

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the signal system at Katy Neck, milepost 1.6, near Houston, Texas, on the Glidden Subdivision, including conversion of the interconnecting track between Harrisburg Junction and Manchester Junction to dark yard limits, and removal of the electrically locked gate.

The reason given for the proposed changes is that due to changes in train operations, the electrically locked gate at Katy Neck causes unnecessary train delays.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protester in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 21, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-4033; Notice 2]

Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated, of Columbus, Indiana, has determined that a number of child restraint systems that it manufactured fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports." Cosco has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on July 22, 1998, in the **Federal Register** (63 FR 39359). We received no comments.

FMVSS No. 213, S5.4.3.5(b), requires that, after the dynamic test of S6.1 of the standard, when tested in accordance with the appropriate sections of S6.2 of the standard, any buckle in a child restraint system belt assembly designed to restrain a child using the system shall release when a force of not more than 71 Newtons (N) (16 pounds) is applied, provided that the conformance of any child restraint to this requirement is determined using the largest of the test dummies specified in S7 for use in testing that restraint when the restraint is facing forward, rearward, and/or laterally. Additionally, S5.4.3.5(e) requires that any buckle in a child restraint system belt assembly designed to restrain a child using the system shall not release during the dynamic testing specified in S6.1 of the standard.

Four Cosco Touriva T-shield convertible child restraints, Model 02-096, were tested at Calspan Corporation as part of NHTSA's child restraint compliance testing program. When tested with the 3-year-old dummy in the upright position, the plunger pin of the buckle assembly of one of the seats was sheared, and the buckle released during the dynamic test. Following a retest of another seat conducted using the same configuration, the post-test buckle release force exceeded 71 N (77.8 N, or 17.5 lb). The post-test release forces for units tested with the infant dummy and with the 3-year-old dummy in the reclined position did not exceed 71 N.

We notified Cosco of the test failures noted above, as documented in Calspan Report Number 213-CAL-96-013. Following that notification, Cosco conducted its own investigation, in which it obtained results that, in some cases, were similar to those in our tests. Thereafter, Cosco notified us of its determination that it manufactured and distributed a number of Touriva convertible child restraint systems that do not comply with the above requirements. The units covered by that determination are those Touriva T-shield models manufactured from May 1, 1996, through November 26, 1997, as follows: Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover (Model 02-084, 5/96 to 11/97, quantity: 11,018); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02-094, 5/96 to 11/97, quantity: 7,202); Touriva Convertible Safe T-Shield, Full Wrap Fabric Cover with Pillow (Model 02-096, 5/96 to 10/97, quantity: 1,411); Touriva Convertible Safe T-Shield, Partial Wrap Vinyl Cover (Model 02-404, 5/96 to 5/97, quantity: 682); Touriva Convertible Safe T-Shield, Partial Wrap Fabric Cover (Model 02-821, 5/96 to 11/97, quantity: 186,040).

Cosco supports its application for a determination of inconsequential noncompliance with the following:

Cosco was able to obtain units manufactured both on and near the dates in question as well as subsequent production units. After extensive in-house dynamic testing and analysis, units were sent to Calspan for testing. Cosco made repeated trips to Calspan in an attempt to understand and resolve this potential noncompliance. Cosco was able to obtain results in isolated tests similar to that of the FY96 NHTSA tests. Cosco was not able to attribute the potential noncompliance to the design or manufacture of any particular component. We ran dozens of in-house tests and spent hundreds of hours in an effort to determine the reason isolated units manufactured on or after 5/10/96 were inconsistently exhibiting high post-test buckle release pressure and shearing of the plunger pin. The results have been inconsistent. The T-shield units involved in NHTSA's FY97 test program tested successfully, but were of identical construction and design to those which failed the FY96 testing.

Since the Touriva T-shield models were first introduced in 1994, Cosco has required the vendor who is molding the housing and plunger pin and assembling the buckle assembly housing, spring and plunger pin to perform a pretest buckle release pressure on *each* assembly. No buckle assembly exhibiting a pretest buckle release pressure of over 13 lb nor under 10 lb has ever been used in the production of any Touriva convertible child restraint, including the T-shield units in question. In searching for possible explanations for the isolated deficiencies, Cosco made a material change to the housing

of the buckle assembly and the material of the plunger pin. This material change has resulted in eliminating any potential noncompliance related to both the high post-test buckle release pressure and the shearing of the plunger pin, although the minimal differences in properties between the materials does not adequately or conclusively explain the test results. All T-shield units manufactured after November 27, 1997 have a housing manufactured using 30% glass filled nylon instead of ABS and a plunger pin using Delrin 100P versus Delrin 500. The T-shield units supplied for NHTSA FY98 testing had the new materials incorporated into the buckle assembly.

In its part 573 Report to the agency, Cosco stated that it:

* * * does not believe that any defect or repeatedly discernable noncompliance exists with the subject child restraint...While a small percentage of the Calspan tests performed on the subject units did exhibit noncompliance results, a vast majority of identical child restraints manufactured during the same period produced complying test results. Cosco concludes from this testing and our exhaustive analysis of the subject child restraints and testing procedures that the noncompliance test results are not the result of the design, materials, or manufacturing processes involved in the production of the subject child restraints, but rather test variables and anomalies that are inherent in the 213 test procedures.

In the summary of its application for inconsequential noncompliance, Cosco stated that it "does not believe the inconsistent deficiency exhibited by a few of the tested units warrants a recall." Cosco concluded that "reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists."

We are denying Cosco's application for the following reasons.

Ultimately, the issue in this case is whether this particular noncompliance is likely to increase the risk to safety through an evaluation of the potential injuries that would be incurred by a child in the event that a seat exhibited the noncompliance at issue. Instead of assessing the gravity of the noncompliance based upon the likely consequences, Cosco simply attributes the noncompliant conditions to "test variables and anomalies that are inherent in the 213 test procedures." In essence, Cosco's primary contention appears to be that many of the seats in question would not have failed to meet the performance requirements of the standard. However, this claim is relevant only to the issue of whether a noncompliance exists in a particular seat or some number of seats, not whether the noncompliance has significant safety consequences. Cosco

has failed to provide any information which would support a determination that these noncompliances do not create a significant safety risk. Thus, we are unable to reasonably conclude that existence of the acknowledged noncompliant condition is inconsequential to safety.

The purpose of the post-dynamic test buckle force requirement of S5.4.3.5(b) is to assure that adults can easily and quickly remove a child from the restraint following a crash. When we issued FMVSS No. 213 (44 FR 72131, December 13, 1979), we specified that buckles must release when a force of not more than 20 pounds was applied after conducting the dynamic systems test required by section S6.1 of the standard. After adoption of the standard, we received information indicating that at this force level, many adults would not be able to easily release the buckle. A report done for us by K. Weber and N.P. Allen concluded that a force of 20 pounds is difficult for most women to generate with one hand. We had also been provided with consumer letters received by one child restraint manufacturer commenting on the difficulty of operating the child restraint harness buckles, and had received numerous telephone calls from consumers complaining about the size of the release buttons on child restraint belts and the high force levels required to operate them.

We subsequently amended the requirement regarding the maximum allowable force to operate the buckle release mechanism following the dynamic sled test described in S6.1 of the standard from the original level of 20 pounds to 16 pounds (50 FR 33722, August 21, 1985). A research study conducted by Peter Arnberg for the National Swedish Road and Traffic Institute ("Handling Performance of Buckles on Child Seats with Regard to Opening Force Requirements", 1975) showed that a 20 pounds force requirement allowed buckles which require two hand operation by many adults, particularly adult females, and two hand operation is often awkward and may adversely affect safety in emergency situations. The Arnberg study showed that while two hands were necessary to operate buckles with a 80 N (18 pounds) release force, 95 percent of adult females tested were able to operate buckles with a 70 N (15.6 pound) release force with only one hand. While facilitating operation of buckles by one hand, this lower force was also considered sufficient to account for damage which might occur to the buckle during the impact test and to counter the forces which could be

exerted on the buckle by a child hanging upside down in rollover crash conditions.

We have been consistent in the manner in which we have addressed other instances of noncompliances with the post-test buckle release force requirements in the past. Since 1992, three other child restraints have failed to satisfy these requirements in compliance tests. One of these cases is currently under investigation, while in the other two cases, the manufacturer recalled the affected seats. In one instance, the post-test buckle release force was measured three times at 16.4, 16.4, and 19.9 pounds—only marginally above the requirement of 16 pounds as stated in S5.4.3.5(b) of the standard.

When the Cosco Touriva T-shield (Model 02-096) was tested with the 3-year-old dummy in the upright position, the plunger pin of the buckle assembly was sheared, and the buckle released during the dynamic test. In a retest conducted using the same configuration, the buckle assembly did not release, but the post-test buckle release force was 77.8 N (17.5 lb). Testing performed by Calspan for Cosco in an effort to isolate the cause of these test failures yielded results identical to those found in our compliance testing program with respect to both failure types. Excluding a number of tests that appear to have been conducted outside of the FMVSS 213 test envelope, and others where the pre- and post-buckle release forces were not measured for some reason, Cosco notes that four of 40 tests resulted in the buckle releasing during the dynamic test while another four exceeded the allowable post-buckle release force. We do not agree with Cosco's assertion that a "small percentage of the Calspan tests performed on the subject units did exhibit noncompliance results," since we do not consider a failure rate of 20 percent to constitute a "small percentage." Moreover, as stated above, the percentage of seats covered by a noncompliance determination that actually will exhibit the noncompliance is not relevant to the issue of consequentiality. It is often not possible to identify precisely which vehicles or items of equipment covered by a noncompliance determination actually are noncompliant. The issue is whether the noncompliance is consequential to safety.

It is also important to note that in most instances where the buckle released during the dynamic test (both in NHTSA compliance tests and in tests performed for Cosco), the head excursion measurements were above the acceptable limit prescribed in section S5.1.3.1(a) of Standard No. 213, and in

at least one instance, the dummy was not retained within the restraint. Failure of the child restraint system in this manner increases the likelihood of head injury to the occupant, which is clearly not insignificant or inconsequential to safety.

Following the NHTSA compliance test failures, Cosco implemented a material change to the housing of the buckle assembly and the material of the plunger pin. Cosco incorporated these material changes into all T-shield restraints manufactured after November 27, 1997 (the effective date for this engineering change is December 5, 1997, as no soft shield units were produced between November 27 and December 5). Testing performed by Cosco has demonstrated that this material change has resulted in the elimination of any noncompliance related to both the high post-test buckle release force and the shearing of the plunger pin. Test results provided in Cosco's application show that some units manufactured as late as November 1997—immediately prior to incorporation of the material change—failed to meet the performance requirements of the standard because the buckle released during dynamic testing, head excursion exceeded 813 mm (32.0 inches), and in one case, the dummy was not retained within the restraint. All subsequent tests of units with the revised materials, including compliance tests performed for NHTSA, have yielded passing results. Despite this, in its application for decision of inconsequential noncompliance, Cosco contends that the “minimal differences in properties between the materials does not adequately or conclusively explain the test results.”

However, if the material properties of the differing buckle assembly housing and plunger pin are virtually identical as stated by Cosco, T-shields manufactured with the new materials would be expected to exhibit inconsistent test results similar to those in question, specifically with respect to release of the buckle assembly during dynamic testing and excessive post-test buckle release forces. Testing of child restraint systems with the material change incorporated has not demonstrated this. Accordingly, we are unconvinced that the noncompliant conditions are simply attributable to “test variances and anomalies that are inherent in the 213 test procedures” as Cosco claims. Rather, these test results indicate that a recall by Cosco in which the earlier seats were modified by bringing them up to the performance level of the later seats would have a beneficial and “consequential” impact on safety.

In its application for decision of inconsequential noncompliance, Cosco states that:

The public, upon seeing the number of recalls, concludes that child restraints currently available are unsafe and therefore declines to use them. The agency is aware and, in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints.

We wish to clarify and correct the above statement. It is correct that we generally advise consumers to continue using child restraints which have identified defects or noncompliances until such a time when the appropriate remedy can be effected. However, this is in recognition that—in most cases—use of a child restraint with an identified defect or noncompliance is safer than the alternatives of (a) restraining the young child with a vehicle belt system that does not fit properly, or (b) not restraining the child at all. In the absence of a grant of an inconsequentiality petition, we have never stated, nor implied, that a noncompliance—“technical” or otherwise—does not compromise the safety or effectiveness of child restraints.

In consideration of the foregoing, we have decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8).

Issued on May 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-98-4383; Notice 2]

Kolcraft Enterprises, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that 706,068 child restraint systems it manufactured fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, “Child Restraint Systems,” and has filed an appropriate

report pursuant to 49 CFR part 573, “Defects and Noncompliance Reports.” Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—“Motor Vehicle Safety” on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published on September 8, 1998, in the **Federal Register** (63 FR 47545), with a 30-day comment period. We received no comments.

FMVSS No. 213, S5.6.1.8, requires:

In the case of each child restraint system that can be used in a position so that it is facing the rear of the vehicle, the instructions shall provide a warning against using rear-facing restraints at seating positions equipped with air bags, and shall explain the reasons for, and consequences of not following the warning. The instructions shall also include a statement that owners of vehicles with front passenger side air bags should refer to their vehicle owner's manual for child restraint installation instructions.

In adopting S5.6.1.8, we said that such instructions would “complement” the requirement that owner's manuals of vehicles having a front passenger side air bag provide information regarding “proper positioning of occupants, including children, at seating positions equipped with an air bag.” 59 FR 7643, 7646 (Feb. 16, 1994) (final rule). This requirement appears in S4.5.1(f) of FMVSS No. 208, which was added in 1993. 58 FR 46551, 46564 (Sep. 2, 1993) (final rule).

The items affected by the noncompliance are the instructions for proper use that were provided after August 15, 1994, with certain models of Kolcraft's child restraints in its effort to comply with S5.6 of FMVSS No. 213. Kolcraft's instructions provided the appropriate warning against using rear-facing restraints at seating positions equipped with air bags, as well as the reason for the warning and the consequences of not following it. However, Kolcraft's instructions did not include a statement expressly referring owners of vehicles with front passenger side air bags to their vehicle owner's manual for child restraint installation instructions. The noncompliances began August 15, 1994, the effective date of S5.6.1.8. The following models of child restraints were affected by the noncompliance: Rock'n Ride (until April 1996); Auto-Mate (until June 1997); Traveler 700 (until December 1995); Performa (until June 1997); and Secure Fit (until June 1997). The total number of child restraints involved is 706,068. In response to an April 17, 1997, letter from us concerning miscellaneous compliance issues,