Century supported this point by performing flammability testing under two conditions: first on the seat and cover as a composite, *i.e.*, as it exists on a child seat with the two items sewn together; and second, by bunching or gathering the noncompliant seat cover and attempting to ignite it. In both cases the seat cover burned at a rate below the four inches per minute maximum set out in FMVSS No. 302.

The agency granted a petition for inconsequential noncompliance submitted by PACCAR (57 FR 45868) in which the circumstances were similar to those in this petition. PACCAR manufactures mattresses for the sleeper areas of certain truck tractors. A small portion of the material used in the construction of the mattresses, and subject to the requirements of FMVSS No. 302, failed the burn rate test. The agency determined that ignition of the noncompliant material was unlikely and, due to the small volume of the material, would not pose the threat of a serious fire if ignited. As a result of this analysis, the PACCAR petition was granted.

The circumstances here are similar to those in which the agency granted a petition for inconsequentiality by General Motors in connection with a noncompliance of the upper beam indicator. 56 FR 33323 (1991). The indicator was noncompliant only when the cigarette lighter was operating. The agency determined that the possibility of the upper beams being operated simultaneously with the cigarette lighter posed a very limited safety hazard. Similarly, it is unlikely that sections of the noncompliant cover fabric large enough to cause serious burn injuries would be separated from the cushion lining. Even if a large section of the fabric was torn away, NHTSA considers the possibility that this material would be exposed to a potential ignition source to be extremely remote.

Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the seat cover materials would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's assessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety. Although empirical results are not determinative, the

absence of any reports of fires originating in these child restraints supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Century has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its petition is granted. Accordingly, Century is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 8, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards. [FR Doc. 95–19897 Filed 8–10–95; 8:45 am]

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[Docket No. 93-48; Notice 4]

Cosco, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On April 30, 1993, Cosco, Inc. (Cosco), of Columbus, Indiana, determined that some of its child safety seats failed to comply with flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." On May 28, 1993, Cosco petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on July 7, 1993 (58 FR 36510). On March 22, 1994, NHTSA denied Cosco's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety (59 FR 14443, March 28, 1994). Cosco appealed that denial. On June 15, 1994 (59 FR 30831), NHTSA published a notice providing an opportunity for public comment on that appeal. No comments were received. This notice grants Cosco's appeale.

Paragraph S5.7 of Standard No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials') (571.302)." Paragraph S4.3(a)

of Standard No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Fabric used in the shoulder straps of certain models of Cosco's child restraints exceeded this limit by an average of .3 inches per minute when tested by NHTSA contractors in early 1993. Apparently, the noncompliance was due to the manner in which the fabric was treated during the process in which the straps were molded into a urethane shield. The company that performed this process for Cosco is the same company that performed the identical process for Fisher-Price, Inc., another manufacturer of child restraints whose request for an inconsequentiality exemption from the recall requirements of the statute is granted elsewhere in today's **Federal Register**.

In its 1993 noncompliance notice, Cosco stated that it had produced 133,897 add-on (as opposed to built-in) child restraints whose shoulder straps did not comply with Standard No. 213. On appeal of the inconsequentiality denial, it stated that only 23,449 restraints seats should have been covered by the notice, the remainder having been shipped to its Canadian subsidiary.

On March 22, 1994, NHTSA denied Cosco's inconsequentiality petition (59 FR 14443, March 28, 1994). That notice contains a full discussion of the noncompliance, the company's petition, and the agency's rationale for its denial of the petition.

On June 15, 1994, NHTSA published in the **Federal Register** Cosco's appeal of the agency's denial pursuant to 49 CFR 556.7. In the appeal, Cosco contended that it is extremely unlikely that straps of its child restraints would ignite independently of an interior fire that was already in progress from another source. It argued that NHTSA based its denial of the petition on hypothetical situations rather than confirmed reports of child restraint fires.

NHTSA has evaluated Cosco's arguments as well as the new materials submitted by Fisher-Price in support of its appeal. For the reasons set out in the notice granting Fisher-Price's appeal, which is published elsewhere in today's **Federal Register** (Docket No. 93–79; Notice 5), the agency has determined that Cosco has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety. Accordingly, Cosco is hereby exempted from the notification