and remedy provisions of 49 U.S.C. 30119 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. 95–19898 Filed 8–10–95; 8:45 am] BILLING CODE 4910–59–P

[Docket No. 93-79; Notice 6]

Fisher-Price, Inc.; Grant of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

On September 16, 1993, Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, filed a petition for an exemption from the notification and remedy provisions of 49 U.S.C. Chapter 301 on the ground that the noncompliance of certain of its child restraints with the flammability requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," was inconsequential as it relates to motor vehicle safety. On March 22, 1994, the National Highway Traffic Safety Administration (NHTSA) denied Fisher-Price's petition (59 FR 23253; May 5, 1994).

On May 6, 1994, Fisher-Price appealed that denial. Notice of the appeal was published on June 16, 1994 (59 FR 30957), and an opportunity was afforded for comment. However, on August 12, 1994, before the agency reached a decision on the appeal, Fisher-Price notified NHTSA that it was taking the position that it had never formally determined that a noncompliance existed. In response, on August 17, 1994, the agency terminated the inconsequentiality proceeding (59 FR 42326), as its regulations require that a determination of noncompliance exist before an inconsequentiality petition may be filed. See 49 CFR 556.4(b)(6).

Following this termination, on September 26, 1994, NHTSA's Associate Administrator for Enforcement published an initial decision, pursuant to 49 U.S.C. 30118(a), that the child restraints at issue failed to comply with FMVSS No. 213 (59 FR 49100). The agency then conducted a public proceeding on October 21, 1994 to allow Fisher-Price and other interested persons the opportunity to present information, views, and arguments on whether a noncompliance existed. Prior to the agency's final decision on this issue, on July 10, 1995, Fisher-Price submitted a Noncompliance Report in accordance with 49 CFR part 573, that

memorializes its formal determination that, under NHTSA's interpretation of the applicable test procedures, the seats in question fail to comply with S5.7 of FMVSS No. 213.

In view of the fact that a determination of noncompliance has been made, the agency may now consider Fisher-Price's petition for an inconsequentiality exemption.

Moreover, rather than require Fisher-Price to file a new petition, NHTSA has decided to reinstate the proceeding at the same stage it was at when it was terminated.

For the reasons set forth below, the agency has decided to grant Fisher-Price's appeal. Thus, Fisher-Price will not be required to conduct a recall campaign. However, as part of the resolution of this matter, Fisher-Price has agreed to pay \$35,000 to the United States in settlement of NHTSA's claim that it violated 49 U.S.C. 30118(c) and 30119(c) by failing to notify the agency in a timely manner after it should, in good faith, have determined that these child restraints did not comply with the standard.

Paragraph S5.7 of FMVSS 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 FMVSS 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 in some models of Fisher-Price's child restraints exceeded this limit by .3 to .6inch per minute when tested by NHTSA contractors in the spring of 1993 and when retested by Fisher-Price in the summer of 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 Fisher-Price is the same company that performed the identical process for Cosco, 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 September 16, 1993 letter to NHTSA, Fisher-Price acknowledged that it had "become aware of information suggesting that the molded shoulder belt webbing on its Model AO9101, DO9101, 9103, 9149, 9173, 9179 and 9180 car seats may not comply with the requirements of FMVSS 302." At the

same time, pursuant to 49 U.S.C. 30118(d) and 30120(h), Fisher-Price sought an exemption from the notification and remedy requirements of the statute on the ground that any such noncompliance was inconsequential as it relates to motor vehicle safety.

On March 22, 1994, NHTSA denied Fisher-Price's inconsequentiality petition (59 FR 23253, May 5, 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 May 6, 1994, Fisher-Price submitted an appeal of the agency's denial pursuant to 49 CFR 556.7. The appeal contains an analysis of the agency's decision, the affidavit of Gail E. McCarthy, Ph.D., P.E., of Failure Analysis Associates (FaAA), and a summary of the supplemental information Fisher-Price had submitted on February 25, 1994, March 17, 1994, and March 24, 1994 that had not been considered by the agency in its denial.

The February 25, 1994 submission contained information on the location of mold release compound on the shoulder webbing and its possible dissipation over time.

The March 17, 1994 submission contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires. The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994 submission, entitled "Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing," contained the detailed data and test results on which the material in the March 17, 1994 document was based.

In its May 6, 1994 appeal, Fisher-Price raised the following points: (1) Fisher-Price claimed that it had not determined that its child restraints failed to comply with FMVSS No. 213. (In view of Fisher-Price's recent acknowledgement that a noncompliance exists, this issue is now moot.) (2) Fisher-Price claimed that NHTSA had considered its petition under a stricter standard for inconsequentiality exemptions than is provided by statute because it involved child restraints. (3) Fisher-Price asserted that NHTSA's past precedent in granting inconsequentiality petitions compels a grant of this petition. (4) Fisher-Price contended that the data it submitted in support of its argument that the flammability of children's clothing