ALLIANCE FOR AUTOMOTIVE INNOVATION

August 29, 2023

Ms. Ann Carlson
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Supplemental Comments; Notice of Proposed Rulemaking (NPRM); Occupant Crash Protection, NHTSA Docket No. 2020-0094, 85 Fed. Reg. 68541 (October 29, 2020)

Dear Acting Administrator Carlson,

The Alliance for Automotive Innovation respectfully submits the following supplemental comments in response to the National Highway Traffic Safety Administration's (NHTSA) October 29, 2020, Notice of Proposed Rulemaking (NPRM) to amend FMVSS 208 to update the list of Child Restraint Systems (CRS) used to evaluate occupant protection for child occupants seated in a CRS installed in the right-front passenger seat. [1,2] We ask that the agency please consider these new recommendations in addition to resolving the previous technical concerns that were included in our prior submissions in response to the proposed rule.[3,4]

Addressing Discontinued CRS in the Proposed Rule

As noted in our previous submissions, Auto Innovators is generally supportive of the agency's efforts to update the list of CRS included in Appendix A-1. While we continue to have concerns with the CRS that have been proposed by the agency, maintaining an updated list will help ensure that the CRS used for compliance testing can be more easily acquired compared to older models that may be discontinued.[5]

To that end, based on a recent review of the CRS list proposed by NHTSA in the NPRM, three of the CRS have since been discontinued or modified by the manufacturer. The three seats in question are the Evenflo Embrace #315 (*discontinued*), Britax B-Safe 35 #E1A72 (*discontinued*), and the Cybex Aton 2 (*Updated to Aton G*).

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[1] From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer, and smarter personal transportation future. www.autosinnovate.org.

[2] 85 Fed. Reg. 68541

[3] https://www.regulations.gov/comment/NHTSA-2020-0094-0006

[4] https://www.regulations.gov/comment/NHTSA-2020-0094-0009

[5] Auto Innovators remain concerned that the agency's proposed updates to the list of CRS used for advanced airbag testing does not sufficiently consider the potential misclassification of smaller stature occupants seated in the right-front seating position. In addition, the proposal does not fully assess the regulatory impact of changes to the appendix on existing vehicle designs, including limitations on the options available for manufacturers in demonstrating compliance with the standard.

This raises a number of immediate compliance questions, particularly given the rule has not yet been finalized and manufacturers have not been required to update their internal testing programs to begin testing using new test devices. In addition, in the absence of a final rule, manufacturers may not have had sufficient budget justification to begin purchasing necessary test equipment until after the rule is finalized – particularly if the final list is subject to change.

Increased testing burden for manufacturers.
Discontinued CRS in Appendix-A1 present additional compliance challenges for manufacturers. While we recognize that the aftermarket presents a potential option for manufacturers to acquire discontinued CRS, there are no guarantees that sufficient quality seats can be reliably purchased or sourced. For example, OEMs would also need to rely on seller assurances that the equipment could be considered unopened and unused and includes all relevant accessories for compliance testing and verification, including being within the appropriate time (i.e., not past the expiration date listed on the CRS). In addition, although minor imperfections and the general safety performance of the CRS may be deemed less important than the size/weight/dimensional characteristics of the seat for evaluating vehicle performance against the requirements of FMVSS 208, we caution that there is no way for compliance testers to fully verify that an *out of a box* CRS found in the aftermarket is in unopened and unused condition – such as not having been in a crash or otherwise damaged in a way not visible to the human eye – so should not be used for testing purposes.

The aftermarket acquisition process can also be an extremely burdensome in terms of time and resource expenditure. First, this type of ad-hoc purchasing cannot typically be performed in bulk in the same way as production CRS might otherwise allow and relies solely on availability of testable CRS. It may also require sourcing from multiple vendors – which may be difficult to identify – in order to obtain the necessary number of seats needed for testing. Second, manufacturers are also subject to the prices set by the secondary market which may not be reflective of the price charged by original retailers, exposing OEMs to the risk of potential price markups. When combined, the cumulative costs and inconvenience could be significant, particularly if a given CRS has been discontinued for a prolonged period of time.

NHTSA should remove discontinued seats from the proposed list of CRS.
With respect to the NPRM, we request that NHTSA remove any discontinued or updated seats from the proposed list prior to issuing its final rule. Imposing an immediate reliance on potential aftermarket acquisition of these seats is not practical given the number of affected manufacturers and the likely volume of CRS that will need to be purchased in order to support ongoing compliance testing while the list remains in effect. If the agency proposes replacing these discontinued seats with newly proposed CRS, we request that the agency consider the concerns Auto Innovators raised in our prior comments in response to this notice and select seats that are more consistent with weight of the current CRS used for compliance testing.

NHTSA should ensure child dummy specifications do not exceed manufacturer recommendations.
Additionally, there are two CRSs included in the proposed update to Appendix A1 Subpart C, in which a 12-month-old CRABI child dummy used for evaluating performance does not meet weight and/or height guidelines set forth by the CRS manufacturers. Given that the CRABI 12-month-old child dummy is intended to be representative of a one year-old child, with a weight of 22.00 ± 0.66lbs and 30.26 inches (nominal) in height, this would require manufacturers to test these CRSs outside the specifications of which they are intended to be used. This is highlighted in the table below.

Model name	Appendix A1 Subpart	Age	Weight	Height
CHICCO MYFIT #04079783—0070	C & D	2 year old +	25 - 65lb	54 inch or less
COSCO FINALE #BC121	C & D	1 year old +	30 - 65lb	32-49 inch

We request that the agency reconsider either the addition or classification of the two CRSs which height and/or weight restrictions exceed child dummy measurements in its final rule.

Recommended approach for addressing discontinued seats in future.
Maintaining an updated list of CRS in FMVSS 208 Appendix A-1 helps better ensure that manufacturers can reliably purchase the necessary seats for evaluating airbag performance and suppression. However, this raises the question of how frequently the list should be updated to ensure that it is reasonably up to date and includes a sufficient number of test devices for assessing vehicles to determine whether they meet the requirements of the rule.

If the rule is not updated frequently enough, manufacturers may be exposed to greater risk of discontinued CRS forcing reliance on existing stockpiles or aftermarket sourcing of test equipment. If the rule is updated too frequently, it may not provide sufficient lead time for manufacturers to incorporate the new seat characteristics as part of vehicle design and testing process or deplete their inventory of seats purchased for testing of new models entering the marketplace.

We therefore request that NHTSA establish new parameters for ensuring the rule is updated in a more reliable and consistent manner, and that appropriate contingencies are in place for when seats are discontinued in the marketplace.

- **Establish a regular process for reviewing the CRS listed in Appendix A1** – The agency should conduct an annual review of the CRS listed in Appendix A1 to determine the number of seats that are currently available in the marketplace or have since been discontinued.

- **Manufacturers should not be required to verify compliance using CRS that have been discontinued** – As noted previously, there are a number of practical concerns associated with the requirement to test using discontinued seats. We therefore request that the agency provide reasonable accommodations to sunset the use of seats that are no longer on sale to the public. For example, the agency should consider updating the introduction of Appendix A-1 to include the following text:

    - *For child restraint systems listed in Subpart A through D of Appendix A1 that have been discontinued by the child restraint manufacturer, these child restraint systems will no longer be used by the National Highway Traffic Safety Administration to test the suppression or low risk deployment system of a vehicle that has been certified as being in compliance with 49 CFR 571.208, beginning on the first September 1 after the child restraint system has been discontinued.*

  This approach would provide additional certainty to manufacturers in planning which CRSs need to be purchased for testing in the upcoming compliance year, minimizing the burden associated with stockpiling for several years. It also allows for seats that have already been purchased to be used for the remainder of the current test year and reduces reliance on the aftermarket for subsequent years.

- **Establish a clear process for updating the CRS list in future** – We urge NHTSA to avoid updating the list too frequently (*e.g., by establishing an arbitrarily scheduled update every two years*), as this can create potential burden and regulatory uncertainty, particularly without adequate lead time. Future updates to FMVSS 208 Appendix A1 should only occur on an as needed basis when there are deemed to be an insufficient number of seats that are still in production. If the number of seats remaining on the list is insufficient in providing a reasonable baseline for evaluating LRD or suppression systems, this review could be used as a basis for initiating rulemaking to add new seats to the list for compliance verification. The addition of any new seats should ensure adequate lead time to assess whether vehicle design changes are needed to address differences in test device characteristics. However, if newly selected seats are similar in terms of the weight and dimensions of existing hardware being tested, then it may be easier to update the list as fewer design changes may be needed. Upon updating the list, sufficient lead time is also needed to allow for the acquisition of new test equipment for use in evaluating new MY vehicles.

Summary and additional lead time consideration

In summary, Auto Innovators again reiterates our previous comments and concerns with the NPRM to include heavier CRS in Appendix A1, as this will likely require substantial lead time to test and redesign key aspects of the airbag and airbag suppression system.[6]

[6] See Footnote 3 & 4.

Related to this, given the continued delay in issuing a final rule, we request that the agency ensure appropriate consideration of the potential compliance date by providing an additional year of lead time (beyond what is currently contemplated) if the rule issued before September 1, 2023.

We are hopeful that the proposed approach for addressing discontinued CRS is considered by NHTSA as this is, in our view, a reasonable, practicable, and straightforward means of addressing regulatory uncertainty and minimizing unanticipated burden.

Please do not hesitate to contact the Auto Innovators team if you have any questions on this supplemental comment.