regulations, the waivers and exemptions that could be granted under the authority of 49 U.S.C. 31136(e) and 31315 would preempt such laws or regulations, if they conflict with or are inconsistent with the terms and conditions of the waivers or exemptions. Also, exemptions granted as part of a pilot program would preempt State and local laws and regulations which conflict with or are inconsistent with the terms and conditions of the pilot program.

FMCSA will consider the preemptive effect of each waiver prior to granting the waiver. With regard to exemptions and pilot programs, State and local governments will have the opportunity to respond to the **Federal Register** notices required by section 4007 of TEA–21 and inform FMCSA of concerns about preemption during the time period that an exemption or pilot program would be in effect.

List of Subjects in 49 CFR Part 381

Motor carriers.

Final Rule

■ The interim regulations published December 8, 1998 at 63 FR 67600, as amended on October 1, 2001 at 66 FR 49867, Part 381 of Subchapter B, Chapter III of Title 49 of the Code of Federal Regulations, are adopted without further revision.

Issued on: August 17, 2004.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 04–19155 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–18905]

RIN 2127–AJ42

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the amendments we made in November 2003 to the advanced air bag provisions in the occupant crash protection standard. Because of time constraints faced by vehicle manufacturers in certifying vehicles under procedures established in the November 2003 final rule, we bifurcated our response. This document is the second of two documents responding to the petitions. It addresses those issues raised by petitioners regarding positioning of the 5th percentile adult female, six-year-old and three-year-old test dummies; determination of target points during low risk deployment tests; specifications for child restraint systems for automatic suppression system tests; and clarification of seat adjustment procedures.

DATES: *Effective date:* The amendments made in this rule are effective September 1, 2004.

Petitions: Petitions for reconsideration must be received by October 4, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection,* specifies performance requirements for the protection of vehicle occupants in crashes (49 CFR 571.208). On May 12, 2000, we published an interim final rule that amended FMVSS No. 208 to require advanced air bags (65 FR 30680: Docket No. NHTSA 00–7013; Notice 1) (Advanced Air Bag Rule). Among other things, the rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended FMVSS No. 208 to require that future air bags be designed to minimize such risk. The Advanced Air Bag Rule established a rigid barrier crash test with a 5th percentile adult female test dummy, as well as several low risk deployment and out-of-position tests using a range of dummy sizes.

The agency received multiple petitions for reconsideration to the Advanced Air Bag Rule. Petitioners raised a large number of concerns about the various test procedures in their written submissions. To address these issues adequately, the agency held a technical workshop so that we could better understand the specific concerns and better determine if the test procedures needed refinement.[1] The agency then addressed each petition in a **Federal Register** notice published on December 18, 2001 and made several changes to the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01–11110). These changes included a number of refinements to the test dummy positioning procedures in the barrier tests and the low risk deployment tests. The December 2001 final rule also amended the list of child restraint systems in Appendix A for use in certain compliance tests through the removal of child restraints no longer in production and the addition of other child restraints.

On November 19, 2003, the agency published a final rule that responded, in part, to petitions for reconsideration of the amendments made in the December

[1] The workshop was held on December 6, 2000, at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by manufacturers because they were experiencing particular problems with following the existing test procedures in these vehicles.

2001 final rule to the Advanced Air Bag Rule (68 FR 65179; Docket No. NHTSA 03–16476, Notice 1). In particular, we amended portions of FMVSS No. 208 regarding seat positioning procedures when using the 5th percentile adult female test dummy in the barrier test and the low risk deployment test and when using the 3-year-old and 6-year-old test dummies in the low risk deployment test; the fore and aft seat location for rear facing child restraint systems (RFCRSs); and the seat track position for the low risk deployment test. We also responded to petitions for reconsideration regarding test dummy positioning procedure issues, specifically those addressing positioning of the feet of the 5th percentile adult female test dummy; positioning of out-of-position test dummies; and positioning of test dummy hands. The November 2003 final rule amended the definitions of ''Plane C'' and ''Plane D'' as they relate to test dummy positioning, Point 1 under the low risk deployment tests, and addressed other reference points and definitions. The November 2003 final rule also amended the list of child restraint systems in Appendix A to be used in certain compliance testing.

II. Petitions for Reconsideration

In response to the November 2003 final rule, the agency received seven petitions for reconsideration. Petitions were submitted by Evenflo Company, Inc. (Evenflo), Maserati S.p.A. (Maserati), Alliance of Automobile Manufacturers (Alliance), TRW Automotive (TRW), Automotive Occupant Restraint Council (AORC), and American Honda Motor Co., Inc. (Honda). A petition was also received from Ferrari S.p.A. (Ferrari), but was later withdrawn without a subsequent submission. Petitioners have asked the agency to reconsider the following issues.

Left Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

Honda petitioned the agency to permit positioning of the left foot of the 5th percentile adult female test dummy on a vehicle's footrest, a position, it stated, that is more representative of a ''real world'' configuration. Honda explained that in some situations, the current procedure for positioning the left foot may still result in a portion of the left foot remaining on a vehicle's footrest or sloping part of the floorpan near the foot rest. The petitioner stated that such a position could influence measured injury criteria.

Right Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

In its petition for reconsideration, the Alliance stated that right foot positioning procedure for the 5th percentile adult female test dummy in the rigid barrier test could result in an unrealistic position. The Alliance explained that under the procedures in S16.3.2.2.1(a) and S16.3.2.2.3 of FMVSS No. 208, a test dummy's foot can be positioned such that it does not contact either the floor or toe boards, necessitating the use of a spacer block. It further stated that such a position is unrealistic and could affect the foot and lower leg kinematics. To address this issue, the Alliance requested the procedure be amended to reflect a more ''real-world'' position. In the alternative, the Alliance requested that the agency specify the material properties of the spacer block in order to reduce potential test variability.

Chin-on-Rim Test Procedure

The Alliance and Honda requested that the agency amend the chin-on-rim test procedure to provide for consistency and repeatability in testing out-of-position drivers. The Alliance requested that for vehicle models with adjustable and non-adjustable steering wheels, the adjustable steering wheel be positioned as close as possible to the position of the non-adjustable steering wheel. Honda requested that the agency specify the shape of the spacer blocks that are to be used when needed to position the dummy's chin on the steering wheel. Honda stated that the pre-test load applied to the neck can vary with the shape of the spacer blocks.

Head-on-Instrument Panel Test Procedure

Honda petitioned the agency to permit rotation of the lower legs when positioning the head of the six-year-old dummy on the instrument panel in order to prevent bracing by the feet on the vehicle floor. Honda stated that this bracing prevents the torso from being rotated into position.

Honda also requested that spacer blocks be permitted when space is present between the six-year-old dummy's feet and the vehicle floor. Honda stated that variation in the position of the feet due to lack of contact with the floor results in variation in the force required to maintain the thigh angle. Again with regard to the six-year-old dummy, Honda requested that the head-on-instrument panel test procedure specify the point and direction for applying the 222 N force to prevent differences in dummy position.

Plane C and Plane D

The AORC and Maserati petitioned the agency to revert to the method established in the December 2001 final rule for defining Planes C and D. In the alternative, Maserati, along with the Alliance, requested clarification of the procedure for determining the volumetric centers of an uninflated and statically inflated air bag, which are used to define Planes C and D. Maserati stated that the new definition of Plane C may alter the positioning of the dummy in low risk deployment testing by 50 mm and that the effect of this altered position on compliance is unknown at this time. Similarly, the Alliance stated that one of its members has reported that the redefined Plane C may alter the positioning of the dummy by 30 mm.

Child Restraint Systems—Appendix A

Evenflo and TRW have requested that Appendix A be amended to reflect child restraint systems (CRSs) currently manufactured and available for retail purchase. Evenflo stated that several of the discontinued CRS models in Appendix A are no longer available. TRW alternatively petitioned the agency to create a separate Appendix to indicate which CRSs will be used in testing beyond 2006. To facilitate the use of automatic suppression systems based on weight detection, Honda petitioned the agency to limit the weight of CRSs. Honda also petitioned the agency to permit 18 months of lead time for the amended Appendix A.

The Alliance requested that the agency develop a procedure for installing CRSs equipped with lower anchorages and tether attachments. The Alliance stated that artificially tight installations can cause some occupant classification systems to misclassify the occupant. The Alliance also requested that the effective date for the revised Appendix A be postponed until September 1, 2005.

Seat Positioning Procedures

The Alliance has requested that the agency specify a vertical seat position for use in determining the seat cushion reference angle. Specifically, the Alliance requested that the seat be positioned in the full rear and full down position when determining the seat cushion reference angle. The Alliance also requested that S16.2.10.3.2 and S16.2.10.3.3 of FMVSS No. 208 be amended to specify that the reference point used in these sections is the seat cushion reference point.

Effective Date of the Test Procedures

Several petitioners stated that the January 20, 2004 effective date for the test procedures established in the November 2003 final rule did not provide sufficient lead time. There was concern that the revisions, particularly to the procedure for defining of Planes C and D, would require mid-model year recertification.

In response to petitioners' concerns with the effective date for the new procedures the agency published a final rule January 27, 2004, which permits manufacturers to temporarily certify vehicles according to the test procedures required prior to the effective date of the November 2003 final rule until September 1, 2004 (69 FR 3837; Docket No. 03–16476; Notice 2). Today's document addresses the remaining issues.

III. Summary of Response to Petitions

As previously noted, this document addresses the following issues raised in the petitions for reconsideration: issues involving dummy positioning procedures, target points referencing Plane C and Plane D, issues associated with the child restraints specified in Appendix A of FMVSS No. 208, and corrections to the regulatory text.

This document amends the procedure for placement of the left foot of the 5th percentile adult female test dummy in the barrier crash. As amended, the procedure specifies that both outboard and inboard hip rotation is permitted to avoid foot contact with a vehicle's footrest or pedal. We are maintaining the positioning procedure established for the 5th percentile adult female test dummy's right foot, and decline to establish material specifications for the spacer blocks permitted under this positioning procedure. Further, we decline to establish material, shape, or size specifications for spacer blocks permitted under the chin on rim low risk deployment test procedure.

We are amending the dummy positioning procedure for the head-on-instrument panel low risk deployment test. The procedure is amended to provide greater flexibility in positioning the 6-year-old and 3-year-old test dummies. We are also clarifying the direction of the application of force used to position the test dummies.

The agency is maintaining the current methods for determining Planes C and D, which reference an axis based on the volumetric centers of an undeployed and statically inflated air bag.

We are also maintaining Appendix A as established in the November 2003 final rule. However, we are amending the effective date of Subpart C for testing with CRSs equipped with lower anchor attachments and a tether strap (LATCH) to specify that these restraints need not be tested prior to September 1, 2006.

Additionally, we are making several amendments to provide consistency within the regulation with regards to incorporated procedures and terminology.

IV. Test Dummy Positioning Procedures

A. Left Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

In response to the petition from Honda, we are amending the procedure for placement of the left foot of the 5th percentile adult female test dummy in the barrier crash to permit hip rotation to both the inboard and the outboard. This will help address Honda's concern that the left foot may have a position that is partially on the footrest. While this amendment should assist in avoiding this partial contact, we recognize that there may be instances in which partial footrest contact is unavoidable.

The December 2001 final rule amended the driver's left foot positioning requirement by stipulating that the foot must not be placed on a vehicle's footrest, wheel-well projection, clutch, brake, or accelerator pedal. In response to petitions, the agency provided additional positioning flexibility so that pedal and footrest avoidance would be possible. S16.3.2.2.6, which specifies positioning procedures to avoid undesirable foot contact, was amended to permit foot flexion at the ankle in conjunction with the previously permitted foot rotation and hip rotation. The agency also provided guidance on the priority for dummy adjustment in avoiding prohibited contact.

The agency is unsure why Honda was unable to avoid footrest contact using the procedure provided. The petitioner did not provide details as to why contact occurred. However, we believe it may have been due to the restriction in S16.3.2.2.6(c) that hip rotation must be to the outboard. The restriction on hip rotation was originally established when only pedal contact by the left foot was to be avoided. It was not the agency's intent to restrict hip rotation to the outboard only. Accordingly, we are amending the procedure to permit rotation to both the outboard and the inboard. This should address Honda's concern that the test dummy's left foot can have a position that is partially on the footrest. We are also amending the procedure to clarify that repositioning of the leg to avoid pedal and footrest contact is applicable to S16.3.2.2.4, S16.3.2.2.5 and S16.3.2.2.6.

We are denying Honda's petition to permit placement of the left foot on the footrest. The agency has previously addressed this issue in the November 2003 final rule when establishing the current procedures. Honda has not provided any additional information to justify our reaching a different conclusion now. Although the positioning procedure allows partial footrest contact, this should arise if the only way to avoid pedal contact is footrest contact. Again, as we stated in the November 2003 final rule, we believe this conflict will be rare. In addition, placement of the entire foot on the footrest in some vehicle designs may be unnatural or impossible to achieve. Further, we have no data that indicate variations in foot positioning significantly affects injury measurements.

B. Right Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

The agency is maintaining the positioning procedure for the right foot of the 5th percentile adult female test dummy as currently specified for the barrier test under the November 2003 final rule. In response to a petition for reconsideration and a request for information, we previously amended the right foot positioning procedure for the 5th percentile adult female test dummy in the rigid barrier test. The November 2003 final rule addressed the situation in which the right heel of the 5th percentile adult female test dummy cannot initially contact the vehicle floor, by allowing for the extension of the lower leg toward the accelerator pedal rather than leaving the leg hanging vertically. If the heel can initially contact the floor, but cannot maintain contact with the floor and reach the accelerator pedal, lower leg extension with the heel leaving the floor is also the preferred position. If the final position results in the heel being off the floor, FMVSS No. 208 permits the use of a spacer block to provide support. Figure 13 in FMVSS No. 208 provides the block dimensions.

The November 2003 final rule stated that lowering the seat is not an acceptable solution for getting the test dummy's right foot to reach the floor. The agency believes that the procedure established in the November 2003 final rule is the most appropriate, and notes that the Alliance submitted additional comments withdrawing its concern that the positioning was potentially unrealistic. Further, the agency declines to specify the material properties of the

spacer block. We do not have reason to believe that the material used for the spacer block will affect injury measurements when a vehicle is subjected to a barrier test with a 5th percentile female dummy. Further, the petitioner did not submit any data to demonstrate otherwise.

C. Chin-on-Steering Wheel Test Procedure

We are maintaining the 5th percentile adult female test dummy positioning procedure for the low risk deployment (LRD) test as currently specified. The Advanced Air Bag Rule adopted a LRD test to address the risk air bags pose to out-of-position drivers, particularly those of small stature. The test is performed using two ''worst case'' positions: placing the dummy's chin on the module and placing the dummy's chin on the steering wheel. As originally established in the Advanced Air Bag Rule, the 5th percentile adult female test dummy's chin was to be placed on the steering wheel rim ''without loading the neck.'' In the December 2001 final rule, we permitted the use of supporting blocks to position the dummy and removed the prohibition from loading the dummy's neck. However, we did not specify the shape of the supporting blocks.

Honda petitioned the agency to specify the position and shape of the support blocks, stating that variation in the blocks can result in variation in the load applied to the test dummy's neck. As a result, Honda continued, neck injury data are not repeatable. Honda submitted neck injury criteria measurements from test dummies positioned with three different support block configurations. Honda's data demonstrated that the different configurations resulted in different initial neck load value ranges and different neck injury criteria measurement ranges (See Honda's petition; Docket No. NHTSA–2003–16476–9).

Honda's petition regarding this issue involves the procedure as amended by the December 2001 final rule. Since Honda's petition was submitted long after the deadline for petitioning for reconsideration of that final rule, we are treating Honda's petition as a petition for rulemaking per 49 CFR 553.35(a). We are denying the petition because Honda did not show that any difference in the injury criteria measurements was statistically significant. Further, Honda did not demonstrate that these differences would affect a manufacturer's ability to comply with the injury criteria requirements. The highest neck injury measurement recorded by Honda was one-third that of the maximum permitted under the standard.

We do not believe that the shape, material, or placement of the spacer blocks will produce any statistically significant difference in injury measurements when a 5th percentile adult female test dummy is subjected to a LRD test. Therefore, we are not specifying the material, shape, or positioning of the spacer blocks.

Further, we are not amending the procedure in response to the Alliance's request that for vehicle models with adjustable and non-adjustable steering wheels, the adjustable steering wheel should be positioned as close as possible to the position of the non-adjustable steering wheel. As stated above, the goal of compliance under this test condition is to provide a worst-case position (See 68 FR 65183). The purpose of the regulatory provision allowing movement of an adjustable steering wheel is to increase the probability of actually attaining this position. Additionally, the Alliance did not provide any data to demonstrate that the desired test dummy position would be attainable with the adjustable steering wheel positioned as it requested. Therefore, we do not support the Alliance's request for this change.

D. Head-on-Instrument Panel Test Procedure

To address concerns raised by Honda regarding a potential inability to properly position a six-year-old test dummy, as well as a three-year-old test dummy, in the head-on-instrument panel test, we are amending the procedure to provide greater flexibility in positioning the 6-year-old test dummy. We are also clarifying the direction of the application of force used to position the test dummy.

The November 2003 final rule clarified the positioning procedure for the 6-year-old and three-year-old test dummies in the head-on-instrument panel LRD test (S22.4.3.5 and S24.4.3.5) to accommodate the situation in which the dummy torso could not be pushed against the instrument panel without forcing the femur angle to change. The procedure was amended to specify that the test dummy could be rotated about its seat contact and then about the test dummy's H-point and that a 222 N load may be applied to achieve contact between the head/torso and the instrument panel.

In Honda's petition, it stated that clarification provided in the November 2003 final rule might not permit dummy placement as specified, particularly in vehicle designs in which the seat is very low relative to the floor pan. The petitioner indicated that in vehicles with very low seats, the test dummy's feet contact the floor pan, resulting in rotation about the foot contact. Honda suggested that the only apparent way to relieve this contact was to extend the dummy's legs. The agency agrees with Honda, and is amending the procedure to permit extension of a test dummy's legs in instances in which contact with the floor pan prohibits rotation about the seat contact or test dummy's H-point.

Honda also stated that the procedure as amended in the November 2003 final rule failed to specify the direction of the application of the 222 N load on the test dummy's torso. S22.4.3.5 and S24.4.3.5 specify that the load is to be applied ''towards the front of the vehicle on the spine of the dummy between the shoulder blades.'' However, to provide additional clarity, the procedure is amended to provide that, in relation to the test dummy, the 222 N load is to be applied perpendicular to the thorax instrument cavity rear face.

Further, Honda requested that spacer blocks be permitted to support a test dummy in order to maintain the appropriate femur angle, if the dummy loses contact with the seat during the positioning procedure. We note that S24.4.3.6 currently permits the use of spacer blocks to support dummy position. This allowance includes the use of spacer blocks to support a test dummy's lower legs, and addresses Honda's request.

V. Plane C and Plane D

The agency is maintaining the current method, as established in the November 2003 final rule, for determining Planes C and D. Planes C and D are used to identify target points for positioning the 5th percentile adult female, 6-year-old, and 3-year-old test dummies in the LRD test procedures. Both planes reference an axis based on the volumetric centers of the undeployed and statically inflated air bag. The November 2003 final rule established the statically inflated air bag method (SIABM) to provide a more objective method for determining the location of Planes C and D.

Maserati and the AORC requested that the procedure revert back to the previous method for determining the air bag target points. In its petition, Maserati stated that the new method of targeting would result in a 50 mm drop in the location of the target point in one of its vehicles. In the alternative, Maserati requested additional lead time under the current procedure. The Alliance, stating that one of its members believes that the new method will result

in a 30 mm drop, also requested additional lead time. The agency has already addressed the issue of lead time in the January 2004 final rule.

We continue to believe that the SIABM targeting method for positioning test dummies provides a more objective procedure and more clearly defines the agency's intent when it originally specified ''the opening through which the air bag deploys.'' The agency realizes that, particularly for top mounted air bags, the target point under the SIABM will be lower than under the previous technique. A lower target point may actually be more favorable for top mounted designs, which have already been shown to be less injurious to out-of-position occupants. This is due to the fact that the dummy will be farther from the initial path of the deploying air bag and will experience lower forces. Petitioners have not demonstrated how a lowering of the target point would adversely affect their ability to meet the LRD injury criteria. As stated in the January 2004 final rule, we believe the new positioning procedures should not require any more than minor modifications by affected manufacturers.

To provide additional clarification with regards to the SIABM, we note that each LRD test that requires an air bag target point also dictates the positions of interior components for the actual LRD test in question. Thus, in determining the volumetric center of the statically inflated air bag, these same component positions should be honored.

Additionally, the November 2003 final rule established the SIABM in S22.4.1.2 (3-year-old LRD), S24.4.1.2 (6-year-old LRD), 26.2.2 (5th percentile adult female chin on module), but inadvertently failed to amend S26.3.3 (5th percentile adult female chin on rim). That omission is corrected in today's final rule.

VI. Child Restraint Systems—Appendix A

We are maintaining Appendix A as established in the November 2003 final rule. However, in response to petitions, we will not require manufacturers to certify that their vehicles comply with the suppression requirements using the LATCH-equipped CRSs until September 1, 2006.

If manufacturers rely on an airbag suppression system to minimize the risk to occupants in child restraint systems, FMVSS No. 208 requires manufacturers to certify that the vehicles comply with the suppression requirements when tested with the CRSs specified in Appendix A (See S19, S21 and S23). Appendix A provides a list of CRSs that the agency has determined to be representative of the systems currently in use in the vehicle fleet. In the November 2003 final rule, we revised the list to add two new CRSs and remove three from Appendix A. The added systems are equipped with LATCH, a configuration required under FMVSS No. 213, *Child restraint systems,* since September 1, 2002.

The Alliance petitioned the agency to extend the effective date for the new Appendix A until September 1, 2005. It stated that the lead time provided, approximately nine and a half months, was not adequate. Further, the Alliance stated that the agency did not provide any notice or opportunity for public comment regarding the amendments to Appendix A.

In the Advanced Air Bag Rule, the agency stated that the appendix would be periodically updated to reflect changes and designs in available CRSs (65 FR 30710). In the December 2001 final rule, we did note that generally one year of lead time will be provided for amendments to the appendix, but stressed the importance of establishing a list that is representative of real world usage (66 FR 65390).

The revisions to Appendix A in the November 2003 final rule were made in response to issues raised by Evenflo. The agency amended Appendix A in the November 2003 final rule to include LATCH-equipped CRSs in an effort to be representative of real world use. The agency recognized that the lead time provided for manufacturers would be less than 12 months. However, the agency also recognized that CRSs have been required to be LATCH equipped since September 1, 2002.

To ensure the robustness of automatic suppression systems, a manufacturer must be able to certify that the system operates under conditions representative of real world use. This includes operation when used with CRS designs that have been sold for almost two years. However, as the Alliance noted, the agency does not yet have a compliance test procedure in place for testing seats installed by means of the LATCH anchorages. Therefore, the effective date for the LATCH equipped CRSs in Appendix A is extended until September 1, 2006. By that time, the agency will have developed a compliance test procedure for securing a LATCH-equipped CRS to a vehicle using the lower anchor attachments.

In its petition, the Alliance also noted that Subpart C of Appendix A includes the Britax Expressway ISOFIX seat. The Alliance correctly points out that Subpart C is described as containing forward-facing convertible seats, yet the Expressway is not a convertible seat and the manufacturer of the Expressway recommends against using it in the rearward direction. Although not a convertible restraint, the Expressway is recommended for children with a weight as low as 20 lb. The Expressway design, while recommended for infants, cannot be clearly categorized under the existing subparts of Appendix A containing infant restraint systems (*i.e.*, Subpart B—rear-facing infant seats, Subpart C—forward-facing convertible seats). However, the agency determined that the Expressway is best placed in Subpart C, which contains restraints used in a forward-facing configuration.

S19, *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds,* specifies that under the automatic suppression compliance option, a vehicle must comply when tested using a 12-month-old test dummy and child restraint systems listed in Subpart B and Subpart C. The test procedure at S20 for S19, incorporates procedures representative of CRS misuse to reflect real world CRS installation. This includes installing a CRS listed in Subpart C in both the forward- and rear-facing position when belted and unbelted. Consistent with the goal of reflecting real world misuse, we will test the Britax ISOFIX Expressway in both directions. However, we note that if a manufacturer does not provide instructions for routing a vehicle's safety belt to secure a restraint for a given position (*e.g.*, rear-facing), we will not test the restraint belted in that position. We will test the restraint facing forward in a belted configuration and both forward and rear-facing in an unbelted configuration to represent misuse. We are also amending Subpart C and Subpart D (forward facing toddler/belt-positioning booster systems) to describe more accurately the CRSs that are in these subparts.

Both Evenflo and TRW commented that Appendix A contains CRSs no longer in production and no longer available. Evenflo provided suggestions as to possible replacements. TRW stated that the lack of availability of CRSs in Appendix A as impeding restraint system development. TRW petitioned the agency to include currently available CRSs or to create a separate appendix for use beyond 2006.

We are not amending Appendix A as requested by Evenflo and TRW. As stated above, the appendix is intended to be representative of CRSs in use by the public, not merely CRSs that are currently on the market. The November 2003 final rule established a procedure for amending Appendix A. Seats will be

added or removed when real world usage would make this appropriate.

Additionally, we do not believe Appendix A is hindering development of an LRD restraint system for infants, as suggested by TRW. Developmental tests need not use every CRS in Appendix A. These systems should be sufficiently robust that the absence of one or more seats represented in Appendix A in the development process should not impact compliance.

Honda's petition to restrict the maximum weight of CRSs is beyond the scope of the rulemaking notices that resulted in the November 2003 final rule. Such a restriction would need to be addressed through an amendment to FMVSS No. 213 and not FMVSS No. 208. Honda has resubmitted this as a rulemaking petition for FMVSS No. 213. This issue will be addressed in a separate notice.

VII. Seat Positioning Procedures

S16 specifies the test procedures for rigid barrier test requirements using a 5th percentile adult female test dummy. S16.2.10.3.1 specifies that the seat cushion reference line is set to the middle of a range consisting of all possible angles with the seat cushion reference point (SCRP) in the rearmost position. The Alliance petitioned the agency to specify that a seat be placed in the full down position before the seat cushion is positioned to the middle of the range. It stated that the range of angles may vary with vertical position.

The agency recognized that a range of seat or seat cushions angles might vary with vertical position. As such, once a seat's SCRP is moved to the rearmost position, the range of angles is determined through use of any and all controls, other than those that primarily move the seat or seat cushion fore or aft. This includes those that adjust vertical position. To our knowledge, determination of the range is not dependent on the starting vertical position prior to moving the SCRP rearward.

VIII. Miscellaneous

In the November 2003 final rule, the agency replaced the term ''right front outboard'' with ''front outboard passenger'' when referring to the passenger air bag in S20.4.9, S22.4.4 and S24.4.4. It was our intent to make similar amendments for all references to passenger air bags, but inadvertently, this was not done. Therefore, we are replacing ''right front outboard,'' ''right front passenger,'' and ''right front'' with ''front outboard passenger'' in S20, S22, and S24.

Additionally, the Alliance noted that in S16.2.10.3.2 and S16.2.10.3.3, the word ''cushion'' was left out of the phrase ''seat cushion reference point.'' We also identified a similar omission in S26.3.1. To rectify this appropriately, the agency is amending the text and use the acronym SCRP in each of these sections.

IX. Effective Date

The amendments adopted in today's document are effective beginning September 1, 2004. This date is the same as the compliance date established in the January 2004 final rule for the November 2003 final rule. Today's final rule extends the compliance date for testing with specified restraint CRSs for a period of two years. If today's final rule was not effective September 1, 2004, manufacturers would be required to comply with the amendments in the November 2003 final rule on that date despite the fact that the compliance date for certain amendments is extended in today's document. Manufacturers would be required to comply with the delayed provisions for an interim period until today's document became effective at some later date. This could result in unnecessary costs for manufacturers. Further, we have determined that the changes made in this document do not impact a manufacturer's ability to certify a vehicle.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document has not been reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review,'' because it was not deemed significant under the executive order. The rulemaking action has also been determined to not be significant under the Department's regulatory policies and procedures. The agency has concluded that the impacts of today's amendments are so minimal that a full regulatory evaluation is not required. The amendments adopted in this document will neither increase nor decrease to cost of compliance. Readers who are interested in the overall costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 final rule (Docket No. NHTSA–2000–7013–02). NHTSA has determined that the costs and benefits analysis provided in that document are unaffected by today's rule.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule or the December 2001 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule remain unchanged from the December 2001 final rule.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. 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). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2001 rule, which, in turn, made only small adjustments to the May 2000 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. 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 rule does not establish any new information collection requirements.

H. 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.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicles of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout a phase-in. Once the phase-ins are complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 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. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [2] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule, the December 2001 final rule or the November 2003 final rule as a result of this final rule.

[2] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

L. Privacy Act

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 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 revising S16.2.10.3.2, S16.2.10.3.3, S16.3.2.2.4, S16.3.2.2.6, S20.1.6, S20.2.2.3, S20.3.2, S22.1.3, S22.2.1.1, S22.2.1.3, S22.2.2, S22.2.2.1(a), S22.2.2.3(a), S22.2.2.5(a), S22.2.2.6(b), S22.2.2.7(b), S22.2.2.8(a), S22.3.2, S22.4.3.5, S22.5.1, S24.1.3, S24.2.3 heading and (a), S24.3.2, S24.4.3.5, S26.3.1, S26.3.3, Appendix A to § 571.208, and adding S16.3.2.2.7 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S16.2.10.3.2 Using only the control that primarily moves the seat fore and aft, move the SCRP to the full forward position.

S16.2.10.3.3 If the seat or seat cushion height is adjustable, other than by the controls that primarily move the seat or seat cushion fore and aft, determine the maximum and minimum heights of the SCRP, while maintaining, as closely as possible, the angle determined in S16.2.10.3.1. Set the SCRP at the midpoint height with the seat cushion reference line angle set as closely as possible to the angle determined in S16.2.10.3.1. Mark location of the seat for future reference.

* * * * *

S16.3.2.2.4 Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as

possible to the point of intersection of the planes described by the toe-board and floor pan.

* * * * *

S16.3.2.2.6 If the left foot does not contact the floor pan, place the foot parallel to the floor and place the lower leg as perpendicular to the thigh as possible.

S16.3.2.2.7 When positioning the test dummy under S16.3.2.2.4, S16.3.2.2.5, and S16.2.2.6, avoid contact between the left foot of the test dummy and the vehicle's brake pedal, clutch pedal, wheel well projection, and foot rest. To avoid this contact, use the three foot position adjustments listed in paragraphs (a) through (c). The adjustment options are listed in priority order, with each subsequent option incorporating the previous. In making each adjustment, move the foot the minimum distance necessary to avoid contact. If it is not possible to avoid all prohibited foot contact, give priority to avoiding brake or clutch pedal contact.

(a) Rotate (abduction/adduction) the test dummy's left foot about the lower leg,

(b) Plantar flex the foot,

(c) Rotate the left leg about the hip in either an outboard or inboard direction.

* * * * *

S20.1.6 Except as otherwise specified, if the car bed, rear facing child restraint, or convertible child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply in the belted tests with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply in the belted test requirements with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply in the unbelted tests with the restraint anchorage system unattached to the vehicle seat anchorage system.

* * * * *

S20.2.2.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the front outboard passenger vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

* * * * *

S20.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

* * * * *

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system and the vehicle seat belt attached.

* * * * *

S22.2.1.1 Install the restraint in the front outboard passenger vehicle seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the 3-year-old child dummy.

* * * * *

S22.2.1.3 For bucket seats, ''Plane B'' refers to a vertical longitudinal plane through the longitudinal centerline of the seat cushion of the front outboard passenger vehicle seat. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

* * * * *

S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR part 572 subpart P 3-year-old child dummy on the front outboard passenger vehicle seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 *Sitting on seat with back against seat back.*

(a) Place the dummy on the front outboard passenger seat.

* * * * *

S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Place the dummy on the front outboard passenger seat.

* * * * *

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy in a standing position on the front outboard passenger seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

* * * * *

S22.2.2.6 *Kneeling on seat, facing forward.*

* * * * *

(b) Position the dummy in a kneeling position in the front outboard passenger vehicle seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

* * * * *

S22.2.2.7 *Kneeling on seat, facing rearward.*

* * * * *

(b) Position the dummy in a kneeling position in the front outboard passenger vehicle seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

* * * * *

S22.2.2.8 *Lying on seat.* This test is performed only in vehicles with 3 designated front seating positions.

(a) Lay the dummy on the front outboard passenger vehicle seat such that the following criteria are met:

(1) The midsagittal plane of the dummy is horizontal,

(2) The dummy's spine is perpendicular to the vehicle's longitudinal axis,

(3) The dummy's arms are parallel to its spine,

(4) A plane passing through the two shoulder joints of the dummy is vertical,

(5) The anterior of the dummy is facing the vehicle front,

(6) The head of the dummy is positioned towards the passenger door, and

(7) The horizontal distance from the topmost point of the dummy's head to the vehicle door is 50 to 100 mm (2–4 in).

(8) The dummy is as far back in the seat as possible.

* * * * *

S22.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

* * * * *

S22.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints, perpendicular to the thorax instrument cavity rear face, until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat cushion, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point. If the dummy cannot be rolled forward on the seat due to contact of the dummy feet with the floor pan, extend the lower legs forward, at the knees, until floor pan contact is avoided.

* * * * *

S22.5.1 The test described in S22.5.2 shall be conducted with an unbelted 50th percentile adult male test dummy in the driver seating position according to S8 as it applies to that seating position and an unbelted 5th percentile adult female test dummy either in the front outboard passenger vehicle seating position according to S16 as it applies to that seating position or at any fore-aft seat position on the passenger side.

* * * * *

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is used under this standard in testing a vehicle with a front outboard passenger vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions with the restraint anchorage system attached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt unattached. It shall also comply with the belted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system and the vehicle seat belt attached. The vehicle shall comply with the unbelted test conditions with the restraint anchorage system unattached to the FMVSS No. 225 vehicle seat anchorage system.

* * * * *

S24.2.3 *Sitting back in the seat and leaning on the front outboard passenger door.*

(a) Place the dummy in the seated position in the front outboard passenger vehicle seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle, within ±10 mm (±0.4 in), as the center of the steering wheel.

* * * * *

S24.3.2 Place a 49 CFR part 572 subpart O 5th percentile adult female test dummy at the front outboard passenger seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

* * * * *

S24.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints, perpendicular to the thorax instrument cavity rear face, until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat cushion, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point. If the dummy cannot be rolled forward on the seat due to contact of the dummy feet with the floor pan, extend the lower legs forward, at the knees, until floor pan contact is avoided.

* * * * *

S26.3.1 Place the seat and seat cushion in the position achieved in S16.2.10.3.1. If the seat or seat cushion is adjustable in the vertical direction by adjustments other than that which primarily moves the seat or seat cushion fore-aft, determine the maximum and minimum heights of the SCRP at this position, while maintaining the seat cushion reference line angle as closely as possible. Place the SCRP in the mid-height position. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

* * * * *

S26.3.3 Mark a point on the steering wheel cover that is longitudinally and transversely, as measured along the surface of the steering wheel cover, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the steering wheel cover and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag. Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located on the steering wheel cover. This is referred to as ''Plane E.''

* * * * *

Appendix A to § 571.208—Selection of Child Restraint Systems

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 is manufactured on or after the effective date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S19:

	Effective and termination dates	
	January 17, 2002	September 1, 2004.
Cosco Dream Ride 02–719	Effective	Remains Effective.

B. Any of the following rear facing child restraint systems, 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 is manufactured on or after the effective date and prior to the termination date specified in the table below and 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.

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Handle with Care 191	Effective	Remains Effective.
Century Assura 4553	Effective	Remains Effective.
Century Avanta SE 41530	Effective	Terminated.
Century Smart Fit 4543	Effective	Remains Effective.
Cosco Arriva 02727	Effective	Remains Effective.
Cosco Opus 35 02603	Effective	Terminated.
Evenflo Discovery Adjust Right 212	Effective	Remains Effective.
Evenflo First Choice 204	Effective	Remains Effective.
Evenflo On My Way Position Right V 282	Effective	Terminated.
Graco Infant 8457	Effective	Remains Effective.

C. Any of the following forward facing toddler and forward-facing convertible child restraint systems, 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 is manufactured on or after the effective date and prior to the termination date specified in the table below and 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 is not recommended for use in a rear-facing position by its manufacturer is excluded from use in S20.2.1.4):

	Effective and termination dates	
	January 17, 2002	September 1, 2006
Britax Roundabout 161	Effective	Remains Effective.
Britax Expressway		Effective.
Century Encore 4612	Effective	Remains Effective.
Century STE 1000 4416	Effective	Remains Effective.
Cosco Olympian 02803	Effective	Remains Effective.
Cosco Touriva 02519	Effective	Remains Effective.
Evenflo Horizon V 425	Effective	Remains Effective.
Evenflo Medallion 254	Effective	Remains Effective.
Safety 1st Comfort Ride 22–400		Effective.

D. Any of the following forward-facing toddler/belt positioning booster systems and belt positioning booster systems, 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 is manufactured on or after the effective date and prior to the termination date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Roadster 9004	Effective	Remains Effective.
Century Next Step 4920	Effective	Remains Effective.
Cosco High Back Booster 02–442	Effective	Remains Effective.
Evenflo Right Fit 245	Effective	Remains Effective.

Issued: August 13, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–18967 Filed 8–19–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072104B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Adjustment of recreational fishery retention limits.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Angling category daily retention limit should be adjusted in order to enhance recreational fishing opportunities for the remainder of the 2004 fishing year that began June 1, 2004, and ends May 31, 2005. Vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling and Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT Angling category quota. The adjustments to the daily retention limits for BFT are specified in the **SUPPLEMENTARY INFORMATION** section of this document. This action is being taken to provide enhanced private recreational and Charter/Headboat fishing opportunities in all areas without risking overharvest of the Angling category quota.

DATES: The daily recreational retention limit adjustments for vessels permitted in the Atlantic HMS Angling category or the Atlantic HMS Charter/Headboat category are effective August 20 through September 20, 2004, inclusive.

The default daily recreational retention limit at 50 CFR 635.23(b) for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels) is effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among various domestic fishing categories. A recommendation of ICCAT requires that NMFS limit the catch of school BFT, measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length (CFL), to no more than 8 percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8 percent landings limit is not exceeded over the applicable 4–consecutive-year period. The 2004 fishing year is the second year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes while minimizing the risk of overharvest of the school size class.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessels type, such as private vessels, headboats and charter boats.

On June 23, 2004 (69 FR 34960), NMFS adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Angling category, to two school, large school, or small medium BFT, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip. This retention limit remained in effect through July 21, 2004, inclusive. Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Angling category, reverted to one school, large school, or small medium BFT, per vessel per day/trip.

Based on communications with fishermen, available quota, and historical information regarding fish migration patterns and availability off the east coast, particularly off the mid-Atlantic states, NMFS has determined that a modest increase in the daily retention limit, of limited duration, is appropriate and necessary without risking overharvest of available quota. Thus NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Angling category, effective August 20 through September 20, 2004, inclusive, to two BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

NMFS is aware of industry concerns that a recreational retention limit of less than three or four BFT per vessel per day/trip does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Charter/headboat operators have requested a modified retention limit that recognizes a fee-paying client's willingness to book charters in advance based on potential retention limits. NMFS published a final rule that clarified the procedures to set differential BFT retention limits to provide equitable fishing opportunities for all types of fishing vessels (December 18, 2002; 67 FR 77434).

NMFS previously adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, to three school, large school, or small medium BFT, per vessel per day/trip, through July 21, 2004 (June 23, 2004, 69 FR 34960). Starting on July 22, 2004, the daily retention limit for vessels permitted in the HMS Charter/Headboat category, also reverted to one school, large school, or small medium BFT, per vessel per day/trip. Based on communications with fishermen and the nature of charter/headboat fishing operations stated above, NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective August 20 through September 20, 2004, inclusive, to three BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

Effective September 21, 2004, through the remainder of the fishing year, May 31, 2005, inclusive, the default daily recreational retention limit at 50 CFR 635.23(b)), will apply in all areas, for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels). The default retention limit is one school, large school, or small medium BFT, measuring 27 to less than 73 inches (69