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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA-2020-0094]

RIN 2127-AL90

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," to update the child restraint systems (CRSs) listed in Appendix A-1 of the standard. NHTSA uses the CRSs in Appendix A-1 to test the performance of advanced air bag suppression and low risk deployment systems in either suppressing or deploying the air bag in a low-risk manner in the presence of a CRS. The proposed amendments would ensure that the CRSs used by NHTSA to test advanced air bags are representative of the current CRS fleet, and would make it easier for vehicle manufacturers and test laboratories to acquire CRSs for testing purposes.

DATES: You should submit your comments early enough to be received not later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Under a proposed phase-in of final rule requirements, 50 percent of vehicles manufactured on or after the first September 1st after the publication date of the final rule would have to be certified as meeting FMVSS No. 208 when tested with the CRSs on the revised

Appendix A-1, and all vehicles manufactured on or after the second September 1st after the publication date of the final rule would have to be so certified.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov at any time or to 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the

comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78).

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to the Docket at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

FOR FURTHER INFORMATION CONTACT: You may contact Ms. Carla Rush, Office of Crashworthiness Standards, Telephone: 202-366-4583, Facsimile: 202-493-2739 or Mr. Daniel Koblenz, Office of Chief Counsel, Telephone: 202-366-2992, Facsimile: 202-366-3820. The mailing address of these officials is: the National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590.

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I. Executive Summary

NHTSA is proposing to amend FMVSS No. 208 to update the CRSs listed in Appendix A-1 of the standard. The CRSs in Appendix A-1 are used by NHTSA to test advanced air bag suppression or low risk deployment systems to ensure that they mitigate the risk of harm to children and infants by either suppressing or deploying the air bag in a low-risk manner in the presence of a child in a CRS. NHTSA seeks to update Appendix A-1 to reflect the changes to the availability of CRSs in the marketplace since 2008, when the Appendix was last updated.

The amendments proposed today would replace or update the identifying information for all the CRSs listed in Appendix A-1. This proposal would allow a phase-in of the amendment to give manufacturers reasonable time to certify their advanced air bag systems using the new CRSs. To effectuate the phase-in using the regulatory framework of FMVSS No. 208, this update would move the CRSs that are now in Appendix A-1 to Appendix A, and reference the new proposed CRSs in Appendix A-1.

If the changes proposed in this NPRM are adopted, NHTSA would test advanced air bags with CRSs more representative of current CRSs than those now in Appendix A-1. Accordingly, air bag systems would be assessed using CRSs that consumers are using in vehicles. In addition,

since the last significant update to the appendix was in 2008, many CRS models listed in the current appendix have been discontinued, and so are difficult and time-consuming to acquire. Updating the list of CRSs would make it easier for vehicle manufacturers and test laboratories to acquire the CRSs for testing purposes.

II. Background on Advanced Air Bags and Appendices A and A-1

On May 12, 2000, NHTSA issued the Advanced Air Bag Rule (65 FR 30680) in order to reduce the frequency and severity of air bag-related injuries to small adults and young children. One of the specific risks that the Advanced Air Bag Rule was intended to address was the risk that front passenger air bags pose to young children in CRSs. To this end, the Advanced Air Bag Rule amended FMVSS No. 208 to add new performance requirements for how the front passenger air bag must operate in the presence of a child in a CRS.

The Advanced Air Bag Rule allows manufacturers to provide child protections using one of three compliance options. The first option requires the front passenger air bag system to automatically suppress when a child (whether in a CRS or not) is present ("suppression"). The second option requires that the front passenger air bag deploy only at a low level of force when a child (whether in a CRS or not) is present ("low risk deployment" or "LRD"). For these first two options, the vehicle must provide passenger-side protections for child-sized test dummies in various positions, including in a CRS. The third compliance option requires the tracking of the passenger occupant's motion and suppresses the air bag if they are too close to the air bag ("dynamic automatic suppression system" or "DASS"). To comply using dynamic automatic suppression, a manufacturer must develop an acceptable test procedure, which must be adopted into FMVSS No. 208 through an expedited rulemaking procedure. To date, no manufacturer has attempted to certify using the DASS option. FMVSS No. 208 permits vehicle manufacturers to

choose different compliance options for different performance tests, and is technology neutral with regard to how a vehicle complies.

For tests that involve air bag performance in the presence of anthropomorphic test dummies in CRSs, the manufacturers are required to certify that their vehicles will comply with the advanced air bag requirements when tested by NHTSA using the CRSs identified in Appendix A of FMVSS No. 208. As we explained in the Advanced Air Bag Rule, NHTSA intended for the CRSs listed in Appendix A to be representative of a large portion of the CRS market across many CRS manufacturers. To keep Appendix A up to date, NHTSA amended it in final rules issued in December 2001 (66 FR 65375) and November 2003 (68 FR 65179) to replace certain CRSs that were no longer in production and to add two LATCH-compatible CRSs, respectively.[1]

NHTSA most recently updated Appendix A in a final rule issued in November 2008 (73 FR 66786). NHTSA created a new "Appendix A-1" to facilitate phasing-in the requirement to certify vehicles with the updated CRSs.[2] Today, Appendix A-1 is the only appendix in effect.

The CRSs listed in Appendix A-1 are broken up into four subparts. Subpart A lists "car bed" CRSs that can be used to test the suppression system of a vehicle that has been certified as complying with S19 of FMVSS No. 208. Subpart B lists rear-facing infant CRSs that can be used by the agency to test the suppression system or the LRD capabilities of a vehicle that is

[1] FMVSS No. 225, *Child restraint anchorage systems*, requires certain vehicles and DSPs to be equipped with LATCH systems. FMVSS No. 213 requires CRSs (except for harnesses, car beds and booster seats) to be equipped with attachments that enable the CRS to attach to the vehicle's LATCH system.

[2] The purpose of the one-year phase-in was to make the test burdens on manufacturers more reasonable, as manufacturers had to certify the compliance of *all* their vehicles' advanced air bag systems using the new CRSs. Appendix A-1 listed the new CRSs. Appendix A was retained with the CRSs it had listed. During the first year of the one-year phase-in, a specified portion of a manufacturer's new vehicles had to be certified as meeting the advanced air bag requirements when tested with the new CRSs in Appendix A-1, while the remaining portion could continue to be certified with the existing CRSs in Appendix A. Starting at the end of the phase-in, all vehicles had to be certified as meeting the requirements using the new CRSs in Appendix A-1.

certified as complying with S19 of FMVSS No. 208. Subpart C lists forward-facing toddler and convertible[3] CRSs that can be used by the agency to test the suppression system or the LRD capabilities of a vehicle that has been certified as complying with S19 or S21 of FMVSS No. 208. Subpart D lists CRSs that are or can be used as a belt-positioning seat (commonly called belt-positioning booster seats (BPBs)) (*e.g.*, combination and 3-in-1 CRSs) and BPBs that can be used by the agency to test the suppression system or the LRD capabilities of a vehicle that has been certified as complying with S21 or S23 of FMVSS No. 208.[4]

III. Development of Today's NPRM

When deciding whether to update Appendix A-1 (68 FR 65188) NHTSA considers whether a particular CRS (from the appendix in effect and from the latest Ease of Use (EOU) data) has been a high-volume model, whether it has mass and dimensions that are representative of many CRSs on the market, whether its mass and dimensions represent outliers, and whether a variety of CRS manufacturers are represented in the appendix. The agency also assesses whether the assortment of CRSs in the appendix assures that NHTSA will be adequately testing the robustness of air bag automatic suppression systems under real world conditions.

To develop today's NPRM, NHTSA conducted a systematic evaluation of the CRSs currently in Appendix A, and of data collected through the agency's EOU program.[5] The agency

[3] A convertible CRS can be used as is or "converts" between rear-facing and forward-facing use.
[4] "Belt-positioning seat" is defined in FMVSS No. 213 S4 as "a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact." A combination CRS can be used forward-facing or as a booster seat. A 3-in-1 CRS is a convertible CRS that can be used as a booster seat.
[5] The EOU program is a program in which NHTSA rates different usability aspects of CRSs currently on the market. It is part of the New Car Assessment Program (NCAP), and is updated annually. The details of this data collection process are discussed in the November 2008 final rule (73 FR 66786). NHTSA primarily used EOU data collected in 2015, which included data on 53 different CRSs from 27 different manufacturers. EOU data from previous years or more recent years were used as needed if a specific type of CRS was not assessed in the 2015 program. In light of the availability of newer EOU data, references to the 2015 EOU data averages have been updated to reflect the 2019 EOU data averages.

assessed child restraint system physical dimensions and weight (mass) to identify which CRSs have dimensions that were representative of the average restraint in today's market, and which were possible outliers, with dimensions, weight[6] and/or footprints[7] markedly outside of those of the "average" CRS. In addition, the agency identified which CRSs had high production totals (based on confidential manufacturers' data) to determine which CRSs were likely to have the greatest market share (highest sales volume).

We note that, in choosing which CRSs to include in the updated appendix, the agency sought to ensure that advanced air bag systems would be designed and calibrated to perform satisfactorily when used with a wide range of CRSs. For example, because rear-facing CRSs with either low or high seat back heights can pose challenges for LRD systems, the agency sought to include rear-facing CRSs of varying seat back heights for LRD testing purposes. Similarly, because the agency believes that certain features like handles and sunshields on rear-facing infant carrier CRSs can lead to false readings by vision-based sensors used in some advanced air bag systems, the agency includes rear-facing CRSs that have handles and sunshields in the appendix.[8]

IV. Proposed Changes

After considering the factors discussed in the previous section of this preamble, NHTSA has tentatively decided there is a need to replace or update all the CRSs in Appendix A-1 of FMVSS No. 208. This includes replacing seventeen (17) existing CRSs with eighteen (18) new

[6] Since the CRSs are used to test air bag suppression systems, it was important to identify which CRSs were the lightest and heaviest, and those that are representative of the average restraint in today's market in terms of weight.
[7] The footprint on every CRS is unique. Some air bag suppression systems have trouble sensing a CRS if the footprint is shaped in a way that loads the air bag suppression system sensors or load cells differently than the CRSs for which the suppression system was designed to recognize.
[8] NHTSA compliance test procedures specify adjustments of the handles and sunshields to the positions specified in the standard to ensure the robustness of the advanced air bag system being tested.

CRSs, and updating model identification information for two (2) existing CRSs. Tables 1-3 below summarize the proposed changes to Appendix A-1. The following sections will discuss our proposed replacements or updates, along with corresponding rationale for these proposals.

Table 1 – Deletions to Appendix A-1

DELETIONS		
MODEL NAME	**APPENDIX SUBPART**	**MODEL TYPE**
ANGEL GUARD ANGELRIDE #AA243FOF	A	Car Bed
CENTURY SMART FIT 4543	B	Rear-Facing Infant
GRACO SNUGRIDE	B	Rear-Facing Infant
GRACO INFANT 8457	B	Rear-Facing Infant
COSCO ARRIVA 22-013 PAW & 22-999 WHO	B	Rear-Facing Infant
PEG PEREGO PRIMO VIAGGIO SIP IMUN00US	B	Rear-Facing Infant
COSCO TOURIVA 02519	C	Convertible
EVENFLO TRIBUTE V 379XXXX	C	Convertible
EVENFLO MEDALLION 254	C	Convertible
GRACO COMFORTSPORT	C	Convertible
GRACO TODDLER SAFESEAT STEP 2	C	Forward-Facing
COSCO SUMMIT DELUXE HIGH BACK BOOSTER 22-262	C&D	Combination
COSCO HIGH BACK BOOSTER 22-209	C&D	Combination
EVENFLO GENERATIONS 352XXXX	C&D	Combination
GRACO PLATINUM CARGO	C&D	Combination
BRITAX ROADSTER 9004	D	BPB
EVENFLO RIGHT FIT 245	D	BPB

Table 2 – Updates to Appendix A-1

UPDATING MODEL IDENTIFICATION INFORMATION		
MODEL NAME	**APPENDIX SUBPART**	**MODEL TYPE**
EVENFLO DISCOVERY ADJUST RIGHT IS NOW CALLED EVENFLO NURTURE #362-----	B	Rear-Facing Infant
BRITAX ROUNDABOUT E9L02XX IS NOW THE BRITAX ALLEGIANCE #E9LR4--	C	Convertible

Table 3 – Additions to Appendix A-1

ADDITIONS		
MODEL NAME	**APPENDIX SUBPART**	**MODEL TYPE**
SAFETY 1ST DREAMRIDE SE LATCH #IC238---	A	Car Bed
CHICCO KEYFIT 30 #04061472------	B	Rear-Facing Infant
EVENFLO EMBRACE #315-----	B	Rear-Facing Infant
DOONA CAR SEAT & STROLLER	B	Rear-Facing Infant
BRITAX B-SAFE 35 #E1A72--	B	Rear-Facing Infant
CYBEX ATON 2	B	Rear-Facing Infant
BRITAX MARATHON CLICKTIGHT #E1A38--	C	Convertible
COSCO SCENERA NEXT #CC123---	C	Convertible
GRACO 4EVER ALL-IN-1	C	3-in-1
GRACO CONTENDER 65	C	Convertible
CYBEX ETERNIS	C&D	3-in-1
SAFETY 1ST GROW AND GO #CC138---	C&D	3-in-1
EVENFLO CHASE #306-----	C&D	Combination
COSCO FINALE #BC121---	C&D	Combination
CHICCO MYFIT #04079783--0070	C&D	Combination
COSCO RISE #BC126---	D	BPB
GRACO BACKLESS TURBOBOOSTER	D	BPB
BRITAX GROW WITH YOU #E1C19--	D	Combination

a. Deletions

Our proposed deletions are based generally on which CRSs do not offer any unique characteristics and those that have not been in production for several years. If we propose to eliminate a CRS that offered a unique characteristic, we attempt to add a CRS that possesses the same unique characteristic or replace it with a CRS that offers an alternative unique characteristic. The quantitative details and photographs of the CRSs currently in Appendix A-1 are found in the Technical Assessment docketed in conjunction with the 2008 update.[9]

1. Deletion of Discontinued CRSs

Appendix A-1 includes several carry-over CRSs that were also in Appendix A. These

[9] Docket ID: NHTSA-2008-0168-0002.

older CRS models and their corresponding sections are listed below:

- Subpart B
    - Century Smart Fit 4543
    - Graco Infant 8457
- Subpart C
    - Cosco Touriva 02519
    - Evenflo Medallion 254
- Subpart D
    - Britax Roadster 9004
    - Evenflo Right Fit 245

The agency has confirmed that all of these CRSs have been out of production for many years and are not readily available for purchase. Given this, and the fact that most CRSs have an expiration date that is 6 years from the date of manufacture, we believe the proposed deletion of these CRSs is warranted.[10]

In addition to these carry-over CRSs from Appendix A, we have identified CRSs in Appendix A-1 that have also been discontinued, making them difficult to acquire for testing purposes and reducing the likelihood they are in actual use by consumers. These CRSs and their corresponding subparts are listed below:

- Subpart A
    - Angel Guard AngelRide AA243FOF
- Subpart B

[10] NHTSA does not require "expiration dates" on child restraint systems. CRS manufacturers developed the expiration date idea and label CRSs with an expiration date following industry practice.

    - Cosco Arriva 22-013 PAW with the 22-999 WHO base
- Subpart C
    - Graco Toddler SafeSeat Step 2
    - Evenflo Generations #352
    - Graco Platinum Cargo
- Subpart D
    - Evenflo Generations #352
    - Graco Platinum Cargo

The Angel Guard AngelRide #AA2403FOF, is a car bed with a 3-point harness. This car bed is no longer in production; therefore, we propose deleting this car bed from Subpart A.

The Cosco Arriva 22-013 PAW with the 22-999 WHO base is a rear-facing infant CRS. The model number for this CRS was updated in Appendix A-1 in 2008 since the previous model number was no longer available. As explained in the 2008 final rule, this was a CRS that was mainly distributed to hospitals, health departments or other organizations. However, the 2008 final rule also noted that the manufacturer was contemplating phasing-out this CRS, and ultimately, it was discontinued. This seat was not considered an outlier, and we are proposing to add a new CRS with similar characteristics.

The Graco Toddler SafeSeat Step 2 is a forward-facing only CRS with a 5-point safety harness. It was added with Appendix A-1 and it was among the heavier forward-facing CRSs on the market at that time. The rationale for including it in Appendix A-1 was its weight and its uniquely flat footprint. We are proposing to add heavy CRSs to Subpart C as well as CRSs with footprints that are flat (e.g., large contact surface area).

The Evenflo Generations is a forward-facing-only combination CRS with a 5-point safety

harness. At the time of the 2008 final rule, it was among the lighter forward-facing CRSs. It was included in Appendix A-1 because its footprint was unique and because it was lightweight for this CRS category. We are proposing to include a lightweight CRS in Subparts C and D to replace the Evenflo Generations.

The Graco Platinum Cargo is a forward-facing-only combination CRS with a 5-point harness listed in both Subparts C and D of Appendix A-1. As part of the 2008 final rule, this CRS was a replacement for the Century Next Step 4920, and there are no remarkable features that would warrant finding a comparable replacement for it in this update.

In light of the fact that these CRSs are discontinued and the fact that many years have passed since our last update, we propose deleting these CRSs to allow the inclusion of newer CRS models.

2. Deletion of the Graco Snugride #E9L02XX from Subpart B

The Graco Snugride #E9L02XX is a rear-facing infant CRS in Subpart B of Appendix A-1, with a detachable base. The Graco Snugride was included in Appendix A-1 in the previous update because it was lightweight and had a high sales volume in the U.S.[11] This specific model of the Graco Snugride is no longer in production. There is a newer model available, but as will be shown, there are newer lightweight infant CRSs that are also popular in the market now. As a result, we propose deleting this CRS from Subpart B.

3. Deletion of the Peg Perego Primo Viaggio from Subpart B

The Peg Perego Primo Viaggio is a rear-facing infant CRS, with a detachable base and a 5-point safety harness. It is heavier than the average rear-facing infant CRSs and has a relatively

[11] The inclusion of lightweight and heavy rear-facing infant CRSs ensure that air bag suppression systems consider a wide range of weights when identifying these CRSs.

large base. This CRS was added in Appendix A-1 in 2008 because we concluded that this CRS is somewhat of an outlier in terms of its dimensions and unique footprint, and we believed that testing an air bag suppression system using this CRS would be a good measure of a system's robustness. This specific model of the Primo Viaggio is no longer in production. There is a newer model available, but as will be shown, there are heavier infant CRSs in the market now and we are proposing one of these with a similar footprint as the Primo Viaggio. As a result, we propose deleting this CRS from Subpart B.

4. Deletion of the Evenflo Tribute V #379XXXX from Subpart C

The Evenflo Tribute V #379XXXX, is a convertible CRS with a 5-point harness. The design and characteristics of this CRS were not evaluated in the previous update because it was a replacement for a CRS listed in Appendix A. While this CRS is still under production with a different model number, we have been informed that it will be phased-out in the near future. We do not see a need to find an equivalent replacement for this CRS because it would be redundant with the Cosco Scenera Next, a proposed addition to Subpart C discussed in the additions section. Therefore, we propose deleting this CRS from Subpart C.

5. Deletion of the Graco ComfortSport from Subpart C

The Graco ComfortSport is a convertible CRS with a 5-point harness. The design and characteristics of this CRS were not evaluated in the previous update because the mold for this CRS closely resembled a CRS listed in Appendix A. While this CRS is still in production we have identified other CRSs to add to the appendix with unique footprints and or dimensional characteristics. In order to properly assess the robustness of air bag systems we deem it necessary to delete this CRS in order to accommodate adding one of these newly identified CRSs.

6. Deletion of the Cosco Summit Deluxe High Back Booster #22-262 from Subparts C and D

The Cosco Summit Deluxe High Back Booster #22-262 is a forward-facing CRS with 5-point safety harness that can also be used as a BPB. The Cosco Summit Deluxe High Back Booster was included in Appendix A-1 because of its wide base and because it was a tall CRS. The agency has identified CRSs that are taller and wider that we are proposing be included in the revised appendix. While, this CRS is still being produced under a different model name (with cosmetic differences) we think it would be prudent to delete this CRS in order to include newer CRSs on the market that are taller and or have a wider base.

7. Deletion of the Cosco High Back Booster #22-209 from Sections C and D

The Cosco High Back Booster #22-209 is a forward-facing only combination CRS with a 5-point harness in Subparts C and D of Appendix A-1. The 2008 final rule modified the identification information for this CRS to one that was more readily available at the time; therefore, no inclusion criteria was established for this CRS in the previous update. While this CRS is still in production it is available under a different model number. Rather than updating the model number again for this CRS, we are proposing that it be removed to accommodate other newer CRSs.

b. Updating Existing CRSs with Newer Models

1. Updating the Evenflo Discovery Adjust Right 212 in Subpart B

The Evenflo Discovery Adjust Right 212 is a rear-facing infant CRS with a detachable base, in Subpart B of Appendix A-1. This CRS was a carry-over from Appendix A. This CRS is now being manufactured under the model name Evenflo Nurture, but is equivalent[12] to the

[12] Equivalent CRS models have no significant structural or physical differences.

Evenflo Discovery Adjust Right 212. The Evenflo Nurture #362-----[13] weighs less than the average rear-facing infant CRSs in the 2019 EOU program and is a rear-facing infant CRS with high sales volume in the U.S. We propose updating the Evenflo Discovery Adjust Right 212 with its equivalent newer model the Evenflo Nurture #362-----.

2. Updating the Britax Roundabout #E9L02XX in Subpart C

The Britax Roundabout #E9L02XX is a convertible CRS in Subpart C of Appendix A-1. The 2008 final rule modified the model number for this CRS to one that was more readily available at the time. Consequently, its dimensions and design were not taken into consideration in the previous appendix update. The Britax Roundabout #E9L02XX is no longer in production. Britax has replaced it with a newer version called the Britax Allegiance #E9LR4--. The Britax Roundabout had undergone changes to the design and mold since the last update and most recently it was renamed to the Britax Allegiance. The Britax Allegiance would not be considered an equivalent CRS to the Britax Roundabout #E9L02XX, but it would be equivalent to the Britax Roundabout G4.1 which was its predecessor. We propose updating to the newer Britax Allegiance because it is wider than the average footprint of convertible CRSs and its footprint is uniquely shaped.

c. Additions

Other than the updating of older CRS models with newer CRS models discussed in the previous section, we are not proposing to maintain any of the current CRSs in the revised Appendix A-1. This section will discuss the proposed CRS additions that will comprise the revised Appendix A-1. (See docketed Technical Assessment for basic measurements, pictures,

[13] When selecting new CRSs for the appendix, the agency sought to provide, to the extent possible, generic model numbers. Therefore, the use of hyphens indicates digits in the model number that are not needed because they indicate changes in soft goods.

and statistical analysis of the proposed CRS additions.)

1. Addition of the Safety 1st Dreamride SE LATCH #IC238--- to Subpart A

The Safety 1st Dreamride SE LATCH #IC238--- is an infant car bed, with a 3-point safety harness and handle bar. It is one of the only readily available car beds on the market; therefore, we propose its addition to Subpart A.

2. Addition of the Evenflo Embrace #315----- to Subpart B

The Evenflo Embrace #315----- is a rear-facing infant CRS, with a detachable base, sunshield, and handle bar. It is lighter than the average rear-facing infant CRSs in the 2019 EOU program with and without the base. This CRS captures a significant portion of the rear-facing infant CRS market. This CRS also has a unique footprint configuration. We believe that testing an air bag suppression system using this CRS would be a good measure of a system's robustness because of the CRS's unique base footprint. Therefore, we propose its addition to Subpart B.

3. Addition of the Doona Car Seat & Stroller to Subpart B

The Doona Car Seat & Stroller is a rear-facing infant CRS and stroller combo with a detachable base, a sunshield, and a handle bar. It is significantly heavier than the average weight, with and without the base, of rear-facing infant CRSs in the 2019 EOU program. Its base is wider than the average for the rear-facing infant CRSs in the 2019 EOU program. What is of particular interest about this CRS, for testing purposes, is the weight, the base width, and overall design of the car seat. This CRS also captures a significant portion of the rear-facing infant CRS market. Therefore, we propose its addition to Subpart B.

4. Addition of the Britax B-Safe 35 #E1A72-- to Subpart B

The Britax B-Safe 35 #E1A72-- is a rear-facing infant CRS, with a detachable base, sunshield, and handle bar. It is heavier than the average rear-facing infant CRSs in the 2019

EOU program with the base. It has a large base footprint compared to the average rear-facing infant CRSs in the 2019 EOU data. This CRS has a unique base footprint because of its flatness. This CRS captures a significant portion of the rear-facing infant CRS market. Because of its large flat base footprint, high sales volume, and weight, we believe this CRS can be considered a good replacement for the Peg Perego Primo Viaggio, which we are proposing to delete. Therefore, we propose its addition to Subpart B.

5. Addition of the Cybex Aton 2 #518000--- to Subpart B

The Cybex Aton 2 #518000--- is a rear-facing infant CRS, with a detachable base, sunshield, and handle bar. It is heavier than the average rear-facing infant CRSs in the 2019 EOU program with and without the base. Its base footprint is unique among rear-facing infant CRSs in the 2019 EOU data because of its shape and because it is designed to accommodate a load leg (see docketed Technical Assessment for pictures).

The load leg is an optional installation feature for this CRS. Based on our analysis we believe that this CRS is somewhat of an outlier in terms of its weight and by having a unique base footprint. In addition, if the seat is installed without the steel-enforced load leg and it is stowed away we think this may challenge air bag suppression systems that use capacitive sensors. We believe that testing an air bag suppression system using this CRS would be a good measure of a system's robustness. Therefore, we propose its addition to Subpart B.

6. Addition of the Chicco KeyFit 30 #04061472------ to Subpart B

The Chicco KeyFit 30 #04061472------ is a rear-facing infant CRS, with a detachable base, sunshield, and handle bar. It is lighter than the average rear-facing infant CRSs in the 2019 EOU program with the base. This CRS captures a significant portion of the rear-facing infant CRS market. This CRS also has a unique footprint configuration. It has a wide base footprint

compared to the average rear-facing infant CRSs in the 2019 EOU data. We believe that testing an air bag suppression system using this CRS would be a good measure of a system's robustness because of the CRS's unique base footprint. Because of its high sales volume, wide base, and weight, we believe this CRS can be considered a good replacement for the Graco Snugride, which we are proposing to delete. Therefore, we propose its addition to Subpart B.

7. Addition of the Britax Marathon ClickTight #E1A38-- to Subpart C

The Britax Marathon ClickTight #E1A38-- is a convertible CRS. It is significantly heavier than the convertibles in the 2019 EOU data. Its footprint is wider than the average for convertible CRSs in the 2019 EOU program. This CRS also has a unique footprint configuration.

This is a convertible CRS with high sales volume and Britax uses this same shell for other similar CRS models (e.g., Britax Advocate ClickTight and Britax Boulevard ClickTight), which increases this shell's market representation. Based on our analysis of this CRS it meets the inclusion criteria because it is a heavy CRS and has a wide unique footprint and our data indicates it captures a significant portion of the CRS market. Therefore, we propose adding it to Subpart C.

8. Addition of the Cosco Scenera Next #CC123--- to Subpart C

The Cosco Scenera Next #CC123--- is a convertible CRS. It is the significantly lighter than the lightest convertible CRS in the 2019 EOU data. It has a smaller than average convertible footprint. This CRS also has a unique footprint that would have minimal surface area contact with the vehicle seat. In addition, this CRS captures a significant portion of the CRS market. Based on our findings we tentatively conclude these qualities warrant its addition to Subpart C.

9. Addition of the Graco 4Ever All-in-1 to Subpart C

The Graco 4Ever All-in-1 is a 3-in-1 CRS. It is heavier than the average weight for 3-in-1 CRSs in the 2019 EOU data and heavier than the average convertible CRS in the 2019 EOU data. It has a wider than average footprint compared to the averages for convertible and 3-in-1 CRSs in the 2019 EOU program. It also has a flat footprint. Based on its weight and footprint width and style we propose adding it to Subpart C.

10. Addition of the Graco Contender 65 to Subpart C

The Graco Contender 65 is a convertible CRS. It was evaluated in the 2014 EOU program. It weighs less than the average weight of convertible CRSs in the 2019 EOU program. It has a narrow and deep footprint compared to the average footprint of convertible CRSs in the 2019 EOU program. The footprint has a unique shape and changes between the rear and forward-facing installation modes. Based on the dimensions of the footprint and its uniqueness we propose adding it to Subpart C.

11. Addition of the Cybex Eternis to Subparts C&D

The Cybex Eternis is a 3-in-1 CRS. It is significantly heavier than the average weight of all 2019 EOU program forward-facing capable CRSs with a harness. This CRS is also much heavier than the average weight of BPBs in the 2019 EOU program. Its footprint is larger than the average footprint of 3-in-1 CRSs in the 2019 EOU program. It also has a unique footprint configuration. Based on its weight and footprint characteristics we propose adding it to Subparts C and D.

12. Addition of the Safety 1st Grow and Go #CC138--- to Subparts C&D

The Safety 1st Grow and Go #CC138--- is a 3-in-1 CRS. It weighs less than the average forward-facing capable CRSs with a harness in the 2019 EOU program. Its footprint width is

narrower than the average forward-facing capable CRS with a harness in the 2019 EOU program. It also has a unique footprint. Based on these evaluated characteristics we propose adding it to Subparts C and D.

13. Addition of the Evenflo Chase #306----- to Subparts C&D

The Evenflo Chase #306----- is a combination CRS. It weighs less than the average weight of all 2019 EOU program forward-facing capable CRSs with a harness and BPBs. Its footprint is wider than the average footprint of combination CRSs in the 2019 EOU program. It also has a unique footprint with limited seat contact surface area. Based on its footprint characteristics we propose adding it to Subparts C and D.

14. Addition of the Cosco Finale #BC121--- to Subparts C&D

The Cosco Finale #BC121--- is a combination CRS. Its weight is lighter than the average weight of combination CRSs in the 2019 EOU program and, as a BPB, its weight is lighter than the average weight of BPBs in the 2019 EOU program. The footprint is smaller than the average footprint of combination CRSs in the 2019 EOU program. It also has a unique footprint shape. Based on its footprint characteristics we propose adding it to Subparts C and D.

15. Addition of the Chicco MyFit #04079783--0070 to Subparts C&D

The Chicco MyFit #04079783--0070 is a combination CRS. It is slightly heavier than the average weight of combination CRSs in the 2019 EOU program. Its footprint is slightly smaller than the average footprint of combination CRSs in the 2019 EOU program. It is a combination with high sales volume. Based on its weight, footprint size, and high sales volume we propose adding it to Subparts C and D.

16. Addition of the Cosco Rise Belt-Positioning Booster Seat #BC126--- to Subpart D

The Cosco Rise Belt-Positioning Booster Seat #BC126-- is a backless BPB that was

evaluated in the 2018 EOU program. Its weight is lighter than the average weight of backless BPBs in the 2019 EOU program. It is a BPB with high sales volume. It also has a unique footprint configuration. Based on its weight and high sales volume we propose adding it to Subpart D.

17. Addition of the Graco Backless TurboBooster to Subpart D

The Graco Backless TurboBooster is a backless BPB. Its weight is lighter than the average weight of backless BPBs in the 2019 EOU program. Its footprint is wider than the average footprint of all BPBs in the 2019 EOU program. It is a BPB with high sales volume. It also has a unique footprint shape. Therefore, based on its footprint characteristics, weight, and high sales volume we propose adding it to Subpart D.

18. Addition of the Britax Grow with You #E1C19-- to Subpart D

The Britax Grow with You #E1C19-- is a combination CRS that was evaluated in the 2018 EOU program. Its weight is heavier than the average weight of combination CRSs in the 2019 EOU program. Its footprint is representative of the average footprint of all combination CRSs in the 2019 EOU program. It also has a flat footprint. Therefore, based on its footprint characteristics and weight we propose adding it to Subpart D.

19. Further Analysis of Proposed Rear-Facing CRS Additions

As discussed in the earlier section titled "Additional Considerations for Rear-Facing CRSs," we analyzed the height of the proposed CRS additions to ensure that the appendix would have a wide range of rear-facing child restraint seat back heights. In the 2019 EOU program, the seat back heights for rear-facing infant and other rear-facing capable CRSs range from 14.875

inch (in.) to 26.75 in.[14,15] The proposed additions to Subpart B have seat back heights that range from 14.875 in. to 26.25 in. Furthermore, CRSs that are being added to Subpart C that have the capability of being installed in a rear-facing or forward-facing mode can also be used for testing in the rear-facing mode. We are proposing to add eight CRSs to Subpart C that are convertible between rear and forward-facing and their seat back heights in the rear-facing mode range from 18.375 in. to 19.75 in.

In addition, the "Additional Considerations for Rear-Facing CRSs" section also discussed the need to include in Appendix A-1 rear-facing infant CRSs with sunshields and handle bars. All the proposed rear-facing infant CRS additions have sunshields and handle bars.

V. Integration of New Appendix A-1 in the Regulatory Text

NHTSA therefore proposes to remove the current Appendix A (which has been phased out), redesignate Appendix A-1 as Appendix A, and add the new list of CRSs described above as Appendix A-1. Designating the current CRS list "Appendix A" and the updated CRS list "Appendix A-1" simplifies the implementation of this proposed rule because it allows NHTSA to use the phase-in schedule from the 2008 final rule (located in FMVSS No. 208, S14.8) by simply adjusting the mandatory compliance dates to correspond to this rulemaking.

VI. Proposed Compliance Dates and Phase-in Period

NHTSA is proposing a phase-in of the requirement to test with the child restraints in the revised appendix. Under the phase-in, 50 percent of vehicles manufactured on or after the first September 1st after the publication date of the final rule must be certified as meeting FMVSS No. 208 when tested with the CRSs on the revised Appendix A-1, and all vehicles manufactured

[14] The upper end of the spectrum represents convertible CRSs with inherently higher seat back heights in the rear-facing mode.
[15] The height measurement used for the rear-facing infant CRSs is the height with their base.

on or after the second September 1st after the publication date of the final rule must be so certified.[16]

This approach would provide manufacturers with sufficient lead time to purchase and implement the new CRSs in their compliance testing, and allow manufacturers to tie their certification to the automatic suppression requirements or LRD requirement with the introduction of a new model year, thereby reducing testing burden. In addition, this phase-in ensures that suppression and LRD systems will be tested with representative child restraints in an expeditious manner and thus maintains the robustness of the FMVSS No. 208 test and the soundness of the child protection systems in recognizing today's CRSs.

As in the past, we are in support of early compliance with the appendix, i.e., a manufacturer may choose to certify more than 50 percent of their vehicles in the first year of the phase-in. However, we note that, within the phase-in period manufacturers are not permitted to pick and choose among the CRSs in Appendix A and A-1 within an individual vehicle certification. This restriction on voluntary early compliance is necessary for the agency to best use its resources in enforcing the phase-in requirements. Permitting manufacturers to selectively apply portions of Appendix A and A-1 for an individual vehicle would impede NHTSA's ability to conduct compliance testing because the agency would need to know how a manufacturer certified each individual CRS-related requirement in FMVSS No. 208 for the vehicle in question. Collecting this additional data would require additional agency time and enforcement resources, as well as a more expansive information collection process of manufacturers' compliance data than we believe is appropriate. We do not believe that the safety benefits of allowing

[16] As with all phase-ins, the agency is adopting a reporting and recordkeeping requirement to facilitate the agency's enforcement of the standard. The existing reporting and recordkeeping requirements, set forth in 49 CFR Part 585, Subpart D, will be updated per the proposed compliance dates.

manufacturers to pick and choose among the CRSs in the appendices for a single vehicle outweigh these additional burdens on the agency's enforcement of the advanced air bag requirements.

VII. Benefits and Costs Associated with the Proposed Rule

The proposed rule does not amend any of the FMVSS No. 208 performance test requirements; it merely updates the list of CRSs NHTSA can use for advanced air bag performance compliance tests. The proposed update would mitigate the risk of injury to children in CRSs from air bags by testing with CRSs that are representative of those that are in production today. However, we cannot quantify the incremental benefits of testing with these new CRSs over those listed in the current Appendix A-1, due to a lack of field performance test data. We are not aware of any injuries to children caused by vehicle manufacturers using outdated (unrepresentative) CRSs to certify their advanced air bag systems. Relatedly, we also note that most children are seated in rear seats as passengers, so they are not exposed to advanced air bag systems. However, if there were a child in the front passenger seat, we believe that there is an unreasonable risk of injury associated with an advanced air bag system either not "recognizing" the CRS and/or not interacting with it in a low risk manner during deployment. Updating the CRSs used to assess the performance of advanced air bags mitigates that risk by enabling manufacturers to design advanced air bag systems to factor in the features and characteristics of the CRSs used today.

Compliance with the proposal would result in a nominal cost to vehicle manufacturers for the purchase of the new CRSs. The agency estimates that a complete set of all the CRSs (20 CRSs) in the proposed new Appendix A-1 is $3,364 in 2020 dollars. However, the proposed rule not only adds 18 unique CRSs to the appendices, but also removes 17 unique CRSs. Thus, in the

absence of a large change in the price of a CRS on the list, the net change to the list is the addition of a unique CRS to the collection expected to be purchased by manufacturers. Since the $3,364 represents 20 CRSs, one of which is an incremental addition, 1/20th of that price is the incremental cost due to the proposed rule. Thus, the proposed rule would create an increased cost of $168.20 per model, per year for manufacturers.

Based on previous experience, we assume that after 10 years all CRSs in the appendix will no longer be in production and might require another update to Appendix A-1.[17] Additionally, we estimate that each vehicle manufacturer will purchase 10 complete sets for each production line over that time or on average 1 complete set per year per line. Based on the 2017 Wards Automotive Yearbook,[18] we estimate that there were a total of 248 production lines among the U.S. vehicle manufacturers in 2021. In other words, we expect the entire 248 production lines will be updated (to be in compliance with the proposed rule) in a period of 10 years. Therefore, the total 10 year cost to all vehicle manufacturers cumulatively would be $417,136 (=$168.20 x 248 x 10) over 10 years for those vehicle lines. Assuming an annual production of 16 million vehicles,[19] there would be 160 million vehicles for the same period of 10 year. Thus, the per vehicle cost is $0.003 ($417,136/160 million) annually. We believe that these minor changes in the content of the appendix will not significantly impact the cost of compliance testing over manufacturer's current practice.

We believe this is a conservative estimate (i.e., an overestimate) for the following reasons. We acknowledge that some manufacturers may purchase fewer of some CRSs (if their

[17] We note that the frequency of past updates to the Appendix is not determinative of future updates. However, a shorter update period would likely mean fewer changes would be made.
[18] Published by WardsAuto, a division of Penton.
[19] This rulemaking would only affect vehicles with advanced air bags. We estimate that 16 million vehicles are produced annually with a gross vehicle weight rating (GVWR) of 8,500 lb or less.

vehicles are equipped with air bag suppression systems) or more of some CRSs (if they are equipped with LRD air bags).[20] Therefore, we consider this a high estimate for the number of complete sets vehicle manufacturers will purchase, because, based on our experience, one set can be used to certify several vehicle models for several years. Vehicle manufacturers would also save an unquantified amount of time and money because they will no longer need to acquire the existing Appendix A-1 CRSs that are out of production. In addition, we believe vehicle manufacturers are testing their advanced air bag systems with CRSs that are not in the appendix, so it is possible that they already possess and have conducted testing with most of the proposed CRS additions, particularly the popular CRSs.

VIII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

[20] The lineup of CRSs that a manufacturer actually purchases will likely vary depending on what type of advanced air bag system the manufacturer chooses for its vehicles. For example, a manufacturer that chooses the LRD compliance option for all the child-sized dummies may purchase 10 sets of the CRSs in Subpart B, 3 sets of the CRSs in Subpart C, and none of the CRSs in Subpart A and D (Subpart A and D CRSs are not used for LRD testing). Alternatively, a manufacturer that chooses the suppression option for all the child-sized dummies may purchase just one set of all the CRSs.

Comments may also be submitted to the docket electronically by logging onto the Docket website at http://www.regulations.gov. Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed athttp://www.whitehouse.gov/omb/fedreg/reproducible.html.

How can I be sure that my comments were received?

If you wish the Docket to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider

comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under ADDRESSES. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to http://www.regulations.gov. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See www.regulations.gov for more information.

IX. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Order 2100.6

We have considered the potential impact of this proposed rule under Executive Order (E.O.) 12866 and DOT Order 2100.6 and have determined that it is nonsignificant. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866. The costs and benefits of advanced air bags are discussed in the agency's Final Economic Assessment for the May 2000 final rule (Docket No. NHTSA-00-7013). The cost and benefit analysis provided in that document would not be affected by this NPRM, since this NPRM only adjusts and updates the CRSs used in test procedures of that final rule.

The agency estimates that compliance with the proposal would result in a nominal total

annual cost to all vehicle manufacturers cumulatively of $417,136 (over ten years) for the purchase of the new CRSs. Assuming an annual production of 16 million vehicles (with a GVWR of 8,500 lb or less), the per vehicle cost is $0.003 annually for the purchase of the new CRSs. More information can be found in the "Benefits and Costs Associated with the Proposed Rule" section above in this preamble. The minimal impacts of today's proposed amendment do not warrant preparation of a regulatory evaluation.

Executive Order 13771

E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of E.O. 12866, "Regulatory Planning and Review," are subject to these requirements. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 60l et seq., NHTSA has evaluated the effects of this action on small entities. I hereby certify that this proposed rule would not have a significant impact on a substantial number of small entities. The NPRM would affect motor vehicle manufacturers, multistage manufacturers and alterers, but the entities that qualify as small businesses would not be significantly affected by this rulemaking because they are already required to comply with the advanced air bag requirements. This proposed rule would not establish new requirements, but instead would only adjust and update the CRSs used

in FMVSS No. 208's test procedures for advanced air bags. The small manufacturers would continue to certify their vehicles as meeting the advanced air bag requirements using the same methods and procedures they use today, only with more current CRSs.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. Today's proposed rule would not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that, if NHTSA has established a standard for an aspect motor vehicle or motor vehicle equipment performance a State may only prescribe or continue in effect a standard for that same aspect of performance if the State standard is identical to the Federal standard. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might

otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposed rule and finds that this proposed rule, like many NHTSA rules, prescribes only a minimum safety standard. Accordingly, NHTSA does not intend that this proposed rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposal.

Establishment of a higher standard by means of State tort law would not conflict with the minimum standard proposed in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

National Environmental Policy Act

NHTSA has analyzed this NPRM for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule contains a collection of information because of the phase-in reporting requirements being established. There is no burden to the general public. We will be submitting a request for OMB clearance for the collection of information required for this proposed rule.

These requirements and our estimates of the burden to vehicle manufacturers are as follows:

NHTSA estimates there are 20 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses having a GVWR of 3,856 kg (8,500 lb) or less.

NHTSA estimates that the annual reporting and recordkeeping burden on each manufacturer resulting from the collection of information is one (1) hour. NHTSA estimates that the annual cost burden on each manufacturer, in U.S. dollars, on each manufacturer will be $42.71. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

The purpose of the reporting requirements will be to aid NHTSA in determining whether a manufacturer has complied with the requirements of FMVSS No. 208 during the phase-in of the proposed requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." There are no voluntary consensus standards that address the CRSs that should be included in Appendix A-1.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposed rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may

file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This NPRM would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products.

49 CFR Part 585

Reporting and recordkeeping requirements

In consideration of the foregoing, NHTSA proposes to amend 49 CFR chapter V as set forth below.

PART 571 - - FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

2. Amend Section 571.208 by adding a sentence to the end of S1 and revising S14.8 appendix A, and appendix A-1 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.8 *Vehicles manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE].* Vehicles manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], shall comply with S14.8.1 through S14.8.4. At any time during the production year ending August 31, [Year of first September 1st after publication of final rule], each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles by make, model and vehicle identification number that have been certified as complying with S19, S21, and S23 of this standard (in addition to the other requirements specified in this standard) when using the child restraint systems specified in appendix A-1 of this standard. The manufacturer's designation of a vehicle as meeting the requirements when using the child restraint systems in appendix A-1 of this standard is irrevocable.

S14.8.1 Subject to S14.8.2, for vehicles manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], the number of vehicles certified as complying with S19, S21, and S23 of this standard when using the child restraint systems specified in appendix A-1 of this standard shall be not less than 50 percent of:

(a) The manufacturer's average annual production of vehicles subject to S19, S21, and S23 of this standard manufactured on or after [Three years prior to DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE]; or

(b) The manufacturer's production of vehicles subject to S19, S21, and S23 of this standard manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE].

S14.8.2 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.8.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as provided in S14.8.2(a) through (c), subject to S14.8.3.

(a) A vehicle which is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

(c) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 585, between the manufacturer so

specified and the manufacturer to which the vehicle would otherwise be attributed under S14.8.2(a) or (b).

S14.8.3 For the purposes of calculating average annual production of vehicle for each manufacturer and the number of vehicles by each manufacturer under S14.8.1, each vehicle that is excluded from the requirement to test with child restraints listed in appendix A or A-1 of this standard is not counted.

S14.8.4 Until [DATE OF THIRD SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], vehicles manufactured by a final-stage manufacturer or alterer could be certified as complying with S19, S21, and S23 of this standard when using the child restraint systems specified in appendix A of this standard. Vehicles manufactured on or after [Date of third September 1st after publication of final rule] by these manufacturers must be certified as complying with S19, S21, and S23 when using the child restraint systems specified in appendix A-1.

S14.8.5 Until [DATE OF THIRD SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], manufacturers selling fewer than 5,000 vehicles per year in the U.S. may certify their vehicles as complying with S19, S21, and S23 when using the child restraint systems specified in Appendix A. Vehicles manufactured on or after [Date of third September 1st after publication of final rule] by these manufacturers must be certified as complying with S19, S21, and S23 of this standard when using the child restraint systems specified in Appendix A-1 of this standard.

* * * * *

Appendix A to §571.208—Selection of Child Restraint Systems

This appendix A applies to vehicles manufactured before [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and to not more than 50 percent of a manufacturer's vehicles manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], as specified in S14.8 of this standard. This appendix does not apply to vehicles manufactured on or after [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE].

A. The following car bed, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with S19 of this standard:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Angel Guard Angel Ride XX2403XXX	September 25, 2007.

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with S19 of this standard. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Century Smart Fit 4543	December 1, 1999.

Cosco Arriva 22-013 PAW and base 22-999 WHO	September 25, 2007.
Evenflo Discovery Adjust Right 212	December 1, 1999.
Graco Infant 8457	December 1, 1999.
Graco Snugride	September 25, 2007.
Peg Perego Primo Viaggio SIP IMUN00US	September 25, 2007.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance with S19 or S21 of this standard. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2 of this standard):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A

	Manufactured on or after
Britax Roundabout E9L02xx	September 25, 2007.
Graco ComfortSport	September 25, 2007.
Cosco Touriva 02519	December 1, 1999.
Evenflo Tribute V 379xxxx or Evenflo Tribute 381xxxx	September 25, 2007.
Evenflo Medallion 254	December 1, 1999.

Cosco Summit Deluxe High Back Booster 22-262	September 25, 2007.
Evenflo Generations 352xxxx	September 25, 2007.
Graco Toddler SafeSeat Step 2	September 25, 2007.
Graco Platinum Cargo	September 25, 2007.
Cosco High Back Booster 22-209	September 25, 2007.

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after the date listed, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with r S23 of this standard:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A

	Manufactured on or after
Britax Roadster 9004	December 1, 1999.
Graco Platinum Cargo	September 25, 2007.
Cosco High Back Booster 22-209	September 25, 2007.
Evenflo Right Fit 245	December 1, 1999.
Evenflo Generations 352xxxx	September 25, 2007.
Cosco Summit Deluxe High Back Booster 22-262	September 25, 2007.

Appendix A-1 to §571.208—Selection of Child Restraint Systems

This appendix A-1 applies to not less than 50 percent of a manufacturer's vehicles manufactured on or after [DATE OF FIRST SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE] and before [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE], as specified in S14.8 of this standard. This appendix applies to all vehicles manufactured on or after [DATE OF SECOND SEPTEMBER 1ST AFTER PUBLICATION OF FINAL RULE].

A. The following car bed, manufactured on or after [*Date of publication of final rule*], may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with S19 of this standard:

SUBPART A—CAR BED CHILD RESTRAINTS OF APPENDIX A-1

Safety 1st Dreamride SE LATCH #IC238---

B. Any of the following rear-facing child restraint systems specified in the table below, manufactured on or after [*Date of publication of final rule*], may be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment (LRD) system of a vehicle that has been certified as being in compliance with S19 of this standard. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

SUBPART B—REAR-FACING CHILD RESTRAINTS OF APPENDIX A-1

Evenflo Embrace #315-----
Chicco Keyfit 30 #04061472------
Doona Car Seat & Stroller

Britax B-Safe 35 #E1A72--
Cybex Aton 2
Evenflo Nurture #362-----

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after [*Date of publication of final rule*], may be used by the National Highway Traffic Safety Administration to test the suppression or LRD system of a vehicle that has been certified as being in compliance withS19 or S21 of this standard. (Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2 of this standard):

SUBPART C—FORWARD-FACING AND CONVERTIBLE CHILD RESTRAINTS OF APPENDIX A-1

Britax Marathon ClickTight #E1A38--
Cosco Scenera Next #CC123---
Graco 4Ever All-in-1
Britax Allegiance # E9LR4--
Graco Contender 65
Cybex Eternis
Safety 1st Grow and Go #CC138---
Evenflo Chase #306-----

Cosco Finale #BC121---
Chicco MyFit #04079783--0070

D. Any of the following forward-facing child restraint systems and belt positioning seats, manufactured on or after [DATE OF PUBLICATION OF FINAL RULE], may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with S21 or S23 of this standard:

SUBPART D—FORWARD-FACING CHILD RESTRAINTS AND BELT POSITIONING SEATS OF APPENDIX A-1

Chicco MyFit #04079783--0070
Cybex Eternis
Safety 1st Grow and Go #CC138---
Evenflo Chase #306-----
Cosco Finale #BC121---
Cosco Rise Belt-Positioning Booster Seat #BC126---
Graco Backless TurboBooster
Britax Grow with You #E1C19--

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PART 585—PHASE-IN REPORTING REQUIREMENTS

3. The authority citation for part 585 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49

CFR 1.95.

4. Revise sections 585.35 through 585.37 to read as follows:

* * * * *

Sec.

585.35 Response to inquiries.
585.36 Reporting requirements.
585.37 Records.

* * * * *

§ 585.35 Response to inquiries.

At any time during the production year ending [DATE OF SECOND AUGUST 31ST AFTER PUBLICATION OF FINAL RULE], each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of 49 CFR 571.208 (Standard No. 208) when using the child restraint systems specified in appendix A-1 of that standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.36 Reporting requirements.

(a) *Phase-in reporting requirements.* Within 60 days after the end of the production year ending [DATE OF SECOND AUGUST 31ST AFTER PUBLICATION OF FINAL RULE], each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with requirements of 49 CFR 571.208 (Standard No. 208) when using the child restraint systems specified in appendix A-1 of that standard for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in § 585.2.

(b) *Phase-in report content* — (1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars, trucks, multipurpose passenger vehicles or buses for sale in the United States must report the number of passenger cars, trucks, multipurpose passenger vehicles or buses manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report on the number of vehicles that meet the requirements of Standard No. 208 when using the child restraint systems specified in appendix A-1 of that standard.

§ 585.37 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36 until [DATE OF FIFTH DECEMBER 31ST AFTER PUBLICATION OF FINAL RULE].

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Issued in Washington, DC under authority delegated in 49 CFR 1.95 and 501.8.

James C. Owens,
Deputy Administrator.

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