§ 97.21 Application for a modified or renewed license.

(a) * * *

(3) May apply for renewal of the license for another term. (The FCC may mail to the licensee an FCC Form 610–R that may be used for this purpose.)

(i) When the license does not show a call sign selected by the vanity call sign system, the application may be made on FCC Form 610–R if it is received from the FCC. If the Form 610–R is not received from the FCC within 30 days of the expiration date of the license for an operator/primary station license, the application may be made on FCC Form 610. For a club, military recreation, or RACES station license, the application may be made on FCC Form 610–B. The application may be submitted no more than 90 days before its expiration to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the application for renewal of the license has been received by the FCC at 1270 Fairfield Road, Gettysburg, PA 17325–7245 prior to the license expiration date, the license operating authority is continued until the final disposition of the application.

(ii) When the license shows a call sign selected by the vanity call sign system, the application must be filed as specified in § 97.19(b).

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[FR Doc. 95–3025 Filed 2–7–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 39]

RIN 2127–AF39

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration of a February 1994 final rule, this rule amends labeling requirements in Federal Motor Vehicle Safety Standard (FMVSS) 213, *Child Restraint Systems*. The final rule requires each rear-facing infant restraint system to bear a label warning against using the restraint in any vehicle seating position equipped with an air bag. This document increases the effectiveness of that warning.

DATES: This rule is effective May 9, 1995.

Petitions for reconsideration of the rule must be received by March 10, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1994 (59 FR 7643), NHTSA published a final rule amending Standard 213. The amendment required, *inter alia*, that each add-on child restraint system designed to be used while it and its occupant are rearward facing (referred to as a ''rear-facing infant restraint'') bear a label warning against using the restraint while it is rearward-facing on any vehicle seat equipped with an air bag.

For a rear-facing restraint designed to be used only while rearward facing and only for infants (referred to below as an ''infant-only restraint''), the rule required the warning to state:

WARNING: PLACE THIS RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG.

For a convertible child restraint (i.e., one that is adjustable so that in one adjustment position, it can be placed on a seat and used rearward facing by an infant and in another position, it can be used forward facing by a toddler), the rule required the warning to state:

WARNING: WHEN YOUR BABY'S SIZE REQUIRES THAT THIS RESTRAINT BE USED SO THAT YOUR BABY FACES THE REAR OF THE VEHICLE, PLACE THE RESTRAINT IN A VEHICLE SEAT THAT DOES *NOT* HAVE AN AIR BAG.

The rule required the warning to be placed on a red, yellow or orange contrasting background so that it would be conspicuous to the user.

The purpose of the warning is to reduce the likelihood that an infant would be injured or possibly killed by a deploying air bag. The rule explained why a rear-facing restraint must not be installed on a seat equipped with an air bag:

When a rear-facing infant restraint is placed on a vehicle seat, the restraint's seat back projects forward, far in front of the vehicle seat back. If the vehicle seating position is a front passenger one equipped with an air bag, the forward-projecting seat back of the infant restraint may rest on or be located close to the part of the vehicle instrument panel containing the air bag.

Placing a rear-facing restraint on such a vehicle seat raises a safety concern of the interaction between those restraints and air bags. An air bag must inflate quickly to create a protective cushion that protects occupants during frontal crashes. The quickly deploying air bag might injure an infant when it strikes the seat back of a rear-facing infant restraint.

59 FR at 7643.

Petitions for Reconsideration

NHTSA received timely petitions for reconsideration from Kolcraft Enterprises and Jerome Koziatek & Associates. Evenflo Juvenile Furniture Company, Century Products Company, and Ms. Kathy Weber of the University of Michigan Child Protection Program (UM–CPP) submitted petitions for reconsideration after the date such petitions were due. Under NHTSA's procedures for the adoption and amendment of rules, 49 CFR 553.35, these petitions were too late to be considered petitions for reconsideration and are considered instead petitions for rulemaking.

All the parties responding to the rule raised almost identical concerns in their petitions. None of them disagreed with the agency's conclusion in the rule that a safety need exists for the warning label, or objected to the rule's requirement to place a label on each affected child restraint. Instead, the petitioners expressed misgivings about particular aspects of the wording of the warning, particularly the warning for convertible child restraints.

The warning for convertible restraints was more elaborate than that for infant-only restraints, because convertible restraints are more complex in design than infant-only restraints. As noted above, a convertible restraint is used rearward-facing with an infant and forward-facing with a toddler or older child. An infant must be positioned rear-facing so that, in a crash, the forces are spread evenly across the infant's back and shoulders, the strongest part of an infant's body.

In issuing the final rule, NHTSA was concerned that consumers might respond to a warning not to use a convertible restraint rear-facing with an air bag by turning the convertible restraint forward so that the infant is forward-facing in an air bag equipped seating position, or by not using any child restraint at all. To reduce the likelihood of those responses, NHTSA adopted a suggestion made in a

comment on the rulemaking from the American Academy of Pediatrics (AAP).

AAP suggested that the warning should be clearer that an infant restraint must be used rear-facing, regardless of the presence of an air bag. To accomplish this, AAP suggested that the warning include the statement, ''When your baby's size requires that this restraint be used in a rear-facing position * * *'' as a condition for the instruction not to use the restraint in an air-bag equipped seating position. NHTSA agreed the wording should refer to the baby's size and adopted a requirement that the warning use that specific language.

Kolcraft petitioned for reconsideration of the requirement to label convertible restraints with the phrase ''When your baby's size requires that this restraint be used in a rear-facing position * * *.'' The petitioner concurred that the warning label should not inadvertently encourage parents to turn convertible restraints to the forward-facing position when used for infants. However, Kolcraft believed that the new language may exacerbate the risk that parents will mistakenly reverse the orientation of a convertible restraint, because ''the language seems to focus on whether the baby's size 'requires' the baby to be rearward facing.'' ''[T]his will confuse parents, and appear to introduce a new criterion for deciding whether to orient a convertible seat front-facing or rear-facing.'' Kolcraft petitioned NHTSA to delete the reference to a baby's size, or replace it with ''When using this restraint with an infant, the restraint must be rear facing * * *.''

Mr. Koziatek petitioned for reconsideration of three aspects of the warning. First, similar to Kolcraft, Mr. Koziatek believed that NHTSA should reconsider the rule's reference to ''baby's size'' as a condition for positioning a convertible restraint to face the rear of the vehicle. The petitioner faulted the rule for giving no information as to when the child restraint system should be used rear-facing, and suggested remedying that shortcoming by beginning the warning with ''This restraint must face the rear for infants less than 20 pounds.'' Second, Mr. Koziatek believed that the warning is too limited in that it implies that the front center seating position in a vehicle equipped with a passenger-side air bag is suitable for a rear-facing child restraint. The petitioner was concerned that future air bag designs may encompass the widespread use of an air bag system that deploys from the passenger side position, yet inflates widely enough to protect an occupant in the front center seating position. (The petitioner apparently was alluding to an air bag system like General Motor's advertised ''air bank'' system for the Cadillac line.) Mr. Koziatek suggested broadening the language of the warning to warn against using a rear-facing child restraint ''in the front seat with a passenger side air bag.'' Third, Mr. Koziatek said that the agency should reconsider its decision not to require the label to specify the consequences of not following the warning against using the child restraint with an air bag. The petitioner believed that the consequences have to be spelled out for the public because ''The general public has been conditioned to expect an air bag to be life-saving and not life-threatening.''

Agency Decision

NHTSA has decided to grant the petitions for reconsideration of Kolcraft and Mr. Koziatek, and is amending the labeling requirement of S5.5.2(k) of Standard 213 in accordance with the petitioners' suggestions. With regard to the suggestion that the warning label should provide better information to the consumer about when an infant should face rearward, the agency agrees that such information is desirable. The information would reduce the likelihood that consumers would misinterpret the warning as instructing them to face an infant (weighing less than 20 pounds) forward rather than rearward in an air bag equipped seating position. Accordingly, this rule requires the warning for convertible restraints to include the statement, ''PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT WEIGHING LESS THAN (insert a recommended weight that is not less than 20 pounds).'' As noted in the highlighted text, manufacturers would insert a recommended weight that is not less than 20 pounds.

The 20 pound minimum criterion is in accordance with established practice and advice in the child passenger safety community that infants weighing less than 20 pounds must face rearward. The American Academy of Pediatrics recommends that parents ''[us]e the infant car seat until your child reaches 17–20 pounds or until your child's head reaches the top of the car seat. If your baby outgrows it before 20 pounds, use a rear-facing convertible car seat until your child weighs 20 pounds.'' As noted above in this preamble, infants weighing less than 20 pounds lack the skeletal and muscular structure to withstand crash forces in a forward-facing position. All rear-facing child restraint manufacturers currently specify that their child restraints must be used rear-facing until the child is at least 20 pounds.

With regard to the concern that the warning should not imply that the front center seating position in a vehicle equipped with a passenger-side air bag is suitable for a rear-facing child restraint, NHTSA concurs that the implication should be avoided. Not enough is known about the interaction of ''air bank'' type systems with rear-facing child restraints to warrant discounting the possibility that an air bank system might be incompatible with a rear-facing restraint. Accordingly, the agency has amended the warning to state, ''WHEN THIS RESTRAINT IS USED REAR-FACING, DO NOT PLACE IT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG.''

Finally, NHTSA agrees with Mr. Koziatek that the warning label should specify the consequences of using the child restraint with an air bag. NHTSA decided against such a requirement in the final rule, since the rule requires the use instructions accompanying the child restraint to contain this information. 59 FR at 7645. On reconsideration, NHTSA concludes that placing a description of the consequences next to the warning would help alert consumers to the importance of the warning. The agency concurs with the petitioner that the fact that an air bag can cause injury is counter-intuitive to the public generally. Information about the consequences of placing a rear-facing restraint near an air bag could more convincingly communicate the important safety need for placing the child in the rear seat. Accordingly, this rule amends the warning statement for convertible and infant-only restraints to require manufacturers to insert a statement that describes the consequences of not following the warning. NHTSA has not prescribed the exact language that must be used and instead is providing manufacturers the flexibility to describe the consequences in their own words. The agency anticipates that the description will accurately describe the potentially grave consequences of not following the warning, yet will avoid frightening consumers into not using a rear-facing restraint with an infant.

The three changes adopted today were also sought by the parties who, because their petitions for reconsideration were untimely, were deemed under the agency's rulemaking procedures to have submitted petitions for rulemaking. The requests in the petitions for rulemaking are, with one exception, substantially the same as the requests made by the reconsideration petitions granted today.

The granting of the petitions for reconsideration thus serves as final action on these requests.

One issue raised in Evenflo's rulemaking petition was not addressed by the petitions for reconsideration. Evenflo said that Cosco Inc., a child restraint manufacturer, ''joins'' in Evenflo's petition and has asked that NHTSA not require the air bag warning to be placed on a color contrasting background. According to Evenflo, Cosco believes that the requirement ''gives the airbag language undue emphasis over the other labels required by FMVSS 213. Highlighting one warning de-emphasizes and somewhat negates other equally important warnings and labels.'' Since a Cosco representative did not sign the Evenflo petition, NHTSA considers the request to be Evenflo's.

The rulemaking request is denied. The purpose of the requirement that the air bag warning label be on a color contrasting background is to make the warning conspicuous. This is important because, as noted above, the agency is concerned that, in the words of Mr. Koziatek, consumers have been conditioned to expect an air bag to be life-saving and not life-threatening. Moreover, there is little information indicating consumers are aware of the potential safety problems between air bags and rear-facing child restraints. Air bags are typically and usually correctly associated with ''safety.'' Accordingly, without a conspicuous warning to negate this association, consumers may seek to place an infant in an air bag equipped seating position, thinking that the air bag will protect the child in a crash. Since the association between air bags and safety is strong and may induce consumers to engage unwittingly in behavior that is contrary to safety, NHTSA concludes that this rule must require highlighting of the warning against use of a rear-facing child restraints in air bag equipped positions. Accordingly, since there is no reasonable possibility that the agency would issue the requested amendment at the conclusion of a rulemaking proceeding, the petition is denied.

Effective Date

This amendment is effective in 90 days. An effective date earlier than 180 days after the date of issuance of this rule is in the public interest for the following reasons. The effective date of the labeling requirement reconsidered in today's rule was August 15, 1994. Thus, rear-facing child restraints manufactured on or after that date must be labeled with the warning specified in the earlier rule. There is good cause for having today's amendments of the earlier rule become effective as early as possible since NHTSA believes today's rule clarifies the required warning and increases its effectiveness. Yet, a 90-day effective date is distant enough to provide manufacturers sufficient leadtime to print revised warning labels. Also, a 90-day effective date will provide some time for manufacturers to use existing stocks of labels that met the previous rule's requirement.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. The effects of today's rule are minor because it only makes slight changes to the labeling required by the February 1994 final rule. The costs of that earlier final rule requiring a specific warning to be labeled on rear-facing child restraints was estimated to range from $0.09 to $0.17 per rear-facing restraint. (NHTSA's regulatory evaluation for that rule was placed in docket 74–09, notice 34.) Today's rule does not change those costs. The agency also anticipated that the earlier rule could save 2 to 4 lives and could reduce 445 injuries a year, assuming that the warning is effective at preventing any placing of rear-facing restraints in air bag positions. NHTSA believes today's rule could improve the potential effectiveness of the warning.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting vehicle manufacturers that produce and install built-in restraints), there are three that qualify as small businesses. This is not a substantial number of small entities.

Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant since today's rule only makes minor changes to the existing labeling requirements for rear-facing restraints. The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will therefore not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

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.

§ 571.213 [Amended]

2. Section 571.213 is amended by revising S5.5.2(k) to read as follows:

§ 571.213 Standard No. 213, Child Restraint Systems.

* * * * *

S5.5.2 * * *

(k)(1) In the case of each rear-facing child restraint system that is designed for infants only, the following statements—

(i) ''PLACE THIS INFANT RESTRAINT IN A REAR-FACING POSITION WHEN USING IT IN THE VEHICLE.''

(ii) ''*WARNING*: DO NOT PLACE THIS RESTRAINT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG. (Insert a statement that describes the consequences of not following the warning.)

(2) In the case of a child restraint system that is designed to be used rearward-facing for infants and forward facing for older children, the following statements—

(i) ''PLACE THIS CHILD RESTRAINT IN A REAR-FACING POSITION WHEN USING IT WITH AN INFANT WEIGHING LESS THAN (insert a recommended weight that is not less than 20 pounds).''

(ii) ''*WARNING*: WHEN THIS RESTRAINT IS USED REAR-FACING, DO NOT PLACE IT IN THE FRONT SEAT OF A VEHICLE THAT HAS A PASSENGER SIDE AIR BAG. (Insert a statement that describes the consequences of not following the warning.)''

(3) The statements required by paragraphs (k)(1)(ii) and (k)(2)(ii) shall be on a red, orange or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat.

* * * * *

Issued on February 2, 1995.

Ricardo Martinez,

Administrator.

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