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Synopsis of Order

1. On June 30, 2004, the National Organization for Women and four other groups ("NOW") jointly filed a Motion for Extension of Time. NOW seeks an extension of the deadline for filing comments and reply comments responsive to the *Third Report and Order and Fourth Notice of Proposed Rule Making* ("3R&O", 69 FR 34950, June 23, 2004; "4NPRM", 69 FR 34986, June 23, 2004), in this proceeding.

2. NOW states that the additional time is necessary to enable it to devote adequate time and resources to this proceeding. NOW states that it also needs time to permit various interested parties to work together to formulate an approach that may successfully resolve the issue in this proceeding.

3. We find that the public interest would be served by granting the requested extension of the comments and reply comments deadlines. The brief extension requested will enable NOW and other parties to prepare comprehensive comments and replies that will help the Commission in its decision-making and help resolve the complex and significant public policy issues raised in this proceeding.

4. NOW's Motion for Extension of Time is *granted*.

5. This action is taken pursuant to delegated authority under § 0.283 of the Commission's Rules, 47 CFR 0.283.

Federal Communications Commission.

William H. Johnson,

Chief, Media Bureau.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2002-12411]

Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by

Mr. Paul Wagner of Bornemann Products to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 207, "Seating systems."

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366-1833. Fax: (202) 366-4329. For legal issues: Eric Stas, Office of Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

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I. The Petition

On October 28, 1997, the agency received a petition¹ from Paul N. Wagner, President, Bornemann Products Incorporated (Bornemann) requesting, "that the National Highway Traffic Safety Administration initiate rulemaking on the necessary test procedures for a seating system that incorporates all safety belt anchorages on the seating system, so as to specifically define the testing processes required accordingly. If denied, it is requested that the National Highway Traffic Safety Administration reaffirm that the current test standards for seating systems hold as written."

In the petition, Bornemann referenced an August 3, 1994 amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," (59 FR 39472), which had the goal of providing adjustability of Type 2 seat belts to improve the fit and increase the comfort of the belt for a variety of different sized occupants as means of increasing belt use. Section S7.1.2.2(a) of FMVSS No. 208 states that the adjustability requirement does not apply to a seat "which is adjustable fore and aft while the vehicle is in motion and whose seat frame above the fore-and-aft adjuster is part of each of the assembly's seat belt anchorages." This effectively exempts seats that have the torso belt anchored to the seat belt (integrated seats). The petitioner drew the conclusion that, therefore, NHTSA believes that integrated seats "would be

an appropriate way to promote further seat belt use."

Bornemann pursued the manufacture of integrated seats. The petition states that "[i]n the development process, it was noticed that different recliner mechanisms, or reclining devices, used in certain integrated seating systems tested could suffer a change in detent, or reclined position, due to the design of the recliner adjustment latch, or 'teeth'; these teeth in the reclining device, which provide the back strength to an integrated system, when tested with the prescribed loads in #571.210, would actually shear during the test loading, and deform dramatically." Correspondence between Bornemann and NHTSA and a series of letters of interpretation from NHTSA from 1994 to 1997² established:

- Compliance testing for FMVSS No. 207, "Seating systems," requires the attachment of a reinforcing strut between the seat back and seat base to facilitate inertial load application through the seat's center of gravity. The seat belt loads specified in FMVSS No. 210, "Seat belt assembly anchorages," are applied simultaneously with the seat inertial loading, including the load applied to the torso belt anchored to the seat back.

- The seat must stay in the pre-load position of adjustment during the test.

- FMVSS No. 210 may be applied independently of FMVSS No. 207. No reinforcing strut is applied when testing to FMVSS No. 210. However, under FMVSS No. 210, the seat recliner may fail without jeopardizing compliance. Bornemann believes that when FMVSS No. 207 is applied to integrated seats and the belt anchorages are tested under S4.2(c) of FMVSS No. 207, "the struts attached to the seat actually may become a strengthening apparatus for the seat back itself for this test." This in turn fails to test the requirement that the seat stay in the pre-load position of adjustment. Bornemann goes on to state that "the issue to be determined by the Agency would be to ascertain whether or not this adjustment issue should be applied to the recliner mechanism in the specific circumstance."

II. Additional Data From Petitioner

On July 15, 1998, the agency sent a letter to Mr. Wagner, asking for more supporting information. In response to the agency's request, Bornemann conducted an integrated seat test program. Tests were performed on three identical seat designs. The seat recliners tested were modified by Bornemann

¹ Docket Management System NHTSA-2002-12411.

² Docket Management System NHTSA-2002-12411.

specifically for these tests and did not represent any existing design by any manufacturer. The tests were as follows: A FMVSS No. 210 test (no struts), a FMVSS Nos. 207/210 combined test (with struts), and a 56 km/h (35 mph) velocity change sled test with a 50th percentile male dummy occupant. In letters dated May 27, 1999, and June 8, 1999, Mr. Wagner provided the results of these three tests.³

In the first test (called the 210 test), the seat was subjected to the FMVSS No. 210 belt anchorage load of 1,361 kg (3,000 pounds) on the shoulder belt and 1,361 kg (3,000 pounds) on the lap belt. However, the recliner mechanism reportedly failed, shearing the recliner gear teeth and changing the detent during the test. The seat back moved forward to, approximately, a 45 degree forward angle. This would not constitute a failure in FMVSS No. 210 since the seat need only "withstand" the applied loads and the belt anchorages did not separate from the seat. Next, a new seat was subjected to a FMVSS Nos. 207/210 combined test (called the 207 test), with the seat back support struts. In this test, the seat withstood the loads with no change in adjusted position or reported damage. The seat and the recliner successfully held the load, with the seat back and seat base rotating as a unit and the seat back moving to an approximately vertical position. Finally, a third test was conducted with a 50th percentile male dummy belted into a new seat. The sled test simulated a frontal crash with a 56 km/h (35 mph) change in velocity and a 29 g peak acceleration. The results of this test reportedly mimicked the first FMVSS No. 210 test, that is, the seat recliner/lock failed causing the seat back to collapse forward.

III. Discussion

A. Summary of Relevant Regulatory Issues

- FMVSS No. 207 requires the attachment of a reinforcing strut between the seat back and seat base to facilitate inertial load application through the seat's center of gravity. Seat belt loading specified in FMVSS No. 210 is applied simultaneously with the seat inertial loading, including the load applied to the torso belt anchored to the seat back.

- The seat must stay in the pre-load position of adjustment during the test, yet the strut may prevent a failure that may have occurred if the strut were not present.

- The loads of FMVSS No. 210 may be applied independently of the loads in FMVSS No. 207. No reinforcing strut is applied when testing to FMVSS No. 210. However, under FMVSS No. 210, the seat recliner may fail without jeopardizing compliance.

- FMVSS No. 208 dynamically tests front outboard seats and restraint systems in vehicles with a Gross Vehicle Weight Rating (GVWR) of 3,856 kg (8,500 lbs) or less.

B. Analysis of the Petitioner's Position

In two interpretation letters to Bornemann, the agency noted that in accordance with S4.2 of FMVSS No. 207, a seat must remain in its adjusted position during the load application, and that the seat recliner mechanism may not have its adjustment teeth shear during the seat back strength tests.^{4,5} Further, Bornemann correctly stated in its October 28, 1997 petition that S4.2(c) of FMVSS No. 207 requires that when seat belt assemblies are attached to the seat, the seat belt anchorage loading specified in S4.2 of FMVSS No. 210 is applied in conjunction with the FMVSS No. 207 loading. However, S5.1.1(b) of FMVSS No. 207 permits the seat back to be braced by securing struts on each side of the seat between the seat back and seat base. This is done to facilitate load application through the seat's center of gravity. For the case of an integrated seat, the struts will alter the load path of the pull force applied to the upper torso restraint.

In a frontal impact, a belted occupant's body will be restrained by the seat belts. In turn, these belts will load the seat belt anchors. An upper torso anchor on a seat back would tend to apply a rotation force or torque at the connection of the seat back to the seat base. In most seat designs, the recliner mechanism or some other type of seat back locking mechanism would resist this torque. The petitioner points out that in the FMVSS No. 207 test procedure, the struts may strengthen the seat back. Thus, the petitioner indicated that there is an inherent conflict between the requirement that the seat, including the seat back, remain in its adjusted position during the test, and the requirement that the seat back is

braced to the seat base prior to testing. This leaves open the possibility that some seat back restraining devices or recliner mechanisms might comply with FMVSS No. 207 as currently written, but would fail if tested in a non-braced configuration. Further, the petitioner provided test data from a non-production seat that complied with the FMVSS Nos. 207/210 combined loading when braced, but in a sled test simulating a 56 km/h frontal impact the recliner/lock of a non-braced seat failed, causing the seat back to collapse forward.

The petition correctly states that a seat could also be subject to FMVSS No. 210 apart from FMVSS No. 207. FMVSS No. 210 does not require the attachment of a strut to the seat. However, failure of the recline/lock mechanism would not result in noncompliance with FMVSS No. 210.

Based on our analysis of the information submitted by Bornemann, we believe that the issue may merit further investigation. At its core, it is a question of whether integrated seats are adequately and/or appropriately tested by the current vehicle safety standards. Integrated seats may be installed in the front or rear rows of vehicles. In addition to having to comply with FMVSS Nos. 207 and 210, front outboard seats in light passenger vehicles are dynamically tested in order to establish that a vehicle meets the frontal barrier crash test requirements found in S5.1 of FMVSS No. 208. FMVSS No. 208 utilizes instrumented test dummies in frontal barrier crash tests to assess occupant protection. So we believe that there is sufficient assurance that front outboard integrated seats will perform adequately. However, seats located in the rear seating positions of vehicles are not subject to performance requirements during the frontal barrier crash tests in FMVSS No. 208.

NHTSA has in the past supported the development and implementation of integrated seats.⁶ These seats have the potential of providing better belt fit to their occupants because the torso belt moves as the occupant moves the seat fore and aft. In rear impacts, they may assist in preventing large relative motion between the occupant and the seat back.

IV. Conclusion

There are insufficient data available now to assess the feasibility of an improved test for integrated rear seats,

⁶ Advanced Integrated Safety Seat, NHTSA Research and Development Contract DTNH22-97-C-07003.

³ Docket Management System NHTSA-2002-12411.

⁴ Letter of Interpretation from NHTSA to Paul N. Wagner of Bornemann Products, Inc., December 23, 1994. Viewable on the Internet at www.nhtsa.dot.gov/cars/rules/interps/files/10392.html. Docket Management System NHTSA-2002-12411.

⁵ Letter of Interpretation from NHTSA to Paul N. Wagner of Bornemann Products, Inc., March 21, 1995. Viewable on the Internet at www.nhtsa.dot.gov/cars/rules/interps/files/10650.html. Docket Management System NHTSA-2002-12411.

as requested in this petition. A new research effort would be needed to generate this data. Consequently, we conclude that there is no potential agency action that can result in initiation of the rulemaking process in the near future. Since there is no possibility of rulemaking action in the near future, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: July 17, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04-16655 Filed 7-21-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040628196-4196-01; I.D. 061704A]

RIN 0648-AQ92

Fisheries Off the West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would limit entry into the American Samoa-based pelagic longline fishery. This proposed rule, which would implement Amendment 11 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), is intended to: avoid a possible "boom and bust" cycle of development that could disrupt community participation in the small-scale pelagic fishery; establish an accepted regulatory framework for the American Samoa-based longline fishery; reduce the potential for the EEZ around American Samoa; maintain local catch rates of albacore tuna at economically viable levels; and provide opportunity for substantial participation in the large vessel (greater than 50 ft or 15.1 m in length) sector of the fishery by indigenous people of American Samoa. This proposed rule would apply to the owners and operators of vessels that fish for pelagic management species under Hawaii limited access longline permits

or western Pacific general longline permits within the EEZ and high seas around the Western Pacific Region (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Midway, Johnston, and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands).

DATES: Comments on this proposed rule must be received by September 7, 2004.

ADDRESSES: Written comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA) should be mailed to William Robinson, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941.

Comments will also be accepted via e-mail and should be sent to

AQ92@noaa.gov. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this proposed rule may be submitted to William Robinson (see **ADDRESSES**) and to David Rostker, Office of Management and Budget (OMB), by email at David_Rostker@omb.eop.gov or by facsimile (Fax) to 202-395-7285. Copies of Amendment 11, which includes an Environmental Assessment (EA) and an IRFA, may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or on the internet at <http://www.wpcouncil.org>.

FOR FURTHER INFORMATION CONTACT: Eric Kingma, Council, at 808-522-8220 or Alvin Katekaru, PIRO, at 808-973-2937.

SUPPLEMENTARY INFORMATION: The pelagic longline fishery within the EEZ around American Samoa was established in 1995 by fishermen operating small "alias" twin-hulled vessels less than 40 ft (12.2 m) in length. The American Samoa-based longline fishery, which primarily targets albacore tuna for domestic canning, has undergone rapid expansion since 1995. Between 1997 and 2002 the longline fleet increased from approximately 21 mostly small vessels to 75 vessels of various sizes and capabilities. Of the 75 active longline vessels, 40 were alias 40 ft (12.2 m) or less in length, 5 vessels were greater than 40 ft (12.2 m) and ranged up to 50 ft (15.2 m) in length, 15 vessels were greater than 50 ft (15.2 m) ranged up to 70 ft (21.3 m) in length, and 15 vessels are greater than 70 ft (21.3 m) in length. Generally, vessels over 50 ft (15.2 m) set five to six times more hooks than the smaller vessels.

Due to regional geography, operators of longline vessels based in American Samoa have access to limited fishing grounds because the EEZ around American Samoa is bounded on all sides by the EEZ's of neighboring countries. These shared boundaries are generally less than 200 miles from American Samoa's shores, and therefore the U.S. has only 113,560 nm² (389,997 km²) of EEZ around American Samoa.

To avoid gear conflicts between small and large vessels, NMFS issued a final rule on January 30, 2002, (67 FR 4369), prohibiting large vessels >50 ft (15.2 m) from fishing for pelagic species within 50 nm around American Samoa (a few large-scale boats received exemptions to the large vessel closed area). As a result, most of the large-scale longline fishing effort became concentrated in the remaining 260,000 km² (75,700 nm²) of the EEZ (outside of 50 nm) around American Samoa. It was determined that an unrestrained longline fishery has the potential of reaching a hook density level of 70 hooks per km² per year (20 hooks per nm² per year). And it was also known that a hook density of 55 hooks per km² per year (16 hooks per nm² per year) is likely to result in gear conflict in the fishery. Therefore, concern was raised that the large vessel closed area alone will not prevent gear conflicts. It became readily apparent that preventing gear conflicts among the longliners in the EEZ around American Samoa might require a limited entry program.

In addition to gear conflicts, over-capitalization in the American Samoa-based longline fishery may produce conditions not consistent with the objectives of the Pelagics FMP. Such conditions may include, among other things, a reduction in local catch rates of albacore tuna below economically viable levels, and a possible "boom and bust" cycle of development that could disrupt current community participation and future participation by indigenous American Samoans within the fishery.

To avoid the previously mentioned conditions listed above, the Council convened several public workshops in 2001 regarding the management of the expanding American Samoa longline fishery. The workshops focused on various management options such as catch quotas, effort restrictions (e.g. hook limits), and landing restrictions. Overall, the general consensus among workshop participants, which included longline fishermen and community members, was that a limited entry program was needed for the American Samoa-based longline fishery.

In 2002, the Council prepared an amendment to the Pelagics FMP