Issued: November 30, 1999.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–31647 Filed 12–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5800; Notice 2]

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

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

Notice of receipt of the application was published in the **Federal Register** on June 16, 1999 (64 FR 32303), with a 30-day comment period. We received no comments.

FMVSS No. 213, S5.5.2(k), requires that each add-on child restraint system designed to be used rear facing must have a label that warns the consumer not to place the rear-facing child restraint system in the front seat of a vehicle that has a passenger side air bag. In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, this label must be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and readable. The text portion of this label consists of a heading reading ''WARNING'', with the following messages under that heading:

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under.

Opposite the text, the warning label has a pictogram showing an inflating air bag striking a rear-facing child seat, surrounded by a red circle with a slash across it. The label must also conform to size and color requirements specified in S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii).

Cosco has notified us that between March 31, 1999 and April 7, 1999, it manufactured 815 Arriva Infant Child Restraints, Model 02–729–TED, that do not have the air bag warning label required by S5.5.2(k) of FMVSS No. 213. During this time period, one of the production lines used by Cosco to produce the Arriva model used pads for the Canadian version of this child restraint which do not incorporate the air bag warning label required by FMVSS No. 213.

Cosco supports its application for inconsequential noncompliance with the following:

> Cosco contends this noncompliance is inconsequential as it relates to motor vehicle safety. A notice and remedy campaign (''recall'') would not serve any safety related purpose and would in fact, cast doubt in the minds of the consumer as to the effectiveness of child restraints. We believe the low number of units involved (815) combined with the enormous publicity given to the warning label issue, rear-facing seats in air bag locations, and given the fact the instructions and unit labels do warn to the consumer about this misuse do not warrant a recall.
>
> To reiterate, Cosco does not believe this noncompliance warrants a recall. The Agency, child restraint manufacturers and child passenger safety advocates are all aware of the negative impacts of recalls resulting from technical noncompliance. The two primary negative effects are, the public, because of the number and frequency of such recalls, pays no attention to recalls that in fact do in a practical way affect child passenger safety. In addition, the public upon seeing the number of recalls, concludes child restraints currently available are unsafe and therefore declines to use them. The Agency is aware and, in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints. In the event a recall is ordered for the noncompliance which has been identified, both of the effects described will impact consumers negatively.
>
> In conclusion, Cosco submits reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists.

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

We would like to begin by addressing a statement made by Cosco in its application. Cosco states that:

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

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

Further, in an issue as critical to safety as air bags and infant seating, Cosco's failure to comply with the requirements of FMVSS No. 213 by not incorporating the air bag warning label required in S5.5.2(k) should not be excused. The requirements addressing warning labels, printed instructions, and information in the vehicle owner's manual pertaining to air bags and child restraints are necessary to maximize the safety of infants and young children traveling in motor vehicles equipped with air bags. Each of these warnings was developed with care to ensure that the specific content and location of the labels and instructions clearly and concisely convey the hazards of placing rear-facing child restraints in air bag-equipped seating positions.[1] We have also worked very closely with both vehicle and child restraint manufacturers and others in the child passenger safety community to reduce the likelihood that a rear-facing infant restraint would be placed in a vehicle seating position that has an air bag. Through media advisories, consumer information fact sheets, and other means, the entire child passenger safety community has taken measures to educate the public regarding the detrimental effects of an air bag when it

[1] FMVSS No. 213 has required rear-facing child restraints to be labeled with an air bag warning since August 1994 (59 FR 7643). The labeling requirement was revised in 1996 (61 FR 60206) to require an enhanced and much more prominent warning on a distinct label. Among other features, the enhanced label includes eye-catching headings and an easy to comprehend symbol. The label must also be located where the child's head rests. The enhanced label has been required since May 1997.

strikes the seat back of a rear-facing infant restraint.

Despite the concerted efforts detailed above, we have confirmed that between 1995 and 1998, 15 children have been fatally injured in crashes where their rear-facing child restraints were installed in a seating position that was equipped with an air bag that had deployed. We are aware of another nine children who have sustained serious, but nonfatal, injuries. These numbers might have been even higher had a warning label not been provided. We cannot excuse Cosco's acknowledged noncompliance of using seat pads without the required air bag warning label in production runs, given the grave potential consequences should a parent mistakenly place a child in a rear-facing child restraint in a seating position equipped with an air bag that subsequently deploys in a crash.

Cosco did not provide information suggesting that it was not a serious safety risk to place a rear-facing child restraint at a seating position equipped with an air bag, nor did Cosco suggest that the warning labels were not an important part of the effort to educate the public about those risks. Instead Cosco outlined its views about how a notice and remedy campaign, which it must conduct if this petition is denied, would negatively affect consumers. While we agree that consumers may react adversely to a proliferation of recalls, that potential consequence should be addressed by reducing the number of noncompliances, not by allowing them to go unremedied. Similarly, Cosco argued that ''the low number of units involved'' in the noncompliance argues in favor of granting its inconsequentiality petition. However, in ruling on inconsequentiality petitions, we consider the consequences of the noncompliance, rather than the number of vehicles or items of equipment that are affected. In the case of this noncompliance, the consequence of a parent not knowing of the dangers of placing a rear-facing child restraint at a seating position equipped with an air bag are potentially fatal. Given these potential consequences, we cannot find the noncompliance to be inconsequential for safety, regardless of the relatively small number of units with the noncompliance.

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

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

Issued on: December 1, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–31617 Filed 12–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143; Notice No. 99–14]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that high-pressure, compressed gas cylinders were marked but may not have been tested by Moore Fire Extinguishers and Fire Protection Company, Inc. (MFE), 462 Orange St., Albany, NY, during the period from1994 through March of 1999. Those cylinders may pose a safety risk to the public.

A hydrostatic retest and visual inspection, conducted as prescribed in the Hazardous Materials Regulations (HMR), are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Serious personal injury, death, and property damage could result from rupture of a cylinder. Cylinders that have not been requalified in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Chris Michalski, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Rd., Suite 306, West Trenton, NJ 08628. Telephone: (609) 989–2256; Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Based on inspections conducted by RSPA it has been determined that MFE has no test records for many cylinders that it stamped as having been tested, and that many cylinders bearing MFE's Retester Identification Number (RIN) may not have been tested by MFE and may pose a safety risk to the public.

C 0
M Y
7 8

C087 is MFE's RIN, M is the month of the retest (*e.g.,* 11) and Y is the year of the retest (*e.g.,* 98).

Anyone who has a cylinder that is marked with RIN number C087 and stamped with a retest date between 1994 and March 1999 should consider the retest marking invalid and should not refill and offer the cylinder for transportation until it has been successfully retested.

Issued in Washington, DC on December 1, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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