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Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Amy Algoe-Eakin at (913) 551-7942, or by e-mail at [algoe-eakin.amy@epa.gov](mailto:algoe-eakin.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP and operating permits program revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 21, 2006.

**John B. Askew,**

*Regional Administrator, Region 7.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA 2006-25453]

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection**

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking requesting that the agency amend Federal Motor Vehicle Safety Standard No. 208, "Occupant crash protection," to include belted test dummies in the rear seats of the dynamic crash tests, and to include a cargo test for occupant protection.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Christopher Wiacek, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-4801, Facsimile: (202) 366-4329.

For legal issues, you may contact Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-5263, Facsimile: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

**I. The Petition**

On August 12, 2004, the agency received a petition from Larry E. Coben of the law firm Coben & Associates, and Alan Cantor of the consulting firm ARCCA, Inc. requesting two safety amendments to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection." First, the petitioners requested an amendment to include belted test dummies in the rear seats of the dynamic crash tests. Second, the petitioners requested that the agency adopt an unrestrained cargo test, as defined by the United Nations under Economic Commission for Europe (ECE) Regulation 17, "Uniform provisions concerning the approval of vehicles with regard to the seats, their anchorages and any head restraints." In support of their position, the petitioners submitted test data to the agency on August 24, 2004.

**A. Part 1—Rear Seat Occupant Protection**

The first aspect of the petition requested amending the existing FMVSS No. 208 frontal barrier crash tests (or an equivalent sled test) to include new performance requirements for an assortment of belted test dummies positioned in rear seats. The petitioners recommended selecting amongst the 95th percentile male, 50th percentile male, 5th percentile female, and 6-year-old child dummy sizes, and adopting FMVSS No. 208 injury criteria for the head, neck, chest and femurs. They also recommended adopting a new method of assessing abdominal injury risk. The

petitioners noted that FMVSS No. 209, "Seat belt assemblies," FMVSS No. 210, "Seat belt assembly anchorages," and the equipment provisions of FMVSS No. 208 do not have dynamic performance requirements for rear seat restraints. The petitioners further stated that applying the same injury criteria to instrumented rear seat dummies that are applied to front seat dummies in frontal crashes is warranted, and would not cause any undue expense.

**B. Part 2—Unrestrained Cargo Test**

The second aspect of the petition requested that the agency amend FMVSS No. 208 to include an unrestrained cargo test, as specified in the European seat standard, ECE 17, and to adopt the pass/fail criteria employed in that standard. The petitioner noted that ECE 17 was adopted to ensure that vehicles maintain sufficient strength to protect occupants from displaced luggage that may be thrown into the back of vehicle seats in a frontal impact. The petitioners noted that FMVSS No. 208 (or any other standard) does not account for cargo that is regularly placed in the luggage/storage areas of passenger cars, vans, sport utility vehicles, and applicable trucks. The petitioners stated that the use of unrestrained cargo in FMVSS No. 208 tests would provide an assessment of the passive barrier that lies between the cargo compartment and rear seat occupants.

**II. Discussion of Part 1—Rear Seat Occupant Protection**

**A. Data From Petitioner**

On August 24, 2004, the petitioners provided frontal impact crash test data using a 1995 model year Hyundai Scoupe in conjunction with their petition.<sup>1</sup> Frontal impact crash tests were conducted at both 48 km/h and 64 km/h with a 5th percentile female Hybrid III dummy placed in the left rear seating position, restrained by a lap/shoulder belt. According to the petitioners' data, the dummy experienced injury measurements in excess of the maximum head injury measurements applicable under FMVSS No. 208 in both tests. Additionally, the dummy's chest acceleration measurement exceeded the criterion in the 48 km/h test and was nearly exceeded in the 64 km/h test. Examination of the films revealed that the 5th percentile female dummy's head contacted the dummy's knees in the 48 km/h test, and contacted the front driver seat back and later its own knees in the

<sup>1</sup> For the crash data, see the docket for this notice.

64 km/h test. In the 48 km/h test, the dummy was positioned in a normal seating position as described in FMVSS No. 208; however, in the 64 km/h test, the dummy's upper torso was positioned away from the seat back and the head was tilted downward. The petitioner did not provide any information on why the dummy positioning was different in the 64 km/h test.

#### B. Summary of Relevant Agency Actions

The dynamic performance of front outboard seats and restraint systems in light passenger vehicles (with a gross vehicle weight rating of 3,856 kilograms or less) is evaluated through dynamic crash tests in FMVSS No. 208. As the petitioner noted, rear seat belts are required to meet various component tests as prescribed in FMVSS Nos. 209 and 210, and the equipment provisions of FMVSS No. 208. Prior to 1989, only lap belts were required in rear outboard seating positions. On June 14, 1989, NHTSA published a final rule (54 FR 25275) that required the installation of lap and shoulder belts in rear outboard seats of passenger cars other than convertibles. NHTSA published a second final rule (54 FR 46257) on November 2, 1989 to extend the rear outboard lap/shoulder belt requirement to convertibles, light trucks, vans, and small buses, other than school buses. Over time, these rear lap/shoulder belts have been found to be 15 percent more effective than lap belts alone in all crashes, and 25 percent more effective in reducing the risk of death in frontal crashes.<sup>2</sup> More recently, on December 8, 2004, NHTSA published a final rule (69 FR 70910) requiring lap and shoulder belts in rear center seating positions in most passenger cars and light duty passenger vehicles. These rear center lap/shoulder belts were first required on September 1, 2005.

NHTSA has also evaluated the merits of including child dummies in the New Car Assessment Group (NCAP) program pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 14(b) of this Act directed the Secretary of Transportation to determine "whether to include child restraints in each vehicle crash tested under NCAP." Two notices have been published on the agency's efforts in this area: Notice of final decision on the NCAP programs for child safety, published in the **Federal Register** (70 FR 29815) on May 24, 2005,

<sup>2</sup> "Effectiveness of Lap/Shoulder Belts in the Back Outboard Seating Positions," Pages 20 and 88, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Washington, DC, June 1999, DOT HS 808 945.

and response to comments, notice of decision for NCAP, published in the **Federal Register** (70 FR 75536) on December 20, 2005. These documents discuss the agency's decision to maintain the current frontal impact test procedures while conducting the necessary research to evaluate if and how the program could be modified to include child dummies.

#### C. Analysis of Petition

NHTSA currently is continuing a research program to examine rear seat occupant protection. The program to advance rear seat occupant protection includes analytical and sled test simulations to determine advanced restraint system feasibility and improved restraint geometry in rear seats. Test dummies of different sizes are included in rear seats of frontal crash tests, when feasible.<sup>3</sup> The objective of the program is to examine the performance of existing rear seat restraints, assess the effectiveness of advanced rear restraint systems and evaluate the biofidelity of various anthropomorphic test devices in the rear seat. NHTSA is collaborating with various restraint and vehicle manufacturers to develop and evaluate effective restraints for the rear seat. NHTSA's Special Crash Investigations and CIREN programs also plan to conduct detailed examination of select crashes involving rear seat occupants with serious to fatal injuries. The agency will use this data to assess the dynamic performance of rear seat restraints in real world crashes. We are also studying this data to establish a correlation between testing and real world crashes.

Implementation of the petitioners' request to amend FMVSS No. 208 at this time would be premature. As discussed in a **Federal Register** notice responding to a petition for rulemaking from Mr. James E. Hofferberth (71 FR 25130), NHTSA currently has an insufficient amount of data on child dummies in a FMVSS No. 208 crash environment to conduct a thorough crash test analysis. Also, the agency does not have sufficient research and testing that would be needed to incorporate the 95th percentile adult male dummy into the Federal motor vehicle safety standards. The information provided by the petitioners gave no new insight in this area.

At this point in time, the agency has concluded that further study is needed and research will continue in order to

<sup>3</sup> Feasibility considerations include, but are not limited to: additional cost, additional timing, added weight, data acquisition capabilities, and potential interference with other aspects of the test.

make a definitive determination on potential requirements for rear seat occupant performance.

### III. Discussion of Part 2—Unrestrained Cargo Test

#### A. Additional Data From Petitioner

On August 24, 2004, the petitioners provided sled test data using a model year 1995 Hyundai Scoupe in support of their petition. Tests were conducted at 48 km/h and 64 km/h following the ECE 17 protocol using unrestrained simulated luggage in the cargo area. Seat back deformation and locking mechanisms were monitored in the tests. The petitioner provided electronic video files<sup>4</sup> showing unrestrained cargo contact with the seat back, seat latch failure, and forward movement of the seat back during the event.

#### B. Summary of Relevant Agency Actions

FMVSS No. 207, "Seating systems," establishes the minimum performance requirements for both the strength of seat backs and the seat attachment to the vehicle. The standard specifies that the seat restraining device shall not release or fail when the required load is applied to the seat back. Effectively, this provides occupants with some level of protection from loose cargo displaced during a crash. Alternatively, ECE 17 requires a dynamic impact test with simulated cargo. The requirement is deemed to be met if, during and after the dynamic impact test, the seat back remains in position and the locking mechanisms remain in place. However, during the test, deformation of the seat back and its fastenings is permitted provided that the forward contour of the seat back and/or head restraint does not move forward past specified limits. While FMVSS No. 207 and ECE 17 have distinct performance tests, we have no data at this time to suggest that the field-relevant performance of one approach is superior to the other.

To identify the current safety problem associated with loose cargo and seat performance in vehicles that comply with FMVSS No. 207 in the current fleet, NHTSA examined real world crash data from the 2000–2004 National Automotive Sampling System Crashworthiness Data System (NASS–CDS) where an occupant sustained an AIS 3+ injury from contact with an "interior loose object," in a frontal crash where there is a "seat performance failure." The NASS–CDS data collection term "interior loose object" includes any interior items that are not a direct

<sup>4</sup> For the sled test data, see the docket for this notice. Reference: sled tests 24953, 24954 and 24955.

part of the vehicle; these items are not necessarily located in the rear cargo area. A "seat performance failure" includes seat hardware failure, seat deformed by intrusion or occupant impact or other failure mechanism. We identified one case where an AIS 3+ injury was reported from contact with "interior loose objects" and there was a "seat performance failure." We then manually reviewed the individual case file<sup>5</sup> for accuracy in the reporting and relevancy to the frontal crash test procedure proposed. After a careful review of the relevant case file, it was concluded that this was not an incident where loose cargo from the luggage area of the vehicle compromised the seat performance, intruded into the passenger compartment, and caused a direct injury to the occupants in a frontal crash. This is not to say that there are not anecdotal cases that occur in the real world. However, our query of five years of NASS data yielded no cases matching the above criteria.

#### C. Analysis of Petition

Analysis of the available real world data does not indicate that the incidences and severity of motor vehicle occupants injured from unrestrained cargo as a direct result of a seat performance failure in motor vehicle crashes is a safety problem that would warrant an amendment to the Federal standard at this time. While there may be anecdotal cases of displaced cargo intruding into the passenger compartment and injuring occupants, the agency has not been able to quantify the safety problem beyond a review of the NASS data. More research would be needed to substantiate a correlation between cargo intrusion and occupant safety resulting from seat deformation or failure. The petitioners also did not provide any field data demonstrating such a problem. Furthermore, for the agency to pursue a rulemaking adopting the ECE 17 requirement, considerable research and testing would be needed on the effectiveness of a seat back deflection measurement to reduce occupant injury and the design and cost of potential countermeasures beyond the current requirements specified in FMVSS No. 207. The petitioners did not provide such information.

#### IV. Conclusion

After carefully considering all aspects of the petitions, the agency has decided to deny them. As stated above, the agency has undertaken research in some areas of concern identified by the petitioners. Making a determination to

amend the standards prior to the completion of this research would be premature. Additionally, other areas of concern identified by the petitioners would require substantial research to address. While the agency may in the future consider adding additional dummies or unrestrained cargo to its frontal crash test and/or other programs, it is not appropriate to consider rulemaking at this time. In accordance with 49 CFR part 552, this completes the agency's review of the petition.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Issued on: November 29, 2006.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Sacramento Mountains Thistle (*Cirsium vinaceum*) and Initiation of 5-Year Status Review

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of 5-year status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the threatened Sacramento Mountains thistle (*Cirsium vinaceum*) (thistle) from the Federal List of Threatened and Endangered Plants, under the Endangered Species Act of 1973, as amended (Act). We find the petition does not present substantial information indicating that delisting of the thistle may be warranted. Therefore, we will not initiate a further 12-month status review in response to this petition under section 4(b)(3)(B) of the Act. However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the Act to consider information that has become available since we listed the species as threatened on June 16, 1987 (52 FR 22933). This will provide the public an opportunity to submit new information on the status of the species. We invite all interested parties to submit comments or information regarding this species.

**DATES:** The finding in this document was made on December 5, 2006. To be considered in the 5-year review, comments and information should be submitted to us (see **ADDRESSES** section) on or before March 5, 2007. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** Data, comments, information, or questions concerning this petition finding and 5-year review should be submitted to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. You may send your comments by electronic mail (e-mail) directly to the Service at [thistlecomments@fws.gov](mailto:thistlecomments@fws.gov). The petition, supporting data, and comments will be made available for public inspection, by appointment, during normal business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** above) (telephone 505-346-2525, facsimile 505-346-2542).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating whether or not a petition presents "substantial" information involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

<sup>5</sup>NASS-CDS case reference: 2004-049-105.