

1. The Secretarial Orders dated February 27, 1934, which established Powersite Classification No. 283, and October 28, 1921, which established Powersite Classification No. 16, are hereby revoked in their entireties for the following described land:

Salt Lake Meridian

T. 13 S., R. 5 E.,

Sec. 31, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80 acres in Sanpete County.

2. The State of Utah has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, 16 U.S.C. 818 (1988).

3. At 9 a.m. on August 9, 1995, the land described in paragraph 1 shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 9, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The land described in paragraph 1 has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required.

Dated: April 21, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95-11459 Filed 5-9-95; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 92-061]

RIN-2115-AE28

Federal Pilotage Requirement for Foreign Trade Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations to require Federal pilots for foreign trade vessels: Navigating certain offshore marine oil terminals located within the U.S. navigable waters of the States of California and Hawaii; making intra-port transits within certain

designated waters in the States of New York and New Jersey; and transiting certain designated waters of the State of Massachusetts. This action is necessary to ensure that vessels are navigated by competent, qualified individuals, who are knowledgeable of the local area. The Coast Guard believes this requirement will promote navigational safety, increase the level of accountability, and reduce the risk of an accident and the discharge of oil or other hazardous substances into these waters.

EFFECTIVE DATE: The final rule is effective on June 9, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Bennett, Merchant Vessel Personnel Division (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, telephone (202) 267-6102.

SUPPLEMENTARY INFORMATION:

Drafting Information: The principal persons involved in drafting this rule are Mr. John R. Bennett, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On July 9, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Federal Pilotage Requirement for Foreign Trade Vessels" in the **Federal Register** (58 FR 36914). This NPRM proposed areas in waters of the States of California, Hawaii, New York, New Jersey, and Massachusetts where a vessel engaged in foreign commerce would be required to use a Federally licensed first class pilot. The Coast Guard received seventy-five letters in response to the NPRM. The majority of these letters addressed the proposed pilotage requirements for New York and New Jersey.

Background and Purpose

The principal reason for this rulemaking is to enhance the safety of vessels performing difficult mooring maneuvers, or transiting congested or restricted waters. As noted in the NPRM, State laws do not require use of a pilot in the areas covered by this rule. Under 46 U.S.C. 8503, the Coast Guard

may prescribe pilotage regulations in waters not subject to State pilotage requirements.

Discussion of Comments and Changes

A. Summary

Seventy nine comments were received. Many comments stated that this rulemaking was unnecessary because most of the vessels affected by this rulemaking are piloted by individuals who hold State and Federal pilot's licenses. While it is true that many vessels affected by this rule are piloted by individuals who hold State and Federal pilot's licenses, it is not always clear whether these individuals are operating under their State or Federal pilot's license. For clarification and disciplinary purposes, the Coast Guard needs: (1) To verify that certain vessels operating in certain waters are being piloted by an individual holding a pilot's license; and (2) to ensure that the pilot is operating under the authority of only one pilot's license.

There have been several marine casualties involving pilots holding both State and Federal licenses. In cases where the individual was operating under the authority of a State license the Coast Guard could not take disciplinary action. This rulemaking will help to ensure that all foreign trade vessels operating in the areas described in this rulemaking are required to be under the direction and control of a Federally licensed pilot who is knowledgeable of the local navigational hazards and operating conditions, and who can be held accountable for his or her actions in the event of a casualty.

Several comments requested a public hearing. However, it is the Coast Guard's belief that holding a public hearing would not result in additional or different information than was provided in the comments. Therefore, the Coast Guard decided not to hold a public hearing.

B. California

Six comments supported this section of the rulemaking based on the belief that the Coast Guard needs to be able to improve its oversight of pilotage and ensure the pilot has local knowledge of the pilotage area.

Two comments opposed this section of the rulemaking because of possible Federalism implications. They noted that the California State Lands Commission (the Commission) already has a regulation that addresses pilotage requirements at offshore terminals. The Commission's regulation requires a mooring master who holds a valid U.S. Coast Guard license as a master or mate,

with an endorsement as first class pilot for the area where the terminal is located. The mooring master must be on board vessels or barges during mooring and unmooring operations at an offshore terminal. The Coast Guard questioned the Commission concerning the intent of its regulation. The Commission stated that it has the authority to regulate the operations of offshore marine oil terminals in the safest manner possible. However, though it developed the mooring master requirements for offshore terminals, it did not intend that this action would establish a state pilotage requirement. The Commission further stated that it has no authority to assess penalties or take action against an individual's license. The Coast Guard also determined that the Commission's regulation does not apply to foreign trade vessels. Therefore, the Coast Guard concluded that this portion of the rulemaking had no Federalism implications.

In response to the NPRM, the Commander, Eleventh Coast Guard District recommended that the size of certain Federal pilotage areas described in this section of the rulemaking be reduced and that San Luis Obispo and Estero Bay be separated into two distinct pilotage areas. Both recommendations were considered prudent and reasonable, and have been adopted.

C. Hawaii

Four comments supported this section of the rulemaking stating that the Coast Guard needs to improve its oversight of pilotage in this region.

One comment opposed this section of the rulemaking stating that a Federal pilotage requirement is unnecessary because vessels using a single point mooring buoy already have a mooring master on board who is "highly trained and familiar with the operation." While most vessels calling at the two offshore marine oil terminals in the State of Hawaii use a pilot to perform docking and undocking maneuvers, this is done voluntarily. There is no State requirement to use a pilot for these maneuvers.

D. New York and New Jersey

Eight comments supported this section of the rulemaking stating that the Coast Guard needs to improve its accountability over pilots in this and other areas. One comment in support also quoted the 1991 report from New York State Governor Cuomo's Task Force on Coastal Resources which specifically recommended that pilots be held accountable by the Federal or State agency which issues pilot's licenses.

The comments also recognized the need to make pilotage of foreign trade vessels compulsory, stating that neither the States of New York nor New Jersey has a law or regulation in effect which would require a State pilot to be on board these foreign trade vessels when making an intra-port transit.

Three other comments in support of this section of the rulemaking cited the court case of *Baezler v. Mobil Oil Corporation*, 375 F.Supp. 1220, dated November 30, 1973. In this case, the District Court ruled that movements from New York harbor to Arthur Kill across Sandy Hook Bar did not amount to entering or departing from the Port of New York within New York or New Jersey compulsory pilotage statutes. This meant that vessels making this type of movement, which is defined as an intra-port transit in this rulemaking, were not required to take a State licensed Sandy Hook pilot.

One comment suggested that the definition used to describe the term "intra-port transit" should be expanded to include reference to the movement of a vessel "from an anchorage to an anchorage." The Coast Guard agrees with this and has made the recommended change.

One comment addressed the rulemaking's effect on small entities such as shipping companies and pilots, and indicated that the rule would have little impact on small entities. The comment supported the Coast Guard's position that vessels routinely use the services of a pilot during intra-port transits.

Fifty comments opposed this section of the rulemaking. Thirty-one of these comments were from individuals who are current or past members of the New York or New Jersey Sandy Hook Pilots Association. There were six general reasons given in opposition to this section of the rulemaking.

First, some comments questioned whether navigational safety would be enhanced by this rulemaking. The Coast Guard believes this rulemaking will enhance navigational safety because it will require pilots where none were required before, and it will raise the level of accountability for pilots involved in marine accidents.

Second, some comments stated that State pilots are more competent than Federal pilots. The comments were made that an individual seeking to become a Sandy Hook pilot is required to complete nearly seven and one-half years of training with the Sandy Hook Pilots Association prior to being issued a full branch State pilot's license. Several comments also referred to the Coast Guard's "Report of the Pilotage

Study Group" dated September 15, 1989. In this report, an assumption was made that a State license was indicative of greater training, education, and testing periods. This study is available for inspection or copying at the office listed under ADDRESSES.

In response to these comments, it should be noted that the Coast Guard completed a study in January, 1993 which compared marine casualties involving pilots operating under the authority of a Federal license with pilots operating under the authority of a State license. The study concluded that a pilot operating under the authority of a Federal license is no more likely to be involved in a marine casualty than a pilot operating under the authority of a State license. This study is available for inspection or copying at the office listed under ADDRESSES. Additionally, though the Coast Guard believes that Federal pilots are as competent as State pilots, this rulemaking will help to ensure that all foreign trade vessels use a Federally licensed pilot in the areas described where no State pilotage requirement is in effect.

Third, some comments believed that it is unsafe if a State pilot does not conn the vessel during intra-port transits. The Coast Guard is concerned with the safe navigation of vessels but notes that there is no Federal or State regulation which would require a State pilot to be aboard a foreign trade vessel making an intra-port transit. Consequently, this rulemaking will enhance navigational safety by requiring all foreign trade vessels to use a Federally licensed pilot during an intra-port transit in these waters.

Fourth, some comments argued that the Coast Guard should establish minimum clearance standards for a vessel's keel-to-bottom, and mast-to-overhead structure. The comment cited this approach as a better way to promote safety, accountability, and responsibility by limiting shipping companies from putting pressure on captains and pilots to get the vessel to or from the dock regardless of the circumstances. The Coast Guard believes that this proposal may be beneficial as an additional requirement, but it is not the subject of this rulemaking and should not be adopted as an alternative to requiring that those vessels making an intra-port transit have a licensed pilot on board. The Coast Guard believes this rulemaking will promote navigational safety, increase the level of accountability and reduce the risk of an accident and the discharge of oil or other hazardous substances by ensuring that vessels are navigated by competent,

qualified individuals, who are knowledgeable of the local area.

Fifth, some comments questioned the effect of this rulemaking on small entities. Several comments expressed a concern that the Coast Guard was trying to inflict economic hardship on the New York and New Jersey Sandy Hook Pilots Association and that this rulemaking would allow holders of a Federal pilot's license to "come out of the woodwork" and obtain contracts with companies which would effectively decrease the earnings of all members of the New York and New Jersey Sandy Hook Pilots Association. As indicated in the rulemaking, the Coast Guard is concerned with promoting navigational safety and does not believe this rulemaking will have a significant economic impact on a substantial number of small entities such as these pilots or shipping companies. Additionally, the Coast Guard notes that a State-licensed pilot may obtain a Federal license, and many pilots hold both licenses.

Sixth, forty-four comments questioned the Federalism implications of the rulemaking on New York and New Jersey. The comments stated that the laws of New York or New Jersey already cover some or all of the areas where a Federal pilotage requirement for foreign trade vessels making an intra-port transit was being proposed. The Coast Guard reviewed the existing pilotage regulations of the States of New York and New Jersey, and does not believe that the laws of either State require a pilot to be aboard a foreign trade vessel for the areas indicated.

Several comments also suggested that the Coast Guard delay implementation of the final rule citing legislative action being undertaken by the States of New York and New Jersey to close gaps in pilotage regarding intra-port transits. The Coast Guard delayed this rulemaking to provide the States of New York and New Jersey the opportunity to close these loopholes. If either State enacts legislation to require the use of a pilot for foreign trade vessels on intra-port transits for the areas indicated, and notifies the Secretary of that fact, the Coast Guard will withdraw its regulation for that region.

E. Cape Cod Canal

Seven comments were in favor of this section of the rulemaking.

One comment provided conditional support for the rulemaking. This conditional support requested that the Coast Guard delay its rulemaking and support a legislative effort by the State of Massachusetts that would satisfy the Coast Guard's concern. The Coast Guard

reviewed the proposed legislation, and determined that this legislation would not require a State pilot to be on board foreign trade vessels in transit through the waters designated in the rulemaking. Therefore, this section of the rulemaking has been retained in the final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard expects the economic impact of this rule to be minimal because this rule adopts practices that are already being followed by most of the industry.

Small Entities

The only comments regarding the rulemaking's potential negative effect on small entities were made in reference to that section concerned with intra-port transits in the States of New York and New Jersey. The comments were reviewed, but the Coast Guard does not believe that this rulemaking will have a significant effect on the small entities referred to in this case, which would include shipping companies and certain pilot associations which may qualify as small entities. Therefore, because it expects the economic impact of this final rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

Congress specifically provided, under 46 U.S.C. 8503(a), that the Federal Government may require a Federally licensed pilot when a pilot is not required by State law. The States of California, Hawaii, New York and New Jersey, and Massachusetts do not have a requirement for a State pilot in the areas covered by this rule. Therefore, the

Federal Government may act to require a Federally licensed pilot. However, under 46 U.S.C. 8503(b), the Federal government's authority to require pilots is only effective until the State having jurisdiction establishes a superseding requirement for a pilot, and notifies the Coast Guard of that fact. Since this action is intended to require the use of Federal pilots in instances where State pilots are not required, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted.

If the States of California, Hawaii, New York and New Jersey, or Massachusetts adopt superseding legislation requiring State pilots for foreign vessels and U.S. vessels sailing on registry, the Coast Guard would be required to withdraw the respective requirement for a Federally licensed pilot. Thus, the States of California, Hawaii, New York and New Jersey, or Massachusetts could preempt this rule, if these States were to adopt a law consistent with the requirements adopted in this rule. Under these circumstances, the Coast Guard would revise its regulations.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The Coast Guard believes that most individuals presently providing pilotage services to foreign trade vessels calling at the eight sites in California and two sites in Hawaii, and making intra-port transits within certain designated waters of New York and New Jersey, and transiting, but not bound to or departing from a port, within certain designated waters of Massachusetts will continue to provide pilotage services because most individuals already hold a Federal first class pilot's license for those waters. Therefore, this rule will permit affected vessels to continue to operate according to current industry practice. The Coast Guard also recognizes that this rule may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings of vessels. However, this impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR Part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for Part 15 is revised to read as follows:

Authority: 46 U.S.C. 3703, 8105; 49 CFR 1.46.

2. Subpart I, consisting of §§ 15.1001 through 15.1040, is added to read as follows:

Subpart I—Vessels in Foreign Trade

Sec.

- 15.1001 General.
- 15.1010 California.
- 15.1020 Hawaii.
- 15.1030 New York and New Jersey.
- 15.1040 Massachusetts.

Subpart I—Vessels in Foreign Trade

§ 15.1001 General.

Self-propelled vessels engaged in foreign commerce are required to use a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard when operating in the navigable waters of the United States specified in this subpart.

§ 15.1010 California.

The following offshore marine oil terminals located within U.S. navigable waters of the State of California:

(a) *Carlsbad, CA.* The waters including the San Diego Gas and Electric, Encina Power Plant, lying within an area bounded by a line beginning at latitude 33°10'06"N, longitude 117°21'42"W, thence southwesterly to latitude 33°08'54"N, longitude 117°24'36"W, thence southwesterly to latitude 33°04'30"N, longitude 117°21'42"W, thence northeasterly to latitude 33°05'36"N, longitude 117°18'54"W, thence northwesterly along the shoreline to latitude 33°10'06"N, longitude 117°21'42"W.

(b) *Huntington Beach, CA.* The waters including the Golden West Refining Company, Huntington Beach Marine Terminal, lying within an area bounded by a line beginning at latitude 33°39'06"N, longitude 118°00'0"W, thence westerly to latitude 33°39'18"N, longitude 118°05'12"W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°35'30"N, longitude 118°00'00"W, thence easterly to latitude 33°35'30"N, longitude 117°52'30"W, thence northwesterly along the shoreline to latitude 33°39'06"N, longitude 118°00'00"W.

(c) *El Segundo, CA.* The waters including the Chevron USA, El Segundo Marine Terminal, lying within an area

bounded by a line beginning at latitude 33°56'18"N, longitude 118°26'18"W, thence westerly to latitude 33°56'18"N, longitude 118°30'48"W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°51'48"N, longitude 118°27'54"W, thence easterly to latitude 33°51'48"N, longitude 118°24'00"W, thence northwesterly along the shoreline to latitude 33°56'18"N, longitude 118°26'18"W.

(d) *Oxnard, CA.* The waters including the Southern California Edison Company, Mandalay Generating Station, lying within an area bounded by a line beginning at latitude 34°14'12"N, longitude 119°16'00"W, thence westerly to latitude 34°14'12"N, longitude 119°19'36"W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°09'24"N, longitude 119°17'20"W, thence easterly to latitude 34°09'24"N, longitude 119°13'24"W, thence northwesterly along the shoreline to latitude 34°14'24"N, longitude 119°16'00"W.

(e) *Goleta, CA.* The waters including the ARCO, Ellwood Marine Terminal, lying within an area bounded by a line beginning at latitude 34°26'12"N, longitude 119°57'00"W, thence southerly to latitude 34°22'48"N, longitude 119°57'00"W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°21'06"N, longitude 119°50'30.5"W, thence northerly to latitude 34°24'18"N, longitude 119°50'30"W, thence northwesterly along the shoreline to latitude 34°26'12"N, longitude 119°57'00"W.

(f) *Gaviota, CA.* The waters including the Texaco Trading and Transportation, Gaviota Marine Terminal, lying within an area bounded by a line beginning at latitude 34°28'06"N, longitude 120°16'00"W, thence southerly to latitude 34°25'06"N, longitude 120°16'00"W, thence easterly along a line drawn three nautical miles from the baseline to latitude 34°25'24"N, longitude 120°08'30"W, thence northerly to latitude 34°28'24"N, longitude 120°08'30"W, thence westerly along the shoreline to latitude 34°28'06"N, longitude 120°16'00"W.

(g) *Moss Landing, CA.* The waters including the Pacific Gas and Electric Company Power Plant, lying within an area bounded by a line beginning at latitude 36°49'00"N, longitude 121°47'42"W, thence westerly to latitude 36°49'00"N, longitude 121°51'00"W, thence southerly to latitude 36°47'00"N, longitude 121°51'00"W thence easterly to latitude 36°47'00"N, longitude 121°47'54"W,

thence northerly along the shoreline to latitude 36°49'00"N, longitude 121°47'42"W.

(h) *Estero Bay, CA.* The waters including various moorings, including the Pacific Gas and Electric Company mooring and the two Chevron Oil Company Terminals lying within an area bounded by a line beginning at latitude 36°25'00"N, longitude 120°52'30"W, thence westerly to latitude 36°25'00"N, longitude 120°56'00"W, thence southerly to latitude 36°22'00"N, longitude 120°56'00"W, thence easterly to latitude 36°22'00"N, longitude 120°52'12"W, thence northerly along the shoreline to latitude 36°25'00"N, longitude 120°52'30"W.

(i) *San Luis Obispo Bay, CA.* The waters including the Unocal Corporation Avila Terminal and the approaches thereto, lying in an area bounded by a line beginning at latitude 35°09'42"N, longitude 120°46'00"W, thence southerly to latitude 35°07'00"N, longitude 120°46'00"W, thence easterly to latitude 35°07'00"N, longitude 120°43'00"W, thence northerly to latitude 35°10'24"N, longitude 120°43'00"W, thence westerly along the shoreline to latitude 35°09'42"N, longitude 120°46'00"W.

§ 15.1020 Hawaii.

The following offshore marine oil terminals located within U.S. navigable waters of the State of Hawaii: *Barbers Point, Island of Oahu.* The waters including the Hawaiian Independent Refinery, Inc. and the Chevron moorings lying within an area bounded by a line bearing 180 degrees true from Barbers Point Light to latitude 21°14.8'N, longitude 158°06.4'W, thence easterly to latitude 21°14.8'N, longitude 158°03.3'W, thence northeasterly to latitude 21°15.6'N, longitude 158°01.1'W, thence northwesterly to latitude 21°18.5'N, longitude 158°02.0'W, thence westerly along the shoreline to latitude 21°17.8'N, longitude 158°06.4'W.

§ 15.1030 New York and New Jersey.

The following U.S. navigable waters located within the States of New York and New Jersey when the vessel is making an intra-port transit, to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an anchorage, within the following listed operating areas:

(a) East River from Execution Rocks to New York Harbor, Upper Bay;

(b) Hudson River from Yonkers, New York to New York Harbor, Upper Bay;

- (c) Raritan River from Grossman Dock/Arsenal to New York Harbor, Lower Bay;
- (d) Arthur Kill Channel;
- (e) Kill Van Kull Channel;
- (f) Newark Bay;
- (g) Passaic River from Point No Point to Newark Bay;
- (h) Hackensack River from the turning basin to Newark Bay; and
- (i) New York Harbor, Upper and Lower Bay.

§ 15.1040 Massachusetts.

The following U.S. navigable waters located within the State of Massachusetts when the vessel is in transit, but not bound to or departing from a port within the following listed operating areas:

- (a) Cape Cod Bay south of latitude 41°48'54"N;
- (b) The Cape Cod Canal; and
- (c) Buzzards Bay east of a line extending from the southernmost point of Wilbur Point (latitude 41°34'55"N longitude 70°51'15"W) to the easternmost point of Pasque Island (latitude 41°26'55"N longitude 70°50'30"W).

Dated: April 24, 1995.

G.N. Naccara,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95-11303 Filed 5-9-95; 8:45 am]

BILLING CODE 4910-14-P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 40]

RIN 2127-AE61

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: This document amends the labeling requirements of Standard 213 that were adopted in a rule facilitating the manufacture of belt-positioning child seats (booster seats designed to be used with a vehicle's lap/shoulder belt system). Specifically, this document amends the requirements for a type of belt-positioning seat known as a dual-purpose booster (a booster that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of a child seated in the booster, but only with a lap/shoulder belt when used

without the shield). In response to a petition for reconsideration from Gerry Baby Products, NHTSA is amending several of the labeling requirements to exclude dual-purpose boosters that are designed such that the shoulder belt is not placed in front of the child when the booster is used with a shield and a lap/shoulder belt. This rule also corrects labeling requirements adopted in the rule by excluding from those requirements car beds and rear-facing restraints, restraints for which the requirements were not intended.

DATES: This rule is effective August 8, 1995.

Manufacturers may voluntarily comply with the amendments promulgated by this final rule on or after June 9, 1995.

Petitions for reconsideration of the rule must be received by June 9, 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 (telephone 202-366-4919), or Ms. Deirdre Fujita, Office of the Chief Counsel (202-366-2992), National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994 (59 FR 37167), NHTSA published a final rule amending Standard 213 to facilitate the manufacture of "belt-positioning" child booster seats (i.e., booster seats designed to be used with a vehicle's lap/shoulder belt system). The amendment adopted performance and labeling requirements and test criteria for belt-positioning booster seats. The labeling requirements were intended to decrease the likelihood that positioning booster seats will be misused. The rule adopted requirements in S5.5.2(i)(2) for "dual purpose" boosters (boosters that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of the restrained child, but only with a lap/shoulder belt when used without the shield).

To ensure that dual purpose boosters are used with the proper vehicle belt system, S5.5.2(i)(2) requires dual purpose boosters to be labeled with the following warning:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT

PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*, AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description*.

The agency adopted the warning regarding the placement of the shoulder belt portion of the belt system behind the child in response to test data. Those data showed that, for small shield booster seats, "the routing of the shoulder belt (three point belt) in front of the dummy significantly affected the [head injury criterion] HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size." Specifically, the study stated that:

The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that routing the shoulder belt in front of the dummy caused the chest clip acceleration to increase for the 3-year-old dummy tested in two shield booster seats, from 31G to 44G and from 38G to 45G, respectively. The chest acceleration increases for these seats were from about 36G to 52G and 28G to 44G, respectively, when tested using a six-year-old dummy. NHTSA stated that it did not know of any shield-type booster seat that performs well when the booster seat is used with a lap/shoulder belt system and the restraining system element (i.e., the shield) and the shoulder portion of the belt system is left in front of the child. In view of safety concerns about the performance of boosters when the restraining system element (shield) is used and the shoulder belt is in front of the child, NHTSA required dual purpose boosters to be labeled with an instruction to consumers to place the shoulder belt behind the child when the restraining system element (shield) is used, and required this instruction to be included in the printed instructions for each of these boosters (S5.6.1.9).

Petition for Reconsideration

Gerry Baby Products Company petitioned for reconsideration of the final rule. Gerry informed NHTSA that the Gerry Double Guard, a dual purpose booster, is designed to have the lap/shoulder belt threaded through a