

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) <sup>1</sup>—Continued

Subpart	Source category	New Mexico
TTTTT .....	Primary Magnesium Refining .....	.....

<sup>1</sup> Program delegated to New Mexico Environment Department (NMED).

<sup>2</sup> Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

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**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 199**

[Docket RSPA-97-2995; Notice 11]

**Pipeline Safety: Drug Testing; Random Testing Rate**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of minimum annual percentage rate for random drug testing.

**SUMMARY:** Each year, pipeline operators randomly select employees to test for prohibited drugs. The number of employees selected may not be less than the minimum annual percentage rate the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) determines, which is either 50 percent or 25 percent of covered employees based on the industry's positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2002 is less than 1.0 percent. Therefore, in calendar year 2004, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

**DATES:** Effective January 1, 2004, through December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sheila Wright, RSPA, OPS, Room 7128, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4554 or e-mail [sheila.wright.rspa.dot.gov](mailto:sheila.wright.rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing conducted in the previous

calendar year (49 CFR 199.119(a)). This information is used to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if it determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if it determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests \* \* \* plus the number of refusals of random tests \* \* \*, divided by the total number of random drug tests \* \* \* plus the number of refusals of random tests. \* \* \*"

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing conducted in 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing conducted in calendar year 2002, RSPA/OPS calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2004, through December 31, 2004.

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 4, 2003.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA 2003-15855]

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

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

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

**SUMMARY:** This document denies a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," because it is redundant to pending rulemaking action by the agency.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-2264. Fax: (202) 493-2290.

For legal issues: Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

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- II. The Petition
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**I. Background**

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final

rule to require advanced air bags (Docket No. NHTSA-00-7013). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children, and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

One means of compliance with part of the advanced air bag regulation is to turn off the passenger air bag by means of a weight sensor and/or some other method of detecting the presence of children. To test the ability of those means to detect the presence of children, the rule specifies that child test dummies be placed in child restraint systems (CRSs) or seats that are in turn placed on the passenger seats. Optionally, for infants in rear facing CRSs, compliance can also be achieved by placing a dummy representing a 12-month-old child in a CRS and assuring that the air bag deploys in a benign

manner. Appendix A of FMVSS No. 208 provides a list of CRSs to be used for these compliance tests. The list published with the May 12, 2000 final rule contained 1 car bed, 11 rear-facing seats, 7 convertible seats, and 4 booster seats for a total of 23.

On December 18, 2001, a new FMVSS No. 208 Final Rule was published in response to petitions for reconsideration to the May 12, 2000, Final Rule. A new Appendix A was published as part of this new rule. All seats that were known to be out of production were removed from the list. Replacement seats were added to the list. The number of rear-facing CRSs was reduced by one and the total number of CRSs in Appendix A became 22.

On November 19, 2003, the agency published a document that responded, in part, to petitions for reconsideration to the December 18, 2001, FMVSS No. 208 Final Rule. It addressed detailed dummy and seat positioning issues and other test procedure clarifications presented in the petitions for reconsideration. It also began to deal with issues associated with child restraints specified in Appendix A of

FMVSS No. 208. The agency also addressed the methodology for regular updates to Appendix A.

**II. The Petition**

The Evenflo Company, Inc., petitioned NHTSA to remove specific Evenflo CRS models from Appendix A of FMVSS No. 208 and change the model number designation of another model. There are currently six Evenflo products in Appendix A. One of these products is a booster seat, which Evenflo is not requesting to have removed from the list. On August 30, 2002, Evenflo discontinued production of all CRSs that were not LATCH compliant in accordance with the requirements of S5.9 of FMVSS No. 213. In its petition, Evenflo recommended replacement seats for the five for which removal was requested. The out-of-production seats and the suggested LATCH compliant seats are shown in Table 1. The third column in Table 1 indicates the similarity, noted by Evenflo, between the out-of-production seats and the suggested replacement seats.

TABLE 1

Out-of-production	LATCH seats	Similarity noted by Evenflo
<b>Rear Facing Infant</b>		
204 First Choice .....	381 Tot Taxi .....	Base not removable.
282 On My Way Position Right V .....	386 Port About 5 .....	Equivalent in size.
212 Discovery Adjust Right .....	316 Discovery .....	Same seat with LATCH.
<b>Convertible Seats</b>		
425 Horizon V .....	379 Tribute .....	Equivalent in size.
254 Medallion .....	359 Triumph 5 .....	Equivalent in size and 5 pt. Harness.

**III. Discussion and Analysis**

Evenflo requested that five out-of-production CRSs that it manufactures be removed from Appendix A and replaced. The On My Way Position Right V has already been removed from the list, so four now remain. Evenflo is not unique among the CRS manufacturers represented in Appendix A. The agency understands that since all CRSs except car beds and booster seats must now be LATCH compliant, many of the CRSs in Appendix A are no longer in production in a non-LATCH form. In response to petitions for reconsideration of the December 18, 2001, FMVSS No. 208 Final Rule, we published a notice addressing the issue of how to update Appendix A. The notice addressed the concerns expressed in Evenflo's petition. Therefore, we are

denying the Evenflo petition because it is redundant.

**Authority:** 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: December 8, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 021212307-3037-02; I.D. 120503A]

**Fisheries of the Exclusive Economic Zone off Alaska; Recision and Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Reallocation.

**SUMMARY:** NMFS is rescinding a previous action that reallocated Pacific