasons discussed in the NPRM. Regarding the Britax Expressway ISOFIX, this CRS is removed from Appendix A effective on the date of publication of this final rule.

Deleting and replacing all the CRSs in the appendix is outside the scope of the present rulemaking. However, we concur with the view that circumstances may warrant updating more than 10 to 20 percent of the number of CRSs in the appendix. The allocation of agency

[12] We later realized that reference to the Encore was in error.

[13] The Alliance is made up of BMW group, Chrysler LLC, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[14] In a petition for rulemaking dated April 27, 2007, the Alliance requested NHTSA to amend FMVSS No. 208 to allow manufacturers the option of certifying vehicles to any edition of Appendix A for five model years after the edition first becomes effective. (In its comment to the September 25, 2007 NPRM, the Alliance reduced the suggested 5-year compliance period to 3 years for this effort to revise Appendix A, recognizing that the appendix has not been amended in several years.)

The petition also requested that the agency commit to amending the appendix every three years and revise the view the agency announced in the past that the appendix should be amended annually. The Alliance believes that annual revisions are not needed to protect children because experience has shown that, despite the fact that the appendix has not been amended since 2003, there is no known incident in which a child in a CRS in the front seat of a vehicle equipped with advanced air bags received a serious injury due to the deployment of an air bag. In addition, the Alliance believed that annual updates to the appendix is inconsistent with the realities of the automobile industry, because retesting and recertifying existing vehicle models every year as new CRSs are added to the appendix would, as the petitioner stated, ''create a tremendous burden on manufacturers which * * * [in light of the absence of known injuries to a child caused by an advanced air bag system] would yield little or no safety benefits.'' The petitioner stated that it recognized that ''in the event of some unanticipated safety need, such as the introduction of an entirely new style of CRS that captures a significant portion of the market, the agency could revise the appendix—subject to notice and lead time constraints—without waiting for three years from the prior update.'' The agency is responding to issues raised in the petition both in this final rule, and in a separate rulemaking action.

resources have hampered our periodic updates of the appendix, so it could be prudent for a rulemaking, such as today's final rule, to affect more than 10 to 20 percent of the CRSs in the appendix.

b. Additions (Identified in Table 1)

With the exception of the Peg Perego Viaggio #IMCC00US, the five child restraints that we proposed to add to Appendix A were supported by commenters. Accordingly, with the exception of the Peg Perego Viaggio #IMCC00US, we are adopting the CRSs for the reasons provided in the NPRM. However, several commenters had questions about some of the restraints and requested clarification of the proposal.

1. Proposed Inclusion of Graco Snugride to Subpart B

GM and the Alliance stated that the NPRM did not provide a model number in Table 1 or in the proposed regulatory text, while the preamble and 2007 Technical Assessment denoted model #8643. TRW noted that it observed that myriad variants of the Snugride exist which appear to have essentially similar construction to the #8643 model and which would likely perform identically in suppression or LRD tests.

Agency Response: Our intent was not to provide a model number for this CRS in the regulatory text. The NPRM mistakenly included the model number for the Graco Snugride in the preamble and the 2007 Technical Assessment.

Due to the dynamic nature of the CRS industry, when selecting new CRSs for the appendix, the agency sought to provide, to the extent possible, generic model numbers. The agency's intention was to make it easier for vehicle manufacturers to find the newly added CRSs by providing model numbers that do not specify patterns for soft goods, type of padding, etc., i.e., for items that would not affect the performance of the advanced air bag system. For some CRSs, such as for Evenflo child restraints, this meant requiring simply a number prefix,[15] or just a name, such as for Graco child restraints, but some CRSs required complete model numbers, such as the child restraints produced by Cosco. Thus, for the Graco Snugride no model number was needed.

2. Proposed Inclusion of Peg Perego Primo Viaggio #IMCC00US to Subpart B

Ferrari stated that the model number proposed for this CRS was out of production and recommended the addition of the new model number IMUN00US. TRW stated that the rubber inserts in the belt slots of the Primo Viaggio have a tendency to grab the seat belt webbing, making it difficult to achieve the maximum 134 N belt tension called for in FMVSS No. 208.

Agency Response: We agree to include model IMUN00US instead of IMCC00US. Market data indicate that the model IMCC00US was discontinued in August 2007 and replaced with the new model name and number Peg Perego Primo Viaggio SIP IMUN00US. The changes made for the new version of the Primo Viaggio SIP are a new handlebar shape and more ear/head padding.

NHTSA installed the Peg Perego Primo Viaggio in seventeen (17) model year (MY) 2008 vehicles and found that while the rubber inserts do make it more difficult to achieve the desired belt tension, the desired belt tension is attainable. We note that, to achieve the specified load, the CRS base was pre-loaded prior to installing the CRS onto the base. Since the IMUN00US is similar structurally to the IMCC00US and the specified FMVSS No. 208 belt tension is achievable using the IMUN00US, we are adding the Peg Perego Primo Viaggio SIP IMUN00US to Appendix A. Photographs of the two CRSs can be found in the 2008 Technical Assessment.

3. Proposed Inclusion of the Evenflo Generations #352 to Subpart C

The NPRM characterized the Evenflo Generations as a convertible CRS.

GM and the Alliance stated that this CRS was not on the manufacturer's website. Ferrari and TRW pointed out that this CRS should be classified as a combination CRS. Ferrari stated that it supports the addition of the Evenflo Generations only if it will be exempted from testing in a rearward facing configuration. TRW stated that there were similar models to the CRS, such as the Generations 3521804.

Agency Response: We are adding the CRS to Appendix A, but we agree with Ferrari and TRW that this CRS was categorized incorrectly in the NPRM as a convertible CRS. This CRS is a forward-facing-only combination CRS. Accordingly, it is listed under the booster car seat section of the manufacturer's Web site.

As explained earlier in this preamble, for purposes of Appendix A, Evenflo child restraints can be identified by a generic model number consisting of a number prefix. The #352 model number provided in the NPRM was merely a prefix of the intended model number. To avoid confusion, we have revised the model number to indicate that the actual model number is several digits long and that the 352 was simply a prefix. The similar model observed by TRW beginning with the 352 prefix is thus an acceptable model.

With regard to combination CRSs, Appendix A categories were developed prior to the development of combination CRSs. Therefore, there is not a subpart of the appendix specific to these restraints. These seats can perform as a forward-facing harness restraint as well as a booster seat using a vehicle's seat belt, so they can technically accommodate a one-year-old, three-year-old, and six-year-old dummy. When considering which subpart of the appendix to categorize these seats, we noted that the FMVSS No. 208 advanced air bag system requirements do not require combination CRSs in Subpart C to be tested with the six-year-old dummy. (*See* FMVSS No. 208, S23.) Therefore, to ensure adequate testing of all the modes a combination CRS can be used for, we are listing the Evenflo Generations 352xxxx in both Subparts C and D of Appendix A.

The agency is responding to Ferrari's comment that the CRS should only be used in rearward facing configurations in the section of this preamble entitled, ''Testing Issues.''

4. Proposed Inclusion of Cosco Summit Deluxe #22–260 to Subpart C

GM stated that it could not find a CRS with the precise name and model number provided in the NPRM and suggested the Summit Deluxe High Back Booster Car Seat model 22565 or the Summit High Back Booster Car Seat model 22260, noting that both have very similar appearance and look like the CRS in the photograph in the 2007 Technical Assessment. The Alliance also pointed out that it could not identify any Cosco CRS with the precise name and model number identified in the NPRM. Ferrari supported the addition of the Summit Deluxe ''only if it will be exempted from testing in rearward facing configurations.''

Agency Response: The agency concurs with the GM comment and is adopting the Cosco Summit Deluxe High Back Booster model 22–262 into Subparts C and D of the appendix. A picture and measurements of the CRS can be found in the 2008 Technical Assessment. The agency is responding to Ferrari's comment that the CRS should only be used in rearward facing configurations in the section of this preamble entitled, ''Testing Issues.''

[15] In the appendix, the additional numbers following the prefix are indicated by ''X''s.

5. Proposed Inclusion of the Graco SafeSeat (Step 2) #8B02 to Subpart C

The Alliance stated that this CRS was on the manufacturer's Web site but that the Alliance was advised by Graco that the company has stopped manufacturing a model with the number or will do so in the very near future. The Alliance stated that NHTSA should substitute the new model name/number that Graco will use for this CRS. TRW stated that Model #8B02 was not found at any of six local large retailers, while a very similar model 8B05 was found at a local retailer and an online source was located for this model.

Agency Response: As discussed earlier, we mistakenly included the model number in the preamble. A model number is not needed. A Graco representative (*see* agency ex parte memorandum in the docket for this final rule) confirmed that Graco model numbers identify only cosmetic features and that identifying the shell does not necessitate identifying a model number. Therefore, the Alliance's concerns about that particular model being discontinued or TRW's concern about not finding that particular model at large retail stores is not a problem. (In addition, this CRS was incorrectly categorized as a combination CRS in Table 1 of the NPRM. As stated in the preamble of that document, the child restraint is a forward-facing only CRS.) However, we are adding the word ''Toddler'' to the name because Graco's Web site and the EOU Web site both list this CRS as the Graco Toddler SafeSeat. Thus, this final rule adopts the Graco Toddler SafeSeat Step 2.

c. Updating Other CRSs in Appendix A (Identified in Table 2)

Commenters generally supported the seven changes identified in Table 2 of the NPRM preamble (the same Table 2 above of today's document).

1. Angel Guard Angel Ride #AA2403FOF (Subpart A)

No commenter objected to including this CRS, but TRW stated that it was unable to find a retail source for this CRS. TRW also expressed concern about the size of this CRS because, the commenter believed, vehicles may not have enough seat belt webbing to reach around it with the vehicle seat fully forward. TRW recommended specifying in FMVSS No. 208 that when the vehicle seat belt lacks the length to reach around a CRS, the vehicle seat is moved to the ''first position rearward of full forward where the seat belt will go around the CRS.''

Agency Response: The agency is replacing the Cosco Dream Ride with the Angel Guard Angel Ride AA2403FOF, a car bed with a 3-point harness, for the reasons provided in the NPRM. The CRS can be ordered directly through Angel Guard and through other sources listed on the manufacturer's Web site (*http://www.angel-guard.com*). The agency is responding to TRW's concern about vehicles' having sufficient belt length to encircle the restraint in the section of this preamble entitled, ''Testing Issues.''

2. Cosco Arriva #22–013 (Subpart B)

In their comments, GM and the Alliance stated that they could not find this CRS on the manufacturer's Web site. TRW also could not find any sources for this CRS and was informed that it is being phased out. Furthermore, TRW requested clarification on whether the Arriva 02–727 should be tested with its base.

Agency Response: We are adopting the Cosco Arriva #22–013PAW, a rear-facing CRS with a 5-point harness, to replace its older counterpart as proposed. The Cosco Arriva #22–013PAW is mainly distributed to hospitals, health departments, and child safety businesses or organizations and is not sold at retailers (these CRSs are called ''institutional CRSs''). However, this CRS is easily available to the public as it can be ordered through Cosco or its distributor, National Safety Resources.[16] We will test the CRS with the base 22–999WHO.

3. Britax Roundabout #E9L02 (Subpart C)

The only comment received on this CRS was from TRW, which supported the change. TRW stated that this CRS was found at large retailers.

Agency Response: We are making the proposed change. However, we will refer to the new restraint as the Britax Roundabout E9L02xx; the last two digits of the model number are not needed because they indicate a specific fabric design. The Britax Roundabout E9L02xx is a convertible CRS with a 5-point harness.

4. Graco ComfortSport (Subpart C)

The NPRM requested comments on replacing the Century Encore with the Graco ComfortSport. However, the reference to the Century Encore was a mistake; that CRS was proposed to be deleted from Appendix A.

GM and the Alliance realized the mistake, stating that the Graco ComfortSport is actually a replacement for the Century STE 1000, not the Century Encore. In addition, the Alliance asked for the identification of a model number for the Graco ComfortSport. TRW stated that it was advised that the model number provided in the 2007 Technical Assessment was recalled and that a new version was becoming available. TRW noted that it purchased a ComfortSport 8C00 for evaluation, because it was advised that all ComfortSports have the same shell.

Agency Response: Commenters are correct that we meant the Graco ComfortSport to replace the Century STE 1000. (The Century STE 1000 and the Century Encore have essentially the same shell, thus the ComfortSport could have replaced either of these CRSs.) No commenter opposed the addition of the Graco ComfortSport, a convertible CRS with a 5-point harness. We are thus adopting the proposed change.

As discussed earlier, a model number is not necessary to adequately identify this Graco CRS. However, we note that several ComfortSport models produced between January 2, 2007 and August 31, 2007 were recalled due to possible misrouting of the LATCH belt during assembly. Graco has assured us that new versions are available and that the model numbers of the new versions end in the number two (2). However, there is still no need to specify a model number for this CRS in Appendix A as no substantive changes were made to the CRS that will affect the performance of a suppression or LRD system.

5. Evenflo Tribute V Deluxe #379 (Subpart C)

The NPRM requested comments on replacing the Evenflo Horizon V with the Evenflo Tribute V Deluxe 379. The only comment on this proposed change was from TRW, which stated that it could not find the Evenflo Tribute V Deluxe with the model number provided in the NPRM.

Agency Response: As explained above, the ''379'' is just a prefix that precedes four other digits of the 7-digit model number. We are clarifying the regulatory text to make this clear. Further, we are removing the ''Deluxe'' specification because it only designates the fabric used and the addition of a cup holder, which are features that will not likely affect the performance of a suppression or LRD system. Accordingly, this final rule replaces the Evenflo Horizon V with the Evenflo Tribute V 379xxxx, a convertible CRS with a 5-point harness.

[16] A representative of the manufacturer verified that they are contemplating phasing out this CRS; however, they said that they would continue producing it as long as there was a demand for it (see agency ex parte memorandum in the docket for this final rule).

6. Graco Cherished Cargo (Subpart D)

GM and the Alliance stated that they could not find the Cherished Cargo on the manufacturer's Web site, although several models that share the name Cargo do appear. TRW claimed that Graco advised them that this CRS was discontinued, but that all Cargo models such as the Platinum, Ultra, etc., use the same shell and are very similar. TRW recommended we avoid the Cherished Cargo and choose a different, more readily available model of the Cargo series, such as the Platinum Cargo.

Agency Response: For the reasons of availability raised by the commenters, we are replacing the Century Next Step with the Graco Platinum Cargo, a forward-facing-only combination CRS with a 5-point harness. It will be listed in both Subparts C and D of the appendix. Graco has informed NHTSA that the Cherished Cargo was not discontinued, but that retailers no longer want to carry this CRS in stock (see agency ex parte memorandum in the docket for this final rule). Graco also confirmed that the Platinum Cargo has the same shell as the Cherished Cargo and it is more readily available. As shown in photographs of the Platinum Cargo and the Cherished Cargo, the CRSs are interchangeable (see the 2008 Technical Assessment).

7. Cosco High Back Booster #22–209 (Subpart D)

The NPRM requested comments on replacing the Cosco High Back Booster with the Cosco High Back Booster 22–209. TRW commented that it could not find this seat at any of the six large retailers it searched. They found similar models such as the 22–206 at two of the six retailers.

Agency Response: We are adopting the Cosco High Back Booster 22–209, a forward-facing only combination CRS with a 5-point harness into Subparts C and D of the appendix. As of July 28, 2008, the manufacturer's Web site has a list of retailers for this CRS on its Web site.

V. Compliance Date

Consistent with statements NHTSA made in the November 19, 2003 FMVSS No. 208 final rule regarding lead time (68 FR at 65188), the agency proposed that the compliance date for the proposed changes to Appendix A be the next model year introduced one year after publication of a final rule modifying Appendix A. The agency believed that the lead time would be sufficiently long to provide vehicle manufacturers time to procure the needed child restraints, test vehicles, and certify the air bag systems to FMVSS No. 208, while ensuring the satisfactory performance of vehicles' suppression and LRD systems in an expeditious manner.

This section addresses the following comments relating to the compliance date.

1. The Alliance agreed that the proposed effective date of September 1, 2009 (the beginning of the next model year introduced one year after the anticipated date of publication of the final rule) is reasonable with respect to new vehicle models and to new child protection systems that will be utilized for the first time in MY 2010 (or later) vehicles. However, the commenter stated that requiring vehicle manufacturers to recertify existing vehicles utilizing a different set of CRSs would impose a tremendous burden on those manufacturers. The Alliance urged the agency to provide manufacturers the option of continuing to certify, for at least three years, ''carry-over'' models that were previously certified to the existing version of Appendix A. The commenter stated that, on average, over 75 percent of its members' MY 2010 models will be equipped with ''child protection systems that are identical to those in the equivalent MY 2009 models.'' The commenter stated that in all likelihood these models will be certified using the CRSs on the existing Appendix A, and that requiring them to be certified using the CRSs on the new Appendix would be extremely burdensome, ''even apart from whether the child protection systems in those models would need to be redesigned or recalibrated to assure compliance with the standard.''

Porsche, a member of the Alliance, commented in support of the Alliance's comments, but added that the model lifespan of Porsche vehicles is typically longer than the industry norms, lasting for seven years or more. Thus, Porsche requested that NHTSA allow manufacturers to use the existing version of Appendix A for up to five years following the effective date of the final rule.[17] ''Any shorter time period would likely result in a significant amount of unnecessary testing, especially under circumstances when most or many of the child restraints on the list are being replaced.''

2. GM, an Alliance member, requested that the effective date of the changes in the final rule be no sooner than September 1, 2010. GM submitted confidential information that provided an estimate of ''the amount of work needed to evaluate, potentially modify, and validate'' its carry-over vehicle platforms and believed that the work could not be completed by ''the next model year introduced one year after publication of the final rule.'' GM believed that delaying the effective date until September 1, 2010 would not increase any risks to safety, because it has no indications ''that there are any CRSs in use that do not properly classify'' with their advanced air bag systems.

3. Ferrari addressed the effective date for the Table 2 changes. The commenter stated that there would be an unnecessary burden on the manufacturers if existing vehicles models already certified to comply with the old CRSs in Table 2 have to be certified again for compliance with the new CRSs. Ferrari suggested that NHTSA add a provision to FMVSS No. 208 stating that if a vehicle manufacturer previously certified a vehicle model using an older CRS listed in Table 2 and has so certified prior to the listing of the newer equivalent CRS in Appendix A, then the vehicle manufacturer does not have to retest said vehicle model using the newer CRS. Ferrari believed that ''This approach avoids costly retesting and since the newer CRS is by definition 'equivalent' to the older CRS, there is no negative effect on safety.''

4. In contrast to the above comments, some comments supported the proposed effective date or expressed concern that it was too long. TRW stated that it saw no concerns with the proposed effective date and believed that it provides sufficient time to adopt the requirements of the proposed rule. Safe Ride News believed that the proposed effective date would be ''too long to wait.'' The commenter was concerned that because the appendix has not been updated in years, it is no longer representative of heavier CRSs that have been on the market for several years. Safe Ride News did not consider it an unreasonable request to shorten the lead-time for manufacturers since the new CRSs will not be difficult to acquire.

Agency Response: NHTSA acknowledges that there are competing considerations in updating Appendix A, specifically, the need to have a representative list while maintaining some stability to minimize the certification burden. Having the list reflect real-world use of a variety of child restraints, and ensuring the compatibility of suppression and LRD systems with those restraints, argue for

[17] Porsche noted that its request is similar to the petition for rulemaking from the Alliance requesting NHTSA to provide a five-year period for carry-over models that were certified to the existing version of Appendix A.

expediency. On the other hand, time constraints and costs associated with certification burdens resulting from changes to the appendix dictate that there are limits to how close in time an effective date can be set. Moreover, as part of the exercise of balancing those interests, we also consider the actual effect that the change to Appendix A has on the robustness of the advanced air bag system, i.e., whether the change to the appendix will result in an actual real-world safety improvement.

NHTSA evaluated the 2000–2007 EOU measurement data to determine if there have been significant shifts in the characteristics of CRSs since 2000 and did not observe any indication of definitive shifts in the CRS characteristics pertinent to air bag performance. (See 2008 Technical Assessment.) For the few changes we did observe, the changes do not appear enough to alter an advanced air bag system's performance. NHTSA undertook indicant tests of seventeen (17) MY 2008 vehicles to assist in determining whether the CRSs being added to the appendix would require manufacturers to redesign their advanced air bag systems. (See matrix in the 2008 Technical Assessment.) The tests indicate that the suppression systems will continue to meet FMVSS No. 208 suppression requirements. This finding is consistent with GM's comment that its vehicles continue to classify CRSs correctly when tested with the CRSs newly added to Appendix A.

The agency is currently working on a response to the Alliance's April 2007 petition; therefore, the suggestions of the petitioners that there should be a set lead time period of 3 or 5 years for re-certification of carry-over models will be addressed in a subsequent rulemaking action. However, to address the recertification concerns with respect to this Appendix A update, we have decided that a balancing of the competing interests can be effectively realized by maintaining the compliance date of September 1, 2009 (the beginning of the next model year introduced approximately one year after date of publication of this final rule), while phasing-in the requirement.[18] The effective date and phase-in schedule apply to all vehicles, without differentiation between new and ''carry-over'' models (these are vehicles that were previously certified to the existing Appendix A). Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 must be certified as meeting FMVSS No. 208 when tested with the CRSs on the revised appendix (which we have designated ''Appendix A–1''), and all vehicles manufactured on or after September 1, 2010 must be so certified as meeting FMVSS No. 208 when tested with the Appendix A–1 child restraints. The September 1, 2009 date ensures that suppression and LRD systems will be tested with representative child restraints in an expeditious manner and thus maintains the robustness of the FMVSS No. 208 test and the soundness of the child protection systems, while the phase-in addresses the vehicle manufacturers' certification burdens. Since there are no marked shifts in the dimensional characteristics of CRSs, a phase-in will not have a negative impact on child safety.[19]

The phase-in has a practical effect of permitting 50 percent of carry-over vehicles to continue to certify to the existing appendix for a period, albeit for a shorter period than the Alliance's suggested period of 3 years or Porsche's suggested period of 5 years. (A manufacturer may choose to have new model vehicles or carry-over vehicles of established models, or both, comprise the 50 percent of vehicles that can be phased-in to the requirement to certify to the revised Appendix A.) The ability to carry over a large percentage of its vehicles for a year works to alleviate compliance burdens on manufacturers.

On the other hand, in response to Safe Ride News, we do not agree that the September 1, 2009 date could be moved up. Although the CRSs newly added to Appendix A will be more readily available than the current seats, recertifying to the new appendix will involve more than just procuring the new CRSs. Vehicle manufacturers need time to test and certify their vehicles. Further, as noted above, we have not seen indication of significant shifts in the CRS characteristics pertinent to air bag performance, so there is not a need to expedite the September 1, 2009 date based on potential real-world safety benefits that could be gained.

We are denying Ferrari's suggestion that we specify in FMVSS No. 208 that if a vehicle manufacturer previously certified a vehicle model using an older CRS that was replaced by this final rule by an ''equivalent'' CRS (these CRSs were listed in Table 2 of the NPRM and Table 2 of this preamble), the vehicle manufacturer does not have to retest said vehicle model using the newer CRS. We do not believe that such a provision is necessary or appropriate. NHTSA does not require vehicle manufacturers to undertake any of the testing specified in the FMVSSs; a manufacturer just needs to ensure that its vehicles meet the requirements of the applicable standard when NHTSA tests the manufacturer's vehicles using the procedures specified in the standard. Thus, a manufacturer has the discretion to decide what testing, if any, is needed to certify the vehicle with the updated appendix.

VI. Early Compliance and Picking and Choosing of CRSs

The NPRM proposed to provide manufacturers the option of early compliance with the amended list, i.e., it was proposed that manufacturers may choose to certify their vehicles with the updated Appendix A prior to the effective date of the provision, as long as the manufacturer notifies the agency that it is exercising this option. However, NHTSA proposed that manufacturers choosing the early compliance option would not be permitted to pick and choose among the CRSs that would be newly added by the final rule. Vehicle manufacturers choosing the early compliance option would have to ensure that their vehicles meet the advanced air bag requirements when NHTSA uses all of the newly-added CRSs (along with the CRSs that were not affected by the amendment). NHTSA proposed this limitation to maintain the integrity of the appendix: The child restraints in each appendix are each part of a comprehensive set based on their physical characteristics and as such, should be maintained as a set.

Agency Response: No commenter objected to the proposal, although the Alliance stated that lead time constraints make it very unlikely that any manufacturer will be able to certify its MY 2009 vehicles to the new version, since, the commenter stated, the sales of these vehicles generally commence in the fall of 2008 or earlier. We are ratifying the provisions discussed above without change. Manufacturers may not pick and choose to certify with some CRSs from Appendix A and some from Appendix A–1.

[18] As with all phase-ins, the agency is adopting a reporting and recordkeeping requirement to facilitate the agency's enforcement of the standard. These reporting and recordkeeping requirements will be set forth in 49 CFR Part 585, Subpart D.

[19] We are submitting a request for OMB clearance of the collection of information required under a phase-in (for compliance purposes, manufacturers must keep records of the vehicles certified to the current Appendix A or to the amended Appendix A, and report that information to NHTSA so that the agency knows which CRSs to use to test vehicles to FMVSS No. 208 suppression and LRD requirements). We request comments on the collection of information. See the section of this preamble entitled, ''Regulatory Analyses and Notices.''

VII. Testing Issues

Commenters raised questions relating to how the agency will use the CRSs in Appendix A. These questions are answered below.

a. Positioning of Adjustable Features

TRW recommends that NHTSA specify what position(s) the adjustable features, e.g., adjustable headrests (Evenflo Generations) and positionable ''feet'' (Graco Snugride and Evenflo Discovery Adjust Right), should be in during testing because, the commenter stated, they may affect their installation in a vehicle and/or how the CRS interacts with the vehicle seat, suppression system sensors, or deploying air bags.

Agency Response: We do not agree that minor adjustments need to be specified in the standard. For the FMVSS No. 208 tests conducted with CRSs, the standard's test procedures state that the installer should follow, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the CRS. Those directions generally provide sufficient information to conduct the compliance test. For example, Evenflo's instructions for the Evenflo Generations state that the headrest should be positioned immediately above the harness slots in use. For other adjustments, the standard is silent because the adjustment is irrelevant for the compliance test; it does not matter how the feature is adjusted because the adjustment does not affect the performance results.

For a few adjustments, FMVSS No. 208 specifically overrides the manufacturer's instructions but is clear in its instruction in those instances. For example, the agency's FMVSS No. 208 test procedure (TP 208) does not require that the CRS be at the manufacturer's recommended angle.[20] In its comment on the NPRM, TRW recommended rewording FMVSS No. 208 and TP208 to require that the CRS level indicator, if present, be in the recommended range. We disagree with this suggestion. FMVSS No. 208 does not specifically require that the CRS level indicator be in the recommended range because the use of positioning devices, such as rolled up towels, do not allow repeatable installations.[21]

b. Testing the Car Bed

In its comment on the proposal to adopt the Angel Guard Angel Ride AA2403FOF car bed into Appendix A, TRW was concerned that due to the large size of the car bed, some vehicles may not have enough seat belt length to reach around this CRS with the vehicle seat fully forward. TRW recommended that FMVSS No. 208 state that when the vehicle seat belt length is insufficient to reach around a CRS, the vehicle seat is to be moved to the first position rearward of full forward where the seat belt will go around the CRS.

Agency Response: We agree to add a provision to FMVSS No. 208 to address this concern. However, we note that TRW did not identify whether it was expressing concern about the belt length of a specific vehicle. FMVSS No. 208, S7.1, requires seat belt assemblies to accommodate a 95th percentile adult male with the seat in any position. That standard defines the hip circumference of a 95th percentile adult male as being 47.2 inches (in). The Angel Guard car bed is approximately 53.75 in around its perimeter (based on a width of 21.75 in and two depth measurements of 16 in). While the car bed appears to require 7 in of additional webbing, many vehicle manufacturers provide additional belt length beyond the minimum required by the FMVSS. According to 2007 and 2008 ''Buying a Safer Car'' information,[22] manufacturers that provide longer seat belts typically provide an average of 24.67 in of extra belt length for the right front passenger position. However, for those vehicles that may not have sufficient webbing to reach around the Angel Guard with the seat in the full forward position, we are amending FMVSS No. 208, S20.2.3.2(a), to provide a provision similar to the one in FMVSS No. 208, S20.1.2, which allows the seat to be moved rearward if there is contact by the CRS or test dummy with the instrument panel.

c. Testing Forward-Facing-Only CRSs in Rear-Facing Configurations

Ferrari stated that it supported the addition of forward-facing-only CRSs to subpart C of Appendix A only if the CRSs are excluded from testing in a rear-facing configuration. Ferrari believed that forward-facing-only CRSs should not be used for testing in a rear-facing configuration and that FMVSS No. 208 and subpart C of the appendix should be revised to exclude forward-facing-only CRSs from all types of rear-facing testing. Ferrari also recommended splitting subpart C into two lists, convertibles (C1) and forward-facing-only CRSs (C2), and to revise S20.2.1.1, S20.2.2.1, and S20.4.2 to identify only CRSs from subpart C1.

Agency Response: We partially agree and partially disagree with this comment. In the NPRM we proposed to include the following language, for the *belted* tests under subpart C: ''Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2.'' This provision already exists in subpart C with regard to S20.2.1.1(a). We proposed expanding the exclusion to S20.4.2 because there are forward-facing-only CRSs in subpart C that cannot be belted in a rear-facing configuration as specified by S20.4.2. Ferrari's comment was supportive of the proposal, and we received no comment in opposition. We are thus adopting the proposed language in the final rule. However, FMVSS No. 208, S20.2.2.1, is an *unbelted* rear-facing configuration test that includes forward-facing-only CRSs as a misuse condition. Since this is an unbelted test, belt routing is not an issue, so forward-facing-only CRSs are not excluded from testing under this rear-facing configuration test. Such an exclusion was not part of the NPRM.

We are not incorporating Ferrari's recommendation to create two sub-categories in Subpart C in this rulemaking, but we will consider it when undertaking future updates of Appendix A.

d. Specifying the Type of Harness Used for Testing

TRW recommends clarifying which type of harness/belt type should be used when testing the CRSs because different types may have been available for the same model number.

Agency Response: We disagree. In the NPRM preamble we specified the

[20] FMVSS No. 208, S20.2.1.5(c) states: ''* * * secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint for the orientation being installed.'' The TP 208–13, Data Sheet 17, Page 111, states: ''Do not use any positioning devices such as towels.'' Therefore, even though the CRS manufacturer's directions specify a recommended angle, achieving it will not be required for compliance tests if the use of positioning devices is necessary.

[21] In the May 12, 2000 Advanced Air Bag Rule, NHTSA acknowledged that some consumers do use rolled up towels or blankets and that manufacturers may need to address this in designing their advanced air bag systems. The agency stated: ''We note that seat-based systems may, however, need to 'read' the presence of a rear-facing infant restraint that has been stabilized with a rolled up towel or blanket in accordance with the restraint manufacturer's instructions. While we will not use such objects in conducting our compliance tests, the presence of a towel or blanket under the most rearward portion of the child restraint is a real world scenario which some seat-based systems may need to accommodate.'' However, for purposes of conducting our compliance tests, as explained above we do not use the towels or blankets.

[22] *http://www.safercar.gov.*

harness type for the CRSs proposed in Table 1 for the reader's convenience. Since the harness type is not an influencing factor in suppression or LRD test results, the harness types specified were just an indication of the type present in the CRSs evaluated, for illustration purposes. The specifications were not intended to be and are not binding as to the specific harness type with which the agency must test. This final rule also specifies in the preamble the harness type for the CRSs newly added to Appendix A for the reader's convenience, and is not meant to require that the CRS with only that type of harness type would be used for compliance testing.

VIII. Suggestions for Future Amendments

Commenters made a number of suggestions for improving the ease and timeliness of future amendments to Appendix A and for selecting the CRSs that should be included in the appendix. The more significant suggestions are addressed below.

a. Publishing a Yearly Bulletin

AORC and TRW suggested the agency should work with CRS manufacturers to publish a ''Bulletin'' annually, which lists suitable equivalent model numbers and/or names to those listed in the appendix.

Agency Response: We do not consider an annual bulletin published by NHTSA necessary or appropriate at this time. For today's final rule we made every effort to ensure that the CRS models we are including in Appendix A will be available, such as by making sure the model numbers we list do not refer to features immaterial to the purposes of the appendix, such as a soft good (i.e., upholstery, fabric) design. This does not preclude industry from working together to identify equivalent CRS models and publishing a yearly bulletin for industry to use.

b. Meaning of ''Available for Purchase''

The Alliance stated that even if the agency adopts the changes to Appendix A proposed in the NPRM,

> it will still be possible that some of the CRSs listed on the revised Appendix A that is ultimately adopted will not be available at the time the final rule is published. The Alliance urges NHTSA to confirm that if that scenario were to occur, it will continue its policy, first articulated in its November 19, 2003 notice, to 'not use the unavailable or altered CRS for compliance testing, and the manufacturers would likewise be relieved of any burden to procure the CRS or use it to test for suppression.' [Footnote omitted.] 68 FR at 65188. Moreover, the Alliance urges the agency to confirm that for a CRS listed on any amended version of Appendix A to be deemed 'available for purchase' (which is the term NHTSA used in the November 2003 notice), it must be available *from its manufacturer* on the date of publication of the final rule promulgating the amendment—as reflected by the manufacturer's Web site or other product information. [Emphasis in text.]

Agency Response: We do not agree that the term ''available for purchase'' means that the child restraint must be available from its manufacturer. The agency considers CRSs to be available for purchase if it can be purchased from any source. Consumers have available to them a multitude of ways of acquiring child restraints in today's marketplace and we believe that the appendix should reflect such real-world acquisition of the restraints, since consumers could reasonably acquire and use the restraint with the advanced air bag system. In addition, after consideration of the statements made in the November 19, 2003 final rule that we would not use a CRS for compliance testing if it were ''unavailable or altered'' on the date of publication of the final rule adopting it into Appendix A, we have concluded that the statement has been overtaken by events in today's context. We cannot imagine a situation where a new CRS that has been added to the appendix will have undergone a significant design change between the time of the proposal and the final rule. CRSs adopted into the appendix are highly unlikely to be unavailable or altered on the date of publication of the final rule adopting them into the appendix since NHTSA works closely with CRS manufacturers to ensure that newly added CRSs are not slated to be unavailable or altered so close in time to the publication of the final rule. Furthermore, if a CRS differs so much on the day of publication of a rule from the CRS that the agency had proposed and intended to adopt, that situation should be addressed in a rulemaking proceeding that would remove the CRS from the appendix or reconsider the merits of its inclusion. For these reasons, we decline to take the narrow view of ''available for purchase'' suggested by the Alliance.

In the NPRM we acknowledged that we were aware that some of the proposed CRSs would likely change model numbers before the publication of this final rule. Therefore, for this final rule, we have verified the model numbers with the CRS manufacturers and the model numbers of some of the CRSs have been updated to reflect the latest information available from the CRS manufacturers.

c. Developing ''Standard'' Models of CRSs

TRW recommended the agency consider working with CRS manufacturers to develop ''standard'' models of each of the CRSs in the appendix. The ''standard'' CRS would be based on a typical model offered for sale by the CRS manufacturer, but would not be subject to change or obsolescence by the manufacturer without notification to the agency and would not be for sale to the public and would be sold only for the purpose of testing and development.

Agency Response: We have considered a similar approach in the past, which we have called the surrogate approach, and have noted some concerns with it. In the November 2003 final rule (68 FR at 65189), we stated that surrogates—

> do not attempt to represent dimensional outliers * * * they cannot ensure the robustness of an automatic suppression system under real world conditions * * * Additionally, without amending FMVSS No. 213 to require restraints to be dimensionally similar to the surrogates, there is no assurance that the surrogates will continue to represent even the average dimensions of restraints on the market.

We continue to have these concerns with surrogates. Also, updating the appendix serves the dual purposes of finding replacement CRSs for those that have become unavailable, and of ensuring that the CRSs listed are representative of those on the market. While developing ''standard'' models would address the availability problems associated with the dynamic nature of the CRS industry, it does not address the identification of new trends or outliers or the representation of average CRSs on the market. Furthermore, such an effort would require a major commitment from the CRS manufacturers and there is no indication that they would be willing or able to pursue such an effort at this time.

d. Define ''Model'' in Child Restraint System Standard

AORC and TRW suggested adopting a formal ''model'' designation system for child restraints in FMVSS No. 213 (49 CFR 571.213) similar to FMVSS No. 209, S4.1(j), to better track any changes to child restraint models that might affect performance in a suppression or LRD test. FMVSS No. 209 requires that each seat belt assembly be permanently and legibly marked or labeled with, among other things, information on the ''model'' of the assembly. FMVSS No. 209 also states that a ''model'' shall consist of a single combination of

webbing having a specific type of fiber weave and construction, and hardware having a specific design, and that webbings of various colors may be included under the same model. The commenters stated that FMVSS No. 213 could be amended to define a ''child restraint model,'' in the following manner: ''A model shall consist of a single combination of shell, base, harness, and vehicle attachment hardware/provisions/routing having a specific design. Webbing and seat upholstery of various colors may be included under the same model.''

Agency Response: The suggestions raised by the commenters will be kept in mind when addressing future Appendix A rulemakings. We note that FMVSS No. 213, S5.5, already requires child restraints to be labeled with the model name or number. Normally, the CRS manufacturers, for their own tracking purposes, indicate with a stamp on the mold or some other type of visual indication when a mold change has been made.

e. Rear-Facing CRSs With High Profiles

Safe Ride News believed that a low seat back height for rear-facing CRSs is an important factor for LRD testing and so, the commenter stated, it is important to include in Appendix A rear-facing CRSs with low profiles. According to the commenter, we should ensure that the appendix include restraints that can be used without a base because restraints with a base tended to have a higher profile.

Agency Response: Seat back height was one of the parameters used by the agency in selecting CRSs for Appendix A. All the rear-facing CRSs in the revised Appendix A come with a base and can be used with or without the base for the purposes of compliance testing. Appendix A has rear-facing and convertible CRSs with seat back heights that range from 12.75 to 27 in.[23] [24] The rear-facing CRSs we are adding to the appendix diversify the spectrum of seat back heights.

We note that contrary to the commenter's belief, agency LRD testing on different car types has indicated that CRSs with high seat back heights can for some designs provide higher injury values than the low profile CRSs. Accordingly, we are keeping CRSs with high seat back heights in our test program.

[23] The upper end of the spectrum (27 in) represents convertible CRSs, which have higher seat back heights than rear-facing-only CRSs.

[24] The height measurement used for the rear-facing CRSs is the height with their base.

IX. Specification of a Manufactured On or After Date for the Newly Added CRSs

In Appendix A–1 we have incorporated the NPRM date, September 25, 2007, as the ''manufactured on or after'' date for the newly added CRSs. This is to distinguish these CRSs from others that may have been manufactured prior to the September date and which may have had slight design differences. (The agency is taking this step only as a precaution; we do not know of any such differences between like-model CRSs manufactured before September 25, 2007 and those studied by the agency and discussed in the NPRM.) The CRSs that are unaffected by this rulemaking are maintaining the December 1, 1999 date.

X. 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). The costs and benefits of advanced air bags are discussed in the agency's Final Economic Assessment for the May 2000 final rule (Docket 7013). The cost and benefit analysis provided in that document would not be affected by this final rule, since this final rule only adjusts and updates the CRSs used in test procedures of that final rule. The minimal impacts of 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 final rule will not have a significant impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, multistage manufacturers and alterers, but the entities that qualify as small businesses will not be significantly affected by this rulemaking because they are already required to comply with the advanced air bag requirements. This final rule does not establish new requirements, but instead only adjusts and updates the CRSs used in test procedures of that final rule.

Executive Order 13132

NHTSA has examined today's final rule 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 does not have federalism implications because this final rule does 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 potential State requirements that might conflict with the final rule, however, in part because such conflicts can arise in varied contexts. We cannot completely rule out the possibility that such a conflict may become apparent in the future through subsequent experience with standard. NHTSA may opine on such conflicts in the future, if warranted.

National Environmental Policy Act

NHTSA has analyzed this final rule 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 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 final rule contains a collection of information because of the phase-in reporting requirements being established. There is no burden to the general public. We will be submitting a request for OMB clearance for the collection of information required under today's final rule.

These requirements and our estimates of the burden to vehicle manufacturers are as follows:

NHTSA estimates there are 21 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,856 kg (8,500 lb) or less.

NHTSA estimates that the annual reporting and recordkeeping burden on each manufacturer resulting from the collection of information is one (1) hour.

NHTSA estimates that the annual cost burden on each manufacturer, in U.S. dollars, on each manufacturer will be $35. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of FMVSS No. 208 during the phase-in of today's requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 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 that address the CRSs that should be included in Appendix A.

Executive Order 12988

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 final 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 final rule will 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 write to us at the address provided at the beginning of this document.

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

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 585

Motor vehicle safety, Reporting and recordkeeping requirements

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V 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 adding S14.8, revising S19.2.1, S19.2.2(d), S20.1.1, the introductory text of S20.2.1.1, S20.2.1.6.1(e), S20.2.2.1, S20.2.3.1, S20.2.3.2(a), S20.4.2, S21.2.1, S22.1.1, S22.2.1.4(a), S22.2.1.6.1(f), S23.2.1, and S24.1.1.

■ 3. Section 571.208 is amended by revising Appendix A, by adding Appendix A–1 after Appendix A, and by moving Figures A1 and A2 that are now at the end of Appendix A to follow Appendix A–1.

■ 4. Section 571.208 is amended by revising the headings of Figures A1 and A2 that are now placed after Appendix A–1.

The amended and added text, appendices, and figures read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.8 *Vehicles manufactured on or after September 1, 2009 and before September 1, 2010.* Vehicles manufactured on or after September 1, 2009 and before September 1, 2010, shall comply with S14.8.1 through S14.8.4. At any time during the production year ending August 31, 2010, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles by make, model and vehicle identification number that have been certified as complying with S19, S21, and S23 (in addition to the other requirements specified in this standard) when using the child restraint systems specified in Appendix A–1 of this standard. The manufacturer's designation of a vehicle as meeting the requirements when using the child restraint systems in Appendix A–1 of this standard is irrevocable.

S14.8.1 Subject to S14.8.2, for vehicles manufactured on or after September 1, 2009, the number of vehicles certified as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A–1 of this standard shall be not less than 50 percent of:

(a) The manufacturer's average annual production of vehicles subject to S19, S21, and S23 of this standard manufactured on or after September 1, 2006 and before September 1, 2009; or

(b) The manufacturer's production of vehicles subject to S19, S21, and S23 manufactured on or after September 1, 2009 and before September 1, 2010.

S14.8.2 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.8.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as provided in S14.8.2(a) through (c), subject to S14.8.3.

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

(c) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.8.2(a) or (b).

S14.8.3 For the purposes of calculating average annual production of vehicle for each manufacturer and the number of vehicles by each manufacturer under S14.8.1, each vehicle that is excluded from the requirement to test with child restraints listed in Appendix A or A–1 of this standard is not counted.

S14.8.4 Until September 1, 2011, vehicles manufactured by a final-stage manufacturer or alterer could be certified as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A. Vehicles manufactured on or after September 1, 2011 by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A–1.

* * * * *

S19.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S20.2 (using the 49 CFR Part 572 Subpart R 12-month-old CRABI child dummy in any of the child restraints identified in sections B and C of Appendix A or A–1 of this standard, as appropriate and the 49 CFR Part 572 Subpart K Newborn Infant dummy in any of the car beds identified in section A of Appendix A or A–1, as appropriate), and activation of the air bag system during each of the static tests specified in S20.3 (using the 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S19.2.2 * * *

(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and the right front passenger's seat in their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage of objects that could obscure the telltale from either the driver's or right front passenger's view, or located where the telltale would be obscured from the driver's view if a rear-facing child restraint listed in Appendix A or A–1, as appropriate, is installed in the right front passenger's seat.

* * * * *

S20.1.1 Tests specifying the use of a car bed, a rear facing child restraint, or a convertible child restraint may be conducted using any such restraint listed in sections A, B, and C, respectively, of Appendix A or A–1 of this standard, as appropriate. The car bed, rear facing child restraint, or convertible child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test.

* * * * *

S20.2.1.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A or A–1 of this standard, as appropriate, installed in the front outboard passenger vehicle seat in the following orientations:

(a) * * *

(b) * * *

* * * * *

S20.2.1.6.1 * * *

(e) Use the loading device equipped with the loading foot shown in Figure A1 and position it as shown in Figure A2 of Appendix A and Appendix A–1 of this section. The 15±3 degree angle of the loading device illustrated in Figure A2 is determined with an initial preload of 75±25N.

* * * * *

S20.2.2.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A or A–1 of this standard, as appropriate.

* * * * *

S20.2.3.1 The vehicle shall comply in tests using any car bed specified in section A of Appendix A or A–1 of this standard, as appropriate.

* * * * *

S20.2.3.2 * * *

(a) Install the car bed following, to the extent possible, the car bed manufacturer's directions regarding proper installation of the car bed. If the seat belt cannot be secured around the car bed, move the seat rearward to the

next detent that allows the belt to be secured around the car bed, or if the seat is a power seat, using only the control that primarily moves the seat fore and aft, move the seat rearward the minimum distance necessary for the seat belt to be secured around the car bed.

* * * * *

S20.4.2 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A or A–1 of this standard, as appropriate.

* * * * *

S21.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S22.2 (using the 49 CFR Part 572 Subpart P 3-year-old child dummy and, as applicable, any child restraint specified in section C and section D of Appendix A or A–1 of this standard, as appropriate), and activation of the air bag system during each of the static tests specified in S22.3 (using the 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

* * * * *

S22.1.1 Tests specifying the use of a forward facing child restraint, including a booster seat where applicable, may be conducted using any such restraint listed in section C and section D of Appendix A or A–1 of this standard, as appropriate. The child restraint may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 3-year-old child of the same height and weight as the 3-year-old child dummy.

* * * * *

S22.2.1.4 * * *

(a) Using the vehicle safety belts as specified in S22.2.1.5 with section C and section D child restraints of Appendix A or A–1, as appropriate, of this section designed to be secured to the vehicle seat even when empty; and

* * * * *

S22.2.1.6.1 * * *

(f) Use the loading device equipped with the loading foot shown in Figure A1 and position it as shown in Figure A2 of Appendix A and Appendix A–1 of this standard. The 15±3 degree angle of the loading device is determined with an initial preload of 75±25 N.

* * * * *

S23.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger frontal air bag system which results in deactivation of the air bag during each of the static tests specified in S24.2 (using the 49 CFR Part 572 Subpart N 6-year-old child dummy in any of the child restraints specified in section D of Appendix A or A–1 of this standard, as appropriate), and activation of the air bag system during each of the static tests specified in S24.3 (using the 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

* * * * *

S24.1.1 Tests specifying the use of a booster seat may be conducted using any such restraint listed in section D of Appendix A or A–1 of this standard, as appropriate. The booster seat may be unused or have been previously used only for automatic suppression tests. If it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a 6-year-old child of the same height and weight as the 6-year-old child dummy.

* * * * *

APPENDIX A TO § 571.208—SELECTION OF CHILD RESTRAINT SYSTEMS

This Appendix A applies to vehicles manufactured before September 1, 2009 and to not more than 50 percent of a manufacturer's vehicles manufactured on or after September 1, 2009 and before September 1, 2010, as specified in S14.8 of this standard. This appendix does not apply to vehicles manufactured on or after September 1, 2010.

A. The following car bed, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A

Cosco Dream Ride 02–719.

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A

Britax Handle with Care 191.
Century Assura 4553.
Century Smart Fit 4543.
Cosco Arriva 02727.
Evenflo Discovery Adjust Right 212.
Evenflo First Choice 204.
Graco Infant 8457.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19, or S21. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A

Century Encore 4612.
Cosco Olympian 02803.
Britax Roundabout 161.
Century STE 1000 4416.
Cosco Touriva 02519.
Evenflo Horizon V 425.
Evenflo Medallion 254.
Safety 1st Comfort Ride 22–400.

D. Any of the following forward-facing child restraint systems and belt-positioning seats, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A

Britax Roadster 9004.
Century Next Step 4920.
Cosco High Back Booster 02–442.
Evenflo Right Fit 245.

APPENDIX A–1 TO § 571.208—SELECTION OF CHILD SYSTEMS RESTRAINT

This Appendix A–1 applies to not less than 50 percent of a manufacturer's vehicles manufactured on or after September 1, 2009 and before September 1, 2010, as specified in S14.8

of this standard. This appendix applies to all vehicles manufactured on or after September 1, 2010.

A. The following car bed, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A–1

	Manufactured on or after
Angel Guard Angel Ride AA2403FOF	September 25, 2007.

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A–1

	Manufactured on or after
Century Smart Fit 4543	December 1, 1999.
Cosco Arriva 22–013 PAW and base 22–999 WHO	September 25, 2007.
Evenflo Discovery Adjust Right 212	December 1, 1999.
Graco Infant 8457	December 1, 1999.
Graco Snugride	September 25, 2007.
Peg Perego Primo Viaggio SIP IMUN00US	September 25, 2007.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S19, or S21. (**Note**: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2):

Subpart C—Forward-Facing and Convertible Child Restraints of Appendix A–1

	Manufactured on or after
Britax Roundabout E9L02xx	September 25, 2007.
Graco ComfortSport	September 25, 2007.
Cosco Touriva 02519	December 1, 1999.
Evenflo Tribute V 379xxxx	September 25, 2007.
Evenflo Medallion 254	December 1, 1999.
Cosco Summit Deluxe High Back Booster 22–262	September 25, 2007.
Evenflo Generations 352xxxx	September 25, 2007.
Graco Toddler SafeSeat Step 2	September 25, 2007.
Graco Platinum Cargo	September 25, 2007.
Cosco High Back Booster 22–209	September 25, 2007.

D. Any of the following forward-facing child restraint systems and belt-positioning seats, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

Subpart D—Forward-Facing Child Restraints and Belt Positioning Seats of Appendix A–1

	Manufactured on or after
Britax Roadster 9004	December 1, 1999
Graco Platinum Cargo	September 25, 2007
Cosco High Back Booster 22–209	September 25, 2007
Evenflo Right Fit 245	December 1, 1999
Evenflo Generations 352xxxx	September 25, 2007
Cosco Summit Deluxe High Back Booster 22–262	September 25, 2007

Figure A1 to Appendix A and Appendix A-1 of FMVSS No. 208 Regulatory Text: Loading Bar Foot Detail

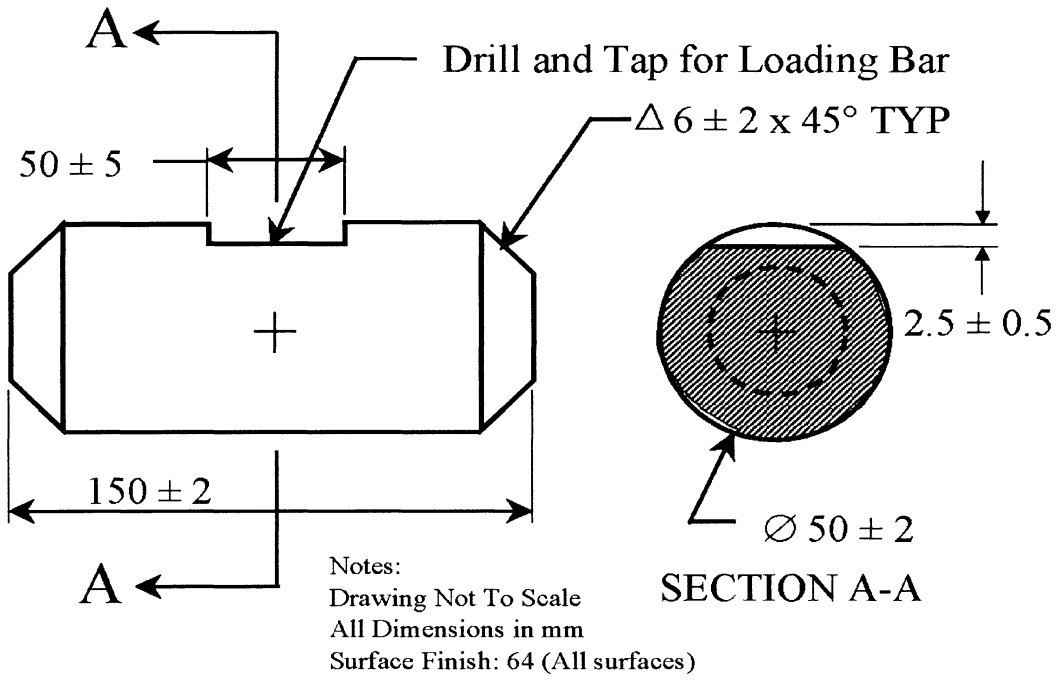
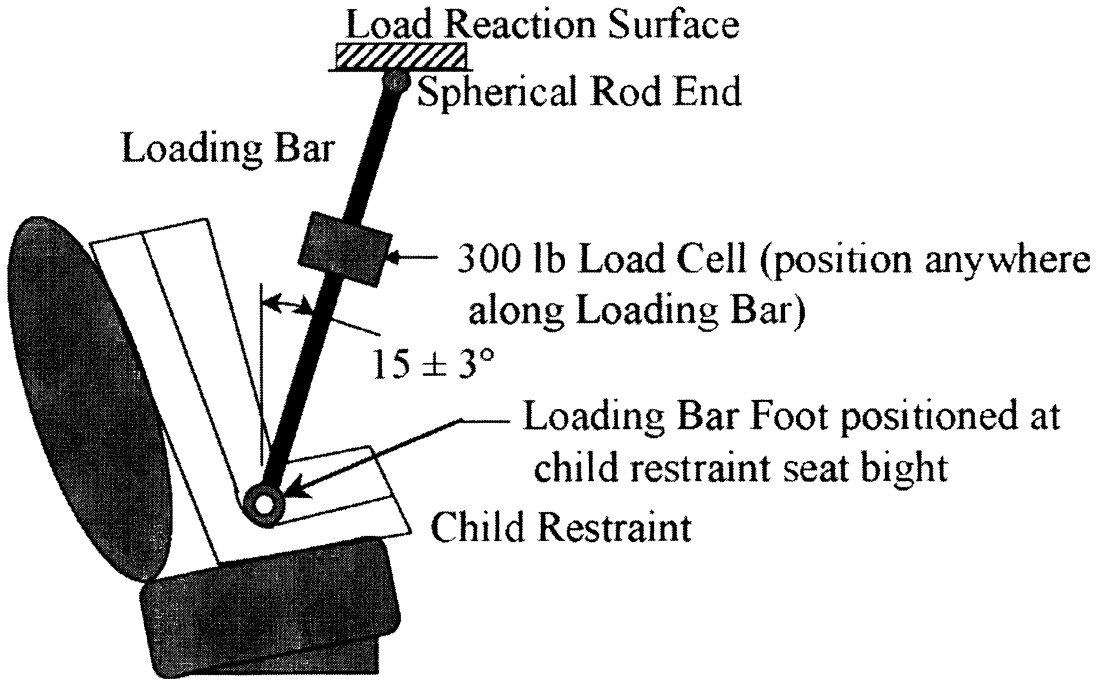


Figure A2 to Appendix A and Appendix A-1 of FMVSS No. 208 Regulatory Text: Loading Bar Installation



■ 3. The authority citation for part 585 continues to read as follows:

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

■ 4. Part 585 is amended by revising Subpart D to read as follows:

PART 585—PHASE-IN REPORTING REQUIREMENTS

* * * * *

Subpart D—Appendix A–1 of FMVSS No. 208 Phase-in Reporting Requirements

585.31 Scope
585.32 Purpose
585.33 Applicability
585.34 Definitions
585.35 Response to inquiries
585.36 Reporting requirements
585.37 Records

* * * * *

§ 585.31 Scope.

This part establishes requirements for manufacturers of passenger cars, and of trucks, buses and multipurpose

passenger vehicles with a gross vehicle weight rating (GVWR) of 3,856 kilograms (kg) (8,500 pounds (lb)) or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that are certified as complying with S19, S21, and S23 of FMVSS No. 208 (49 CFR 571.208) when using the child restraint systems specified in Appendix A–1 of this standard.

§ 585.32 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A–1 of that standard.

§ 585.33 Applicability.

This part applies to manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a GVWR of 3,856 kg (8,500 lb) or less.

§ 585.34 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

(d) Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

§ 585.35 Response to inquiries.

At any time during the production year ending August 31, 2010, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A–1 of that standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.36 Reporting Requirements.

(a) *Phase-in reporting requirements.* Within 60 days after the end of the production year ending August 31, 2010, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with requirements of Standard No. 208 when using the child restraint systems specified in Appendix A–1 of that standard for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in section 585.2 of this part.

(b) *Phase-in report content*—

(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars, trucks, multipurpose passenger vehicles or buses for sale in the United States must report the number of passenger cars, trucks, multipurpose passenger vehicles or buses manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report on the number of vehicles that meet the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A–1 of that standard.

§ 585.37 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36 until December 31, 2013.

Issued on: October 30, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8–26812 Filed 11–10–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 6)]

Waybill Sample

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Board is adopting a final rule to require all carriers that submit carload-waybill-sample information (Waybill Sample) under 49 CFR 1244 to report fuel surcharge revenue in a separate waybill field created by the Board for that purpose, commencing with the Waybill Sample filed for January 2009. The Board will revise the waybill-file-record layout to reflect this change.

DATES: *Effective Dates:* This regulation is effective January 1, 2009. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 1, 2009.

FOR FURTHER INFORMATION, CONTACT: Paul Aguiar, (202) 245–0323 or *aguiarp@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: A carload waybill is a document describing the characteristics of an individual rail shipment: originating and terminating freight stations, the names of all railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car types, movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR Part 1244, a railroad is required to file a Waybill Sample for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, the railroad terminated 4,500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular state.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminated in the United States. Of particular importance, the Board relies on the data in the ''Total Freight LH Revenue'' (also referred to as ''Freight Revenue'') field to compute its ''Revenue Shortfall Allocation Method'' (RSAM) benchmarks. The RSAM benchmarks, which are used in adjudicating certain rate disputes, measure how much a carrier would need to charge its potentially captive traffic in order to obtain adequate revenues overall.

In the last few years, questions have been raised about how railroads reported fuel surcharge revenue in the Waybill Sample. The Board sought to address those questions, and to provide for consistency in the reporting of fuel surcharge revenue in the Waybill Sample, by clarifying that all railroads that are required to submit a Waybill Sample under 49 CFR Part 1244 should report fuel surcharge revenue as part of total freight revenue in the ''Freight Revenue'' field in the waybill-file-record layout. *Waybill Sample,* STB Ex Parte No. 385 (Sub-No. 6) (*Clarification*) (published at 72 FR 72000 on December 19, 2007).

In a request for reconsideration filed on December 31, 2007, the National Industrial Transportation League (NITL) argued that the Board's *Clarification* made it more difficult to identify fuel surcharge revenue in the Waybill Sample and, therefore, did not promote transparency as to the use of fuel surcharges by rail carriers. NITL, with