

differentiate among various IP-enabled services, and that regulation may be deemed inappropriate with regard to most, if not all, IP-enabled services, applications or providers. It thus seeks comment on the appropriate grounds on which to differentiate among providers of IP-enabled services. The NPRM further seeks comment on the appropriate legal classification for each category of IP-enabled services, and on which regulatory requirements, if any, should be applied to services falling into each category. The NPRM makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities. We seek comment here on the effect various proposals will have on small entities, and on the effect alternative rules would have on those entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

15. Pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), this *Notice of Proposed Rulemaking* is adopted.

16. That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-6944 Filed 3-26-04; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04-608; MB Docket No. 04-67; RM-10856]

Radio Broadcasting Services; Easthampton and Pittsfield, MA, and Malta, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Vox New York, LLC, licensee of Station WNYQ(FM) ("WNYQ"), Malta, New York, and Great Northern Radio, LLC, licensee of Station WBEC-FM, Pittsfield, Massachusetts. The licensees

propose to upgrade Channel 289A, Station WNYQ, to Channel 289B1 and to reallocate Channel 288A, Station WBEC-FM, from Pittsfield to Easthampton, Massachusetts. The reallocation of Channel 288A to Easthampton will provide Easthampton with its first local aural transmission service. The coordinates for requested Channel 289B1 at Malta, New York, are 42-17 NL and 73-40-52 WL, with a site restriction of 9.1 kilometers (5.7 miles) east of Malta. The coordinates for requested Channel 288A at Easthampton, Massachusetts, are 42-18-52 NL and 72-41-18 WL, with a site restriction of 5.5 kilometers (3.4 miles) north of Easthampton.

Petitioners' proposal complies with the provisions of Sections 1.420(g)(3) and (i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 289B1 at Malta, New York, or Channel 288A at Easthampton, Massachusetts, or require the licensees to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before May 3, 2004, and reply comments on or before May 18, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David G. O'Neil, Esq., Rini Coran, PC; 1501 M Street, NW., Suite 500; Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04-67, adopted March 10, 2004, and released March 12, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Easthampton, Channel 288A, and removing Channel 288A at Pittsfield.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 289B1 and removing Channel 289A at Malta.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04-6943 Filed 3-26-04; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 99-5891; Notice 02]

RIN 2127-AH14

Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding concerning a petition for rulemaking from Kathleen Weber of the University of Michigan Child Passenger Protection Research Program in Ann Arbor, Michigan. The

petition addresses the unavailability of child restraints for children weighing more than 18 kg (approximately 40 pounds (lb)) that can be used in seating positions that are equipped with only lap belts instead of lap and shoulder belts.

The agency published a request for comments in the **Federal Register**. After considering the public comments received on the agency's request for comments on the petition, evaluating the results of a test program conducted to aid in the evaluation of the petition, considering recent developments concerning child restraints and tethers in Standards 213 and 225, passage of Anton's Law, and noting the emergence of products that have been available to restrain children over 18 kg that utilize a lap belt only without a tether, the agency has concluded that Standard 213 should not be amended at this time as proposed in the petition. However, we will continue to address this issue in support of Anton's Law.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at (202) 366-0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at (202) 366-2992.

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

SUPPLEMENTARY INFORMATION:

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I. Background

A. Unavailability of Child Restraints for Children Weighing More Than 40 Pounds in Seating Positions With Lap Belts Only

Booster seats are designed for children who have outgrown a convertible or toddler child restraint system. They are generally designed for children who are about 4 to 8 years old, and who weigh more than 18 kg. Shield booster seats, which are capable of being used with only a vehicle's lap belt, were

available in the past, but became unavailable for children weighing over 18 kg subsequent to an upgrade that NHTSA made to the standard pursuant to the Intermodal Surface Transportation Efficiency Act ("ISTEA") of 1991 (Pub. L. 102-240). That Act directed NHTSA to initiate rulemaking on a number of safety matters, including child booster seat safety (§ 250). The legislative history for the directive indicated that its impetus was a study finding that shield booster seats then manufactured could not adequately restrain test dummies representing the children for whom the seats were recommended by the manufacturers. In the study¹, the boosters could not adequately restrain a 22 kg (48 lb) test dummy (representing a 6-year-old) when dynamically tested under Standard 213. The boosters were ineffective at limiting head excursions to within the requirements of Standard 213, and two of the boosters failed structurally. The boosters also failed to prevent the ejection of a 9 kg (20 lb) test dummy (representing a 9-month-old child) in the dynamic test. These phenomena were observed notwithstanding the recommendation of some booster seat manufacturers that their seats were suitable for children weighing from 9 up to 32 kg (20 up to 70 lb).²

In response to this study and to the ISTEA directive, NHTSA amended Standard 213 in two ways. First, the standard was amended to permit the manufacture of belt-positioning booster seats (59 FR 37167, July 21, 1994). A belt-positioning booster seat is designed to use both portions of a vehicle's Type II belt to restrain the child. A belt-positioning seat is not directly attached to the vehicle seat, but is held in place by the child's mass and the vehicle's Type II belt, which is strapped over the child's lap and torso, just as the Type II belt is used to restrain an adult occupant. A belt-positioning seat must not be used with a vehicle's lap belt alone, since the seat lacks structure or an internal belt to restrain the child's upper torso. Second, NHTSA also incorporated the 6-year-old and 9-month-old dummies into the standard's compliance test protocols, to ensure a more thorough evaluation of the ability

¹Edward C. Hiltner, "Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and Modified SA103C and SA106C Child Dummies," Final Report DOT HS 807 844, February 1990.

²Because at that time only a 3-year-old dummy was used in Standard 213's compliance test, the boosters could meet the standard when tested with that dummy and were thus certified as complying with the standard.

of a child restraint to adequately restrain children recommended for the restraint, as compared to testing done with only the 3-year-old dummy. Beginning in September 1996, any child restraint recommended for children weighing over 18 kg must be able to comply with the standard when tested with the 6-year-old child dummy (60 FR 35126, July 6, 1995; 60 FR 63651, December 12, 1995).

Comments from manufacturers and others on the proposal to use the 6-year-old dummy in compliance tests did not indicate that shield boosters manufactured at the time of the rulemaking could not comply. To the extent there were any shield boosters that could not pass the standard's requirements with the 6-year-old dummy, NHTSA anticipated that manufacturers might (1) design their seats to achieve compliance (such as by raising the height of the shield relative to the child's torso), (2) label shield boosters as being suitable for children weighing less than 18 kg (and thus avoid testing with the 6-year-old dummy), or (3) replace production of shield boosters with belt-positioning boosters. While the latter two responses to the final rule have occurred, manufacturers have not redesigned shield boosters to pass Standard 213 with the 6-year-old dummy. Thus, the shield boosters manufactured today are not recommended for use with the shield by children over 18 kg.

B. The Petition

On December 4, 1997, Ms. Kathleen Weber of the University of Michigan Child Passenger Protection Research Program, submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213). The petition, which NHTSA granted on January 30, 1998, concerns the manufacture of child restraints that can be used by families in pre-1989 model year vehicles. These vehicles are permitted to have only lap belts in rear seating positions.

The petitioner suggests that Standard 213 be amended to allow—

Child restraint systems to be certified for children who weigh between 18 and 23 kg using a top tether if the restraint meets current FMVSS 213 test criteria (using the Part 572:I 6-year dummy) when secured by a lap belt and top tether strap, as long as the same restraint can be certified for children under 18 kg (using the Part 572:C 3-year dummy) without a tether.

The petitioner notes that—

this would allow the "hybrid" toddler/booster restraints (forward facing with internal harness/high-back belt-positioning

booster) to be used by a [20 kg] 45 lb child in the toddler mode with its internal harness and installed with a lap belt and top tether strap.

An example of such a "hybrid" seat is Century's Breverra booster car seat, which is recommended for children 14 to 45 kg (30 to 100 lb). The Breverra has a removable 5-point harness system. When used with children weighing up to 18 kg (40 lb), the Breverra is used with the 5-point harness, and the restraint is secured to the vehicle seat by either a Type I or Type II belt. This configuration (using the restraint system with children weighing up to 18 kg (40 lb), and restraining them with the internal 5-point harness) is what the petitioner refers to as the "toddler mode." The Breverra is also designed for use as a belt-positioning booster seat with children 14 to 45 kg (30 to 100 lb). Parents are instructed to remove the 5-point harness from the booster seat, and to use the vehicle's Type II belt to restrain the child. Because seats such as the Breverra are designed for use both as a "toddler seat" and as a "belt-positioning booster seat," the petitioner refers to them as "hybrid" restraints.

The petitioner seeks to permit child restraints to be certified as meeting the standard when recommended for children up to 20 kg (45 lb) in the toddler mode (using the 5-point harness, attached to the vehicle by lap belt). Currently, restraints recommended for children up to 20 kg are tested with the 6-year-old dummy. At the time the petition was submitted, child restraints were required to limit head excursion to a maximum of 813 mm (32 inches (in)) when tested dynamically in a simulated 30 mph frontal crash in accordance with Standard 213. Because of the increased height and higher center of gravity of the 6-year-old dummy as compared to the 3-year-old dummy, convertible and hybrid restraints were not typically able to meet the 813-mm head excursion limit when tested with the 6-year-old dummy in the toddler mode (using the 5-point harness), untethered. As the basis for the petition, the petitioner presumes they could meet the 813-mm limit when tethered.

The effect of the petition would be to eliminate the requirement for child restraints to meet the 813-mm head excursion requirement when tested with the 6-year-old dummy, untethered, as long as the same restraint meets the 813-mm head excursion limit when tested with a tether attached. Further, the petitioner suggests that the same restraints should be required to meet all of Standard 213's requirements with the 3-year-old dummy untethered. Petitioner states:

Requiring restraints to meet the dynamic test criteria without a tether using the 3-year dummy is somewhat consistent with the "misuse" test formerly required by the standard for restraints equipped with top tether straps . . .

C. Changes Regarding Tether and Head Excursion Requirements

At the time of the petition, NHTSA did not require a tether on child restraints or a tether anchorage on vehicles. The agency did not prohibit a tether, but generally required child restraints to meet Standard 213's 48 km/hr (30 mph) dynamic testing requirements without attaching a tether to reflect the historically low use rate of tethers in this country in vehicles that did not have factory-equipped tether anchors. As such, all child restraints recommended for use by children weighing under 22.7 kg (50 pounds) (the limit of Standard 213) were required to limit head excursion to a maximum of 813 mm in the dynamic test.

As noted above, nonuse of the tether has been a problem in the U.S. In an effort to boost use rates, NHTSA once proposed requiring all vehicles under 4536 kg (10,000 lb) GVWR to have tether anchorages at all rearmost seating positions, to make it possible for motorists to easily attach the tether straps on their child restraints to the vehicle (45 FR 81625; December 11, 1980). At the time of the proposal, tether use was about 50 percent. NHTSA terminated rulemaking on this proposal after determining that (a) since the proposal, there was a continual shift toward untethered seats, so that most seats did not need a tether to meet Standard 213's requirements; (b) motor vehicle manufacturers had increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes to facilitate the attachment of tether straps; and (c) the most effective way to promote child safety would be to amend Standard 213 to require all child restraints to meet Standard 213's requirements without attachment of the tether (50 FR 27632; July 5, 1985).

As part of the agency's development of Standard 225, "Child Restraint Anchorage Systems," NHTSA concluded that a top tether should be provided to better secure child restraints. By restraining the top portion of a child seat, a tether would supplement the vehicle belt system in limiting forward movement of the child restraint in a crash. With less forward movement, head excursion could be reduced. However, instead of expressly requiring child restraints to have a top

tether strap, NHTSA established a performance requirement that has the practical effect of requiring a tether on child restraints. NHTSA established a new head excursion requirement for forward-facing child restraints that limits excursion to 720 mm (28.35 inches) forward of the Z-point on the FMVSS No. 213 test seat assembly when a child restraint is attached to the standard seat assembly in accordance with the manufacturer's recommendations. To meet this requirement, manufacturers provide a top tether, which is attached in the test for this new requirement. The agency felt that the head excursion limit of 720 mm was practicable with a tether because it is the same as a Canadian requirement and because most, if not all, child restraint manufacturers currently produce child restraints for sale in Canada and thus already meet the requirements for those products.

NHTSA concluded however, that tethers would be much more likely to be used if child seats are equipped with a tether and if vehicles are equipped with a factory-installed, easy- and ready-to-use tether anchorage. Citing experience with respect to higher tether use rates in Australia and Canada where factory installed tether anchorages and/or tether hardware are available, NHTSA required vehicle manufacturers to begin installing factory-installed, user-ready tether anchorages (with hardware) in new vehicles beginning September 1, 1999.

II. NHTSA Conducts Test Program To Evaluate Performance of Child Restraints in Limiting Head Excursion of 6-Year-Old Dummy

NHTSA conducted a test program at our Vehicle Research and Test Center (VRTC) in March 1998, to evaluate the performance of various types of child restraints in restricting the amount of head excursion of the 6-year-old dummy. In developing this test program, NHTSA asked child restraint manufacturers and the National Transportation Safety Board (NTSB) for suggestions as to which approaches and products should be evaluated. One objective of this test program was to obtain baseline information on the dynamic performance of a "typical" shield-type booster seat, tested with the 6-year-old dummy while secured to the vehicle seat by a lap belt only. It was presumed that this type of seat was unable to meet the 813 mm head excursion requirement of Standard 213, and had therefore resulted in child restraint manufacturers limiting these restraints to use for children weighing no more than 18 kg. Pre-test discussions

with restraint manufacturers confirmed that Standard 213's head injury criterion (HIC), chest acceleration, and knee excursion parameters did not pose concerns when testing this type of restraint with the 6-year-old dummy. Rather, because of the increase in height and weight of the 6-year-old dummy as compared to the 3-year-old dummy—1168 versus 965 mm standing height (46 versus 38 inches), and 22 versus 15 kg in weight (48 versus 33 lb)—the standard's head excursion limit was the issue. The shield portion of the restraint apparently does not provide adequate upper torso restraint to limit the head excursion within acceptable limits when subjected to Standard 213's dynamic test. NHTSA chose the Cosco Grand Explorer as a representative shield-type booster for the baseline test.

The test program also evaluated a combination forward-facing toddler/high-back belt-positioning booster seat, utilizing its internal 5-point harness, secured to the vehicle seat by a lap belt and a top tether. This represented the specific configuration recommended in the Weber petition. NHTSA chose the Century Breverra, which comes with an optional top tether, as a representative seat for the test program.

NHTSA also tested two convertible seats. Pre-test conversations with restraint manufacturers indicated that there may be some convertible restraints that are equipped with tethers which may also perform adequately when attached to the vehicle seat with a lap belt only, when restraining the 6-year-old dummy. Not all convertible

restraints were equipped with a top tether strap at the time, and not all convertible restraints were able to accommodate the 6-year-old dummy. Britax Child Safety, Inc. indicated that they manufactured two convertible restraints, the "Roundabout" with a standard top tether and the "Elite" with an optional top tether attachment, which they felt would perform satisfactorily in a crash test with the 6-year-old dummy when the restraint was secured to the vehicle seat by a lap belt and top tether. Accordingly, NHTSA included both of the Britax convertible restraints in the subject test program.

At the time of the test program, the only commercially available products marketed specifically for children weighing over 18 kg and secured with a lap belt only were the 86-Y-harness and vest systems produced by E-Z-On Products. Both of these systems required the use of a top tether. The 86-Y harness system consisted of two shoulder straps extending from the top tether anchorage, and looped ends to allow the vehicle lap belt to be routed through and fastened over the pelvic area. The vest system functioned similarly, with a single strap extending from the top tether anchorage that split into two separate straps with hardware that attached to rings located on each shoulder of the vest, and the vehicle lap belt threaded through web loops on the bottom of each side of the vest. Both the 86-Y harness and the vest systems were included in the test program for evaluation.

The dynamic sled tests were conducted at VRTC, and were based on the test conditions and procedures prescribed in S6 of Standard No. 213. This test program was intended for research only and did not precisely replicate compliance testing. The VRTC tests evaluated the ability of the restraints at limiting head excursion, HIC, chest acceleration, and knee excursion. The test conditions were fixed throughout the sled test series, with the only variable being the particular restraint being tested and its attachment method (*i.e.* tethered or untethered). With the exception of the baseline test utilizing the shield booster seat, each restraint was tested in each attachment configuration on two separate sled runs. Two identical shield boosters were tested, but on the same sled run rather than separate sled runs as with the other restraints.

All tests were conducted using the 6-year-old dummy, and each of the restraints—whether tethered or untethered—was attached to the vehicle test seat using a lap belt only. At that time, Standard 213's limits were as follows: HIC—1000; chest acceleration—60g; head excursion—813 mm; and knee excursion—914 mm (36 in).³ The full test results are provided in Table 1. It is important to note that in each of the tests conducted, values for both the HIC and chest acceleration parameters were typically significantly below the established limits prescribed in Standard 213, and none exceeded the maximum allowable limits.

TABLE 1.—SUMMARY OF SLED TEST RESULTS FOR ALL RESTRAINTS

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
		60	813	914	
FMVSS No. 213 limit	1000				
Cosco Grand Explorer Lap Belt w/Sm. Shield	424	32.9	698	614	UMP01
Cosco Grand Explorer Lap Belt w/Sm. Shield	417	32.2	749	660	UMP02
Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether	332	38.9	760	904	UMP03
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether	273	30.8	851	926	UMP04
Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether	307	40.5	719	881	UMP05
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether*	243	50.2	NA	NA	UMP06
E-Z ON 86-Y Harness Lap Belt w/Top Tether	463	52.5	495	540	UMP07
E-Z ON 103Z Vest Lap Belt w/Top Tether	702	59.3	558	636	UMP08
E-Z ON 86-Y Harness Lap Belt w/Top Tether	461	52.9	474	540	UMP09
E-Z ON 103Z Vest Lap Belt w/Adj. CAM-Wrap	315	35.9	713	598	UMP10
Britax Roundabout Lap Belt w/Top Tether	270	42.3	623	799	UMP11
Britax Roundabout Lap Belt; No Top Tether	477	39.3	810	896	UMP12
Britax Roundabout Lap Belt w/Top Tether	303	43.4	574	736	UMP13
Britax Roundabout Lap Belt; No Top Tether	425	36.1	795	864	UMP14
Britax Elite Lap Belt w/Top Tether	554	51.2	640	782	UMP15
Britax Elite Lap Belt; No Top Tether	377	39.2	820	868	UMP16
Britax Elite Lap Belt w/Top Tether	614	58.9	580	720	UMP17
Britax Elite Lap Belt; No Top Tether	377	43.1	822	878	UMP18

³ As noted in Section I(C) above, the agency subsequently established a new head excursion limit of 720 mm for forward-facing child restraints

that limits excursion. A tether strap may be attached in this test, but child restraints must also

meet the previous limit of 813 mm without the tether strap attached.

TABLE 1.—SUMMARY OF SLED TEST RESULTS FOR ALL RESTRAINTS—Continued

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
FMVSS No. 213 limit	1000	60	813	914	
Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether (Repeat of UMP	299	31.2	844	918	UMP19 (Repeat of UMP06)

*HIC based on head contact w/CRS as dummy slipped out of failed 5-pt. harness.

While NHTSA anticipated that shield-type boosters could not meet the 813-mm head excursion limit of the standard when tested with the 6-year-old dummy, test results showed that when tested in this configuration, the Cosco Grand Explorer shield booster seats used for the baseline testing satisfactorily limited head excursion to under 762 mm (30 inches) in both instances. In addition, knee excursion was measured to be 254 to 300 mm (10 to 12 inches) below the 914 mm limit.

As these head and knee excursion measurements were in direct contrast with the Calspan and VRTC studies conducted in support of NHTSA's ISTEPA rulemakings on booster seats, NHTSA conducted a second set of testing to evaluate three other then-available shield-type booster seats (the Gerry Double Guard, Evenflo Sidekick, and Fisher Price T-Shield). As before, each seat was tested twice, on separate test runs, to enhance the repeatability of the test results. In each instance, the

measured head excursion significantly exceeded the 813 mm limit of Standard 213, ranging from 874 to 1016 mm (34.5 to 40.0 inches). The measured knee excursion was well within the FMVSS No. 213 limit of 914 mm in each of these tests, ranging from 749 mm to 838 mm (29.5 to 33 inches). These results more closely paralleled those recorded in the earlier tests conducted by Calspan and VRTC. Full test results are provided in Table 2.

TABLE 2.—ADDITIONAL SHIELD BOOSTER TESTS

Restraint configuration	HIC	3 ms chest clip (G)	Head excursion (mm)	Knee excursion (mm)	Test No.
FMVSS No. 213 limit	1000	60	813	214	
Gerry Double Guard Lap Belt w/sm. Shield	748	35.8	980	826	UMP21
Evenflo Sidekick Lap Belt w/sm. Shield	721	37.8	874	762	UMP22
Fisher Price T-Shield Lap Belt w/sm. Shield	349	26.1	927	767	UMP23
Evenflo Sidekick Lap Belt w/sm. Shield	820	35.9	876	749	UMP24
Gerry Double Guard Lap Belt w/sm. Shield	780	34.6	1016	838	UMP25
Fisher Price T-Shield Lap Belt w/sm. Shield	525	31.5	955	785	UMP26

Following the baseline tests with the shield-type booster seats, the agency tested the Century Breverra hybrid booster both with and without the top tether strap. In the tethered configuration, head excursion was measured to be below 762 mm (30 inches), and knee excursion was measured to be below the 914 mm limit (although only marginally in one instance at 904 mm). However, in each of the test runs conducted using the untethered configuration, head and knee excursions beyond the respective 813 and 914 mm limits were measured, with marginal reductions in both the HIC and chest acceleration parameters. It should be noted that a total of three test runs were conducted using the untethered configuration, as the test dummy slipped out of the child restraint during the second test run due to a failure of the 5-point harness, voiding the measurement of head and knee excursion. Interestingly, a comparison between the untethered shield-type boosters used in the baseline testing and

the tethered hybrid booster (forward facing with internal harness/high-back belt-positioning booster) indicates that the untethered shield booster performs marginally better (on average) with respect to limiting head excursion and significantly better with respect to limiting knee excursion than the hybrid booster.

Two convertible restraints were evaluated in the same manner, first with a top tether strap attached and then without. In the tethered configuration, the Britax Roundabout limited head excursion to 622 and 574 mm (24.5 and 22.6 inches) in the two tests performed, well below the 813 mm limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, whereas the untethered hybrid toddler/booster restraint configuration resulted in unacceptable head and knee excursions, the untethered Roundabout configuration limited both head and

knee excursion within acceptable limits (although only marginally with respect to head excursion in the first test at 810.26 mm (31.90 inches)). Additionally, while the untethered hybrid toddler/booster restraint tests resulted in reduced HIC and chest acceleration measurements, the untethered Roundabout tests resulted in reduced chest acceleration measurements but increased HIC values.

The second convertible restraint, the Britax Elite, demonstrated similar results. In the tethered configuration, head excursion was limited to 640 and 580 mm (25.2 and 22.85 inches) in the two tests performed, again well below the 813 mm limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, each of the tests conducted in the untethered configuration resulted in head excursion measurements that marginally (820 and 821 mm) (32.29 and 32.35 inches)

exceed the 813 mm limit, while knee excursion measurements remained within acceptable limits.

The two different E-Z On products, the 86-Y harness and the vest, were the only products marketed for children over 18 kg that do not require the use of a shoulder harness to attach to the vehicle. Both of these systems require the use of a tether. Test results show that the 86-Y harness system dramatically limited head excursion to 495 and 474 mm (19.5 and 18.65 inches) on the two tests, or approximately 33 percent below the 813 mm limit prescribed in the standard, and significantly below the other tethered systems. Knee excursion was also limited to values well below established limits.

E-Z On markets two different styles of the vest system. The first is an adjustable vest, which can be adjusted for fit as the child grows via three different zipper locations on the back of the vest. This was not used in this test program, as the vest, when configured in its smallest size, was still too large to properly fit the 6-year-old test dummy. E-Z On also manufactures fitted or custom vests, provided to the consumer based on anatomical measurements of the child as provided to E-Z On. NHTSA utilized a fitted vest in this testing program, although it should be noted that the vest provided by the manufacturer for this testing was very tight on the 6-year-old dummy, and the next larger size would likely have provided a better fit. The E-Z On vest system was tested utilizing a top tether strap. The head and knee excursion values were both well below established limits. The chest acceleration was 59.3 g, marginally below the limit of 60 g. This high value for chest acceleration may be partially attributable to the very snug fit of the vest on the test dummy.

III. Comments Received

On July 7, 1999, NHTSA published a Request for Comment (64 FR 36657) to obtain information that would aid in determining whether Standard 213 should be amended as proposed by the petitioner. Following publication of the notice, the petitioner wrote the agency and expressed concern that the issues raised in the petition had been misinterpreted and/or misstated in the notice (Docket No. 99-5891-8). The petitioner felt that the text of the notice wrongly suggested that the petitioner offered tethered booster seats as an option to properly restrain children weighing more than 18 kg in seating positions equipped with only lap belts. The petitioner emphasized that the proposal would permit manufacturers to

certify any child restraint system—not only boosters—for weights up to 20.4 kg (45 lb) if those restraints could meet the requirements of Standard 213 when tested with the 6-year-old dummy with the use of a tether.⁴

The agency received comments from child restraint manufacturers (Fisher-Price⁵, E-Z-On, Cosco), auto manufacturers and associated trade organizations (Ford, NADA), child passenger safety advocate groups (SafetyBeltSafe USA, National Safe Kids Campaign), the medical community (AAP, Children's Hospital of Philadelphia(CHOP)), the National Transportation Safety Board (NTSB), and eight individuals. Generally, commenters (1) agreed that appropriate restraints need to be developed to facilitate the proper protection of children above 40 pounds in vehicles equipped with only lap belts; (2) differed on whether they feel tether use will improve over that documented by the agency in the past, with many feeling that the introduction of FMVSS 225 will prompt an increased awareness about the benefits of tether use, and therefore, increase tether usage; and (3) noted that while alternative means of protecting older children are currently available (*i.e.*, vest and harness systems, retrofit shoulder belts) that these alternatives are often costly and/or difficult to obtain via traditional retail avenues.

The request for comments posed a number of questions that asked for comments and data on specific issues relating to the petition. Responses to these questions are summarized as follows:

Question 1: *How likely are tethers to be used in vehicles that lack user-ready tether anchorages?* NHTSA noted that tether use in vehicles not originally equipped with tether anchorages has been very low in this country, and asked if there are data showing that tether use in such vehicles will be greater than it has been in the past. Donald and Roberta Wegeng replied stating:

Past evidence would suggest that tethers are not likely to be used in this case. However, we believe that this trend will change as parents become more aware of the need to use tethers. Recently there has been a tremendous amount of media attention given to the safe use of child restraints. More

⁴ The petitioner requested that a follow-up notice be published to clarify the intent of the petition, as she felt that commenters to the original notice would be misled by the perceived misstatement of the issues. NHTSA reviewed the text of the original notice, and concluded that the issues raised in the petition had been sufficiently and clearly presented, and that a follow-up notice was unnecessary.

⁵ Fisher-Price no longer manufactures or markets child restraints.

and more parents are having their installations checked by qualified inspectors. With the recent rule change that requires all new cars to have user-ready tether anchorages, even more attention will be given to this subject.

Fisher-Price, Cosco, and CHOP all generally supported the Wegengs' position with respect to the use of tethers in instances where the anchorage hardware was not provided as standard equipment on the vehicle. Cosco noted that the number of requests they receive for tethers through their Consumer Relations Department is currently "less than overwhelming." Fisher-Price provided detailed insight into their experience regarding child restraints equipped with tether straps at a time where tether anchorages were not required to be installed in vehicles:

We believe that tether use will be limited until the passenger vehicle fleet in the field today is replaced by vehicles which came from the factory with tether anchors already installed.

Fisher-Price has the unique viewpoint as the only U.S. child seat manufacturer who has recent experience with tethers. In 1997, we provided a tether on our 79700 Safe Embrace Convertible Car Seat because the increased performance of a tether was consistent with our objective to provide a safer seat than what the market had to offer. The product launched with a retail price of \$140 in a sea of competitive offerings where the mass volumes occurred at a \$80 price point. We consider our consumers who justified the additional expense to be among the most safety conscientious.

In an effort to promote the use of the tether, several provisions were made to encourage the installation of the tether anchor: A universal tether anchor kit with installation instructions was provided with every product; A collaborative program was established with nationwide Goodyear service centers who provided free tether anchor installation; An enveloped letter, addressed to "vehicle dealer" which explained what a tether was and what hardware and service was required for anchor installation, written on behalf of our consumer, was provided with each product; Our consumer affairs personnel were trained to answer anchor installation questions, were enabled to provide vehicle manufacturer's anchor kit part numbers and stocked and provided free-of-charge vehicle manufacturer anchor kits to consumers who were unable to get a kit on their own. Despite these efforts and an assumed higher level of safety conscientiousness, a recent random survey of approximately 200 of our U.S. consumers identified only 58 percent used the tether.

Tether anchor installation requires action on the part of a consumer, who is consumed with other parental responsibilities, may not appreciate the performance benefit, does not anticipate involvement in an accident, and is generally reluctant to modify their vehicle. Today's family vehicle of choice is the minivan. In most minivans, vehicle manufacturers provide means for tether

anchorage in the third row seat only. Parents may have to forgo the tether attachment option if they desire to have the child located in the second row, closer to the driver.

We do not believe at this point and time that tethers will be greatly used by the general car seat user population. Therefore, allowance of the certification of a child safety seat whose performance is solely dependent on the tether is not in the best interest of child safety. As factory-installed tether anchors become more prevalent in vehicles on the road, we expect that tether usage will increase.

Question 2: Is a child better off in an untethered booster or seated directly on the vehicle seat and restrained by a lap belt? Are there alternative approaches? Citing Fatality Analysis Reporting System (FARS) and Multiple Cause of Death (MCOB) data from 1988 through mid-1997, the agency noted that (1) children 5–14 appear to derive the greatest incremental benefit from using back seat lap/shoulder belts rather than just a lap belt when compared to the other age and sex groups evaluated in the study, (2) children ages 5–14 do not have an increased risk of abdominal injuries compared to occupants in other age groups, but (3) the head injury rate for the same children, seated in the back seat in frontal crashes restrained by a lap belt only, is double that of those children restrained with a lap and shoulder belt (and thus provided with upper torso protection similar to what could be expected through the use of child restraint systems).

The agency asked for information regarding “lap belt syndrome,” which refers to bruising across the abdomen, internal injuries and lower spine fractures which, allegedly, are caused mainly by a lap belt that is used incorrectly or that moves off the child’s pelvis during a crash. The agency also requested comment on approaches that would eliminate, or alternatively, extend the existing limit on head excursion when testing child restraints with the 6-year-old dummy, untethered. Most commenters felt that an untethered child restraint would be preferable to a lap belt only for children, but generally did not have specific data to support their position. Rather, commenters noted that child restraints would provide some measure of upper torso protection, as compared to none with lap belts only. Cosco and CHOP stated that FARS data is probably not an adequate source for making a judgement, in that this data source only includes fatal crashes and cannot provide estimates for child exposure to non-fatal or non-injury crashes. CHOP noted:

We cannot answer this question without more study. We need more evidence that the use of lap belt only restraint systems by young children does not significantly increase the incidence of abdominal injuries over lap shoulder belted children * * * It is difficult to assess the risk of abdominal injuries through laboratory testing since current child dummies are not equipped to measure abdominal loads. Computer simulations are a useful tool to compare relative injury measures and should be utilized to address this issue.

Wearing a lap belt only, however, dramatically increases the risk of head injuries and as a result, is an unacceptable option. An untethered booster, in contrast, still provides some degree of upper body restraint.

Both child restraint manufacturers, Fisher-Price and Cosco, along with the AAP, opposed increasing the head excursion limit when testing with the 6-year-old dummy untethered. Fisher-Price stated that “increasing the head excursion limit to 34” based on what is possible with current products does not seem appropriate without first determining what is a safe limit for the older/taller child in today’s vehicles.”

Question 3: Should the test that evaluates child restraint performance without attaching the tether be deleted for all restraints, not just hybrid toddler/booster restraints? Should the test be deleted when testing with dummies other than the 6-year-old? NHTSA asked, if the agency would consider deleting the head excursion requirement for hybrid boosters when testing with the 6-year-old dummy untethered, should the same requirements be similarly revised when testing other types of restraints (*i.e.*, convertible child restraints) or testing with other dummies (*i.e.*, the 3-year-old dummy)? Donald and Roberta Wegeng, Fisher-Price, Cosco, AAP, and CHOP all opposed deleting the untethered test currently required by Standard 213. The AAP noted:

The untethered restraint performance requirement should not be rescinded for other restraints or for testing with other dummies. Such a change is not necessary and the current testing should be retained for optimal safety. The petitioner’s proposal is necessary at this time only to enhance safety for a specific group of children until all vehicles have lap/shoulder harnesses.

Ford provided differing viewpoints in its comments, stating, in part:

Ford strongly supports deleting the untethered test for all types of child restraints when tested with the 6-year-old dummy, not just hybrid or harness boosters. If there are convertible restraints that fit and protect a 6-year-old child, such as the tested Britax Roundabout, our customers should have the option to use that available protection. That

option should also be available for vehicles equipped with ISOFIX anchors.

Ford also supports deletion of the untethered test for other dummies, but timing for such a change is not critical. We have repeatedly suggested that testing with only lap belts, using the FMVSS 213 standard seat, is no longer appropriate to today’s vehicles. Added tests with tether straps, ISOFIX anchors, and additional dummies are increasing the test burden of the child restraint industry.

Ford prefers deletion of the untethered 6-year-old dummy test to the Notice’s suggestion of an increased head excursion limit for an untethered test with a 6-year-old dummy. Any child restraint for children over 40 pounds must soon meet the head excursion criteria in two tethered tests with the 6-year-old dummy, one with a lap belt and tether and another with ISOFIX anchors and a tether. Adding two additional 6-year-old dummy untethered tests (with lap belt only and with ISOFIX only) adds an unnecessary test burden to the child restraint manufacturers, and may discourage offering harness boosters for children up to 50 pounds.

Question 4: Why are shield boosters no longer manufactured for children weighing over 18 kg (40 lb)? NHTSA requested information, particularly from child restraint manufacturers, concerning the reasons shield-type booster seats are no longer marketed for children weighing more than 18 kg. The two manufacturers that responded, Fisher-Price and Cosco presented differing viewpoints regarding the performance of shield boosters. Fisher-Price stated:

Our version of the shielded booster marketed in the early 90’s could not, without modification, pass the revised requirements for the 6-year-old dummy. Rather than invest in the proliferation of the “back-less” booster, we felt that greater levels of performance, more consistent to our goal of marketing safer car seats, was better achieved with a high back belt positioning booster configuration.

On the other hand, Cosco provided the following:

The current certification test bench, while desirable for continuity, familiarity, and comparison, was never intended for testing backless booster seats with the 6-year-old dummy. The current set-up has some anomalies, which may cause excessive HIC readings on rebound after the test is essentially over that prevent booster seats from passing the standard with the 6-year-old dummy. In the real world, shield boosters, of which literally millions have been sold, perform very well. We believe the March 1998 VRTC tests conducted by NHTSA at a facility, using the same methodology but not designated for compliance testing is more indicative of actual performance of shield boosters.

Question 5: What is the feasibility of redesigning hybrid/toddler booster

restraints such that the restraint can be certified for use with older children, without the use of a tether? Both Fisher-Price and Cosco commented that it may be possible to design a child restraint appropriate for older children that can be certified under Standard 213's 813-mm head excursion limits without the use of a tether. Ford, however, was critical of the suggestion that hybrid/toddler boosters be redesigned to meet the requirements of Standard 213 using a 6-year-old dummy untethered, stating:

What is the point of redesigning hybrid boosters (or other child restraints) to meet an arbitrary head excursion limit when tested in an artificial sled test at the center of a front bench seat replicating an obsolete vehicle equipped with a lap belt that is now highly atypical? * * * Child restraint manufacturers should concentrate on improving performance when child restraints are installed in rear seats and restrained by typical lap/shoulder belts or ISOFIX anchors, plus top tethers. Lap-only belts are rapidly disappearing from new cars, and many millions of vehicles on the road have no lap-only belts * * * Tethers will soon be installed on all new forward-facing harness restraints. All Ford products built in the last 15 years have tether anchorages, and new vehicles will soon have built-in tether anchors. Child restraint regulations should permit customers to make the best use of this safety equipment to protect their children, even if some customers may not be able to, or may choose not to, use the restraint to its full capacity.

Question 6: *Is the suggested amendment warranted when there are products now available for older children that may perform better than a tethered seat at limiting head excursion?* E-Z-On Products, Inc. manufactures vest and harness restraint systems for use with a lap belt and tether. Vests and harnesses are "child restraint systems" under Standard 213 and are certified as meeting all requirements of the standard. NHTSA's March 1998 test program evaluated the performance of E-Z-On's products in limiting the amount of head excursion of the 6-year-old dummy. In brief, the tethered vest and harness performed much better than the tethered hybrid booster or tethered convertible restraint at limiting head excursion. Based on this, NHTSA noted that vests and harnesses could address the petitioner's concerns and provide a viable alternative to consumers. However, NHTSA noted that because the vest and harness systems do not "look like" traditional child restraint systems, they might not be as readily accepted by some consumers as a tethered hybrid or convertible seat might be. NHTSA requested input regarding the performance and public acceptance of the E-Z-On devices.

Comments submitted by Ford and Fisher-Price acknowledge that data from NHTSA's testing of the E-Z-On products demonstrate the ability of those products to provide adequate restraint in lap belt only seating positions (with a tether). However, Ford, Fisher-Price, Donald and Roberta Wegeng, Cosco, AAP, and CHOP all cite various concerns regarding the availability and/or acceptance of the E-Z-On products, which in turn, leads the commenters to conclude that the vest and harness systems should not be relied on as the preferred method by which to restrain children in lap belt only equipped seating positions. Specifically, Ford ("these products have been available for many years, and have not achieved significant acceptance, except for niche markets"); Fisher-Price ("the convenience of vest and harness systems, however, leaves much to be desired"); Donald and Roberta Wegeng ("the products that are currently available are not readily or easily available"); Cosco ("the products cited can be expensive and are not available at retail, where most people shop for car seats"); AAP ("we are not aware of any evidence to indicate that a tether would more likely be used with a vest than with a hybrid booster"); and CHOP ("the E-Z-On vest and Y harness are not easily obtained by parents and do not look like traditional child restraints and as a result, may not be readily accepted by consumers") all provided information supporting the adoption of alternative solutions to vest and harness systems as a means by which to address the concerns of the petitioner. Further, Cosco and CHOP both noted that while the E-Z-On products were very effective in limiting head and knee excursion of the dummies during the dynamic testing, the tethered hybrid boosters and convertible restraints that were tested generally performed better than the E-Z-On products with respect to HIC and chest acceleration parameters.

Question 7: *Would adoption of the suggested amendment inappropriately encourage some parents to position restraints in the center rear seating position?* Petitioner only addressed the need of consumers with pre-1989 vehicles, but adoption of the suggested amendment could also affect the preference of parents who wish to install a booster seat in the center rear position (which is typically equipped with only a lap belt). NHTSA and others have long supported the placement of children in child restraints in the center rear seating position, when possible, to minimize the number and severity of

injuries in side impact crashes. However, optimal performance of the restraint, if the suggested proposal were adopted, is dependent on attachment of the tether. An untethered seat in the center rear seat is unlikely to perform as effectively as an untethered belt-positioning booster used at the outboard seating position with a lap and shoulder belt. NHTSA requested comments regarding whether adoption of the proposed amendment might further confuse the public regarding the correct restraint choice and/or seating location for children weighing more than 18 kg.

The AAP responded, stating:

The proposed change might encourage some parents to position restraints in the center-rear seating position, but this would not be a bad choice if the hybrid booster were properly tethered. We do not think the proposed change would increase the likelihood of inappropriate positioning of the hybrid seat in the toddler mode due to a desire to use a center seat without a lap/shoulder harness; caretakers can make that same mistake now with the hybrid product.

Other commenters offered varying opinions. Ford commented that "this is not a significant concern," while Fisher-Price noted that "if a new misuse scenario is created, then obviously misuse potential increases."

Question 8: *What is the feasibility of retrofitting a rear seat shoulder belt in pre-1989 vehicles?* NHTSA noted that many vehicle manufacturers offer shoulder belt retrofit kits for rear seating positions, although availability and cost of these kits tend to vary widely. We also noted that installation of a shoulder belt can benefit children who have completely outgrown a child restraint, and can also benefit adults. NHTSA requested comments regarding these retrofit kits.

Ford provided the following, specific to their vehicles:

Installing accessory rear seat shoulder belts is practicable in most Ford passenger cars, but not in trucks. Ford has encouraged installation of rear seat shoulder belts, which provide safety benefits for a wide range of rear seat occupants. Ford has an ample supply of accessory kits available for nearly all cars built during the 1980's. The kits include two black shoulder belts and all necessary hardware and instructions for only \$53. The labor time standard for installation in most sedans is 0.8 hours, so dealer installation should cost about \$50. Installation in hatchbacks and station wagons is somewhat more complicated and time-consuming. Ford also prepared do-it-yourself installation manuals with step-by-step photographs for consumer installation. But customer installation rates have been disappointing. Despite repeated direct mail offers to owners of affected vehicles, including personalized letters to all registered owners that included coupons

offering the kits for only \$30, sales have been low. Sales continue to decline as these vehicles age and are scrapped.

AAP and CHOP both generally agreed with the agency's analysis that retrofit shoulder belts are often too expensive and not readily available to the consumers needing them.

IV. Agency Decision To Terminate Rulemaking

At the time of the petition, there were limited options for parents of children weighing more than 18 kg in vehicles that lacked lap and shoulder belts. There were no "traditional" child restraint systems (*e.g.*, convertible or forward-facing child restraints, hybrid boosters, or belt-positioning boosters) that were certified above 18 kg and that could be secured to the vehicle with a lap belt only. The E-Z-On vest and harness systems were the only available child restraint systems that were certified to address this specific segment of the child and vehicle population. However, proper use of these systems requires use of a tether attachment. Also, as noted in response to the request for comments published by the agency, there have been concerns regarding the availability and/or acceptance of the E-Z-On products. These are only available through authorized E-Z-On distributors and not at retail, and do not "look like the traditional child restraints." As such, they have typically not been readily accepted by consumers as a viable alternative to restrain children in lap belt only equipped seating positions.

NHTSA does not believe that it is likely that tether anchorages will be installed in pre-1989 vehicles. Transport Canada has required vehicles *to be able to be equipped with locations suitable for the installation of tether anchorages* since 1989 (the same year NHTSA mandated all vehicles be equipped with lap and shoulder belts installed in rear outboard seating positions). As virtually all vehicles manufactured for use in Canada are also manufactured for use in the U.S., most of the post-1989 vehicles still on the road today in the U.S. can be retrofitted with tether anchorages. However, in pre-1989 vehicles—the vehicles that are the focus of this petition because they have only lap belts in the rear seating positions—there is typically no tether anchorage point designated by the vehicle manufacturer. Installation of a tether anchorage in pre-1989 vehicles (1) without a designated anchorage location, and (2) lacking hardware and instructions supplied directly by the vehicle manufacturer is likely to be a difficult and costly process for a consumer. The agency believes that independent repair and body shop

personnel may not be familiar with tether anchorages, and may express concern about the potential liability of installing aftermarket safety equipment. For these reasons, the agency does not believe that it is likely that tethers will be used in pre-1989 vehicles. Further, the agency is hesitant to facilitate the use of a product that is likely to be misused in the real world (*e.g.*, child restraints that depend on tethering when the vehicle for which it is recommended would not have a tether anchorage.)

Since the time of the petition, there have been various child restraint systems developed that address the gap existing for the combination of older vehicles and heavier children. Although Fisher-Price is no longer marketing child restraints, it had developed and marketed the first forward-facing child restraint certified for more than 18 kg that used a lap only belt to secure the restraint to the vehicle and a 5-point harness to restrain the child within the restraint. The Futura 20/60 forward-facing child restraint was certified for children weighing up to 27.2 kg (60 lb) using a 5-point-harness while secured to the vehicle with either a lap only or lap/shoulder belt combination. In addition to being the only child restraint at the time certified for more than 18 kg using a lap belt only, the Futura 20/60 was also the only forward-facing child restraint that was able to meet FMVSS No. 213's revised head excursion limit of 720 mm without the use of a tether strap.

Similarly, Britax recently marketed a different child restraint that was designed to be used with children weighing more than 18 kg with the restraint secured to the vehicle by a lap only belt. The Britax Laptop was an energy-absorbing restraint designed to reduce the impact forces that occur in a crash. The Laptop was designed to be used with either a lap belt only or a lap and shoulder belt combination, could be placed in both rear outboard and rear center seating positions, and was certified for use by children weighing up to 29.5 kg (65 lb). The agency performed compliance testing on the Britax Laptop using both the 3- and 6-year-old dummies. In each instance, the performance criteria set forth in the standard were met by a large margin. When tested with the 3-year-old dummy, the HIC was 576 (limit = 1000), the chest acceleration was 31.87 g's (limit = 60), the head excursion was 502 mm (19.75 in) (limit = 720 mm (28 in)), and the knee excursion was 544 mm (21.41 in) (limit = 915 mm (36 in)). When tested with the 6-year-old dummy, the HIC was 277, the chest

acceleration was 31.73 g's, the head excursion was 599 mm (23.6 in), and the knee excursion was 530 mm (20.88 in). Britax is no longer manufacturing the Laptop for sale in the United States.

There are currently a number of child restraints available that are certified for use by children weighing more than 18 kg that can be used in vehicle seating positions equipped with lap only belts. The Britax Wizard and the Britax Marathon are convertible child restraints with 5-point harnesses that can be used forward-facing by children weighing up to 29.5 kg. The Britax Husky is a forward-facing only child restraint with a 5-point harness that is certified for children weighing up to 36.3 kg (80 lb). The Nania Airway LX Booster is a forward-facing child restraint that can be used with its 5-point harness by children weighing up to 22.7 kg.

While restraints certified for children weighing more than 18 kg in seating positions equipped with lap only belts were largely unavailable at the time this petition was submitted, the introduction of the various restraints described above has demonstrated the ability of child restraint manufacturers to devise solutions for this segment of the population. The fact that there are not more restraints currently marketed for this segment of the population could be due to the fact that it is a small population that is shrinking as the numbers of pre-1989 vehicles on the road are steadily declining in number, and will eventually be replaced by vehicles with lap and shoulder belts in the rear seats.

As part of the recently enacted "Anton's Law" (Pub. L. 5504; December 4, 2002), NHTSA has issued an NPRM to require lap and shoulder belts at rear center seating positions (68 FR 46546; August 6, 2003). Anton's Law also requires in part that NHTSA initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 22.7 kg. As part of this rulemaking, the agency is required to consider "whether to address situations where children weighing more than 22.7 kg only have access to seating positions with lap belts, such as allowing tethered child restraints for such children." (Reference Section 3(a)(3) of Anton's Law) NHTSA has initiated a program to address this specific provision of Anton's Law, which directly parallels the issues raised in Ms. Weber's petition. As a result, efforts within the agency to address the development of acceptable restraint options for children weighing more than 22.7 kg in lap belt

only seating positions will continue, even though the subject rulemaking is being terminated.

For the reasons outlined above, the agency has decided to terminate the rulemaking that was initiated in response to the petition submitted by Ms. Weber.

Issued on: March 24, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04-6901 Filed 3-26-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 040316092-4092-01; I.D. 103003A]

RIN 0648-AQ37

International Fisheries; Atlantic Highly Migratory Species

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to require dealers who import, export, or re-export bluefin tuna (BFT), southern bluefin tuna (SBFT), bigeye tuna (BET) and swordfish (SWO), regardless of ocean area of origin, to hold a valid highly migratory species (HMS) international trade permit, to complete and submit required statistical documents and re-export certificates, and to comply with all applicable recordkeeping and reporting requirements of the trade monitoring programs. The regulations would implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish statistical document programs to track the international trade of SWO and BET, would implement the recommendation of the Inter-American Tropical Tuna Commission (IATTC) to establish a statistical document program to track the international trade of BET, would require dealers to comply with the SBFT statistical document program adopted by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), and would expand the current BFT statistical document program to include the re-export of BFT.

DATES: Comments on the proposed rule and supporting documents must be

received on or before May 10, 2004.

Comments sent to the Office of Management and Budget (OMB) on the information collection requirements of the proposed rule must be received on or before May 10, 2004.

ADDRESSES: Please submit your comments on the proposed rule and supporting documents by mail to Dianne Stephan, Highly Migratory Species Management Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is NeroHMSTrade@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: Nero HMS Trade Rule.

Comments on the burden-hour estimates or on other aspects of the collection of information relevant to this proposed rulemaking may be submitted to NMFS at the above address, or may be submitted to the Office of Regulatory Affairs, Office of Management and Budget, by email to David_Rostker@omb.eop.gov or by facsimile (Fax) to (202) 395-7285.

Copies of the supporting documents, including the original ICCAT and IATTC recommendations, are available by sending your request to Dianne Stephan at the NMFS address listed above.

BFT, SBFT, BET, and SWO statistical documents, re-export certificates, and biweekly dealer reports may be obtained from:

Atlantic coast: NMFS, HMS, ATTN: Kathy Goldsmith, 1 Blackburn Drive, Gloucester, MA 01930-2298,

Gulf coast: NMFS, National Seafood Inspection Laboratory, ATTN: Lori Robinson, 705 Convent St, Pascagoula, MS 39568-1207;

West coast: NMFS, Southwest Region, Sustainable Fisheries Division, ATTN: Pat Donley, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213, and;

Western Pacific: NMFS, Pacific Islands Regional Office, ATTN: Raymond Clarke, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

FOR FURTHER INFORMATION CONTACT:

Dianne Stephan (Atlantic coast), 978-281-9397; Raymond Clarke (Western Pacific), 808-973-2935; Lori Robinson (Gulf coast), 228-769-8964; or Patricia J. Donley (West coast), 562-980-4033.

SUPPLEMENTARY INFORMATION:

Background

At its 2001 meeting, ICCAT adopted recommendations for the establishment of SWO and BET statistical document programs to further the domestic and international understanding of these

fisheries, and to help address illegal, unreported and unregulated (IUU) fishing for these species. More recently, IATTC also adopted a recommendation to establish a BET statistical document program similar to the ICCAT program. At its 2003 meeting, ICCAT made slight modifications to all of its statistical document forms to collect more information relevant to vessel identification and farming operations. Generally, these programs require that imports of certain fish be accompanied by a species specific statistical document, or when appropriate, a re-export certificate. The United States is a member of both ICCAT and IATTC. The purpose of this proposed rule is to implement these ICCAT and IATTC recommendations.

The Atlantic Tunas Convention Act (ATCA) of 1975 (16 U.S.C. 971 *et seq.*) authorizes the promulgation of regulations as may be necessary and appropriate to implement ICCAT recommendations. The Tuna Conventions Act of 1950 (TCA)(16 U.S.C. 951 *et seq.*) authorizes rulemaking to carry out IATTC recommendations. NMFS manages the Atlantic SWO and tuna fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP). Regulations implementing the HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Fishery Conservation and Management Act (M-SA or Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and ATCA. NMFS manages SWO and tuna in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan (PFMP) that was prepared by the Western Pacific Fishery Management Council (WPFMC). Regulations implementing those plans at 50 CFR parts 300 and 660 were promulgated under the authorities of the ATCA, TCA and the M-SA, respectively. The Pacific Fishery Management Council also has developed an FMP for U.S. West Coast Highly Migratory Species, which is under review.

Other authorities relevant to Pacific management include the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), and the U.S.-Canada Albacore Treaty. A new Western and Central Tuna Fisheries Convention is likely to come into force sometime in 2004. Customs requirements pertaining to the import and export of product harvested by national and international SWO and tuna fisheries include those under 19 U.S.C. 1 *et seq.* and regulations of the Bureau of Customs and Border Protection (CBP), formerly the U.S.