

railroads that have already taken the lead on this issue by having in effect a similar or comparable requirement: Burlington Northern Santa Fe, Conrail, CSX, Norfolk Southern, and Union Pacific.

FRA may modify Safety Advisory 98-2, issue additional safety advisories, or take other appropriate necessary action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on June 1, 1998.

George Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 98-14975 Filed 6-4-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-97-3194; Notice 2]

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

Cosco, Incorporated of Columbus, Indiana, has determined that approximately 82,176 child restraint systems 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, with a 30-day comment period, on February 20, 1998, in the **Federal Register** (63 FR 8735). NHTSA received no comments.

FMVSS No. 213, paragraph S5.7, requires that each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302, "Flammability of Interior Materials." This requires that any material that does not adhere to other material(s) at every point of contact shall meet the burn rate requirements of S4.3 when tested separately. Materials are to be tested as a composite only if the material adheres to other material(s) at every point of contact.

Following compliance tests conducted by the National Highway Traffic Safety Administration (NHTSA), Cosco has confirmed through its investigation that it manufactured and distributed a number of Touriva convertible child restraint systems

whose covers incorporate an additional polyester fiberfill pillow which does not meet the flammability requirements of FMVSS Nos. 213 and 302. The Cosco child restraints affected and the dates of production are as follows: Touriva Overhead Shield Accu-Just (Model 02-025; 3/95 to 6/96); Touriva Luxury Overhead Shield AccuJust (Model 02-045; 2/95 to 6/96); Touriva Overhead Shield (Model 02-034; 4/94 to 6/96); Touriva Overhead Shield Accu-Just (Model 02-054; 4/94 to 6/96); Touriva 5 point (Model 02-564; 3/95 to 6/96); Touriva Overhead Shield (Model 02-055; 1/95 to 6/96); Touriva Luxury Overhead Shield (Model 02-065; 3/95 to 6/96); Olympian Overhead Shield (Model 02-257; 6/96); Touriva 5 point (Model 02-597; 6/96); Touriva Safe T-Shield (Model 02-096; 4/96 to 6/96); and Touriva Overhead Shield Accu-Just (Model 02-064; 1/95 to 6/96). All of the models listed are convertible child restraints incorporating the same shell design and a pillow in the head contact area, but the different models are a combination of restraint types, cover designs, and options. In each of the noncompliant models, a polyester fiberfill is utilized to form the pillow in the head area of the cover, and it is this polyester fiberfill material which exceeded the 4 inches per minute maximum burn rate when tested in accordance with S4 of FMVSS No. 302. In its investigation, Cosco found burn rates ranging from 17.3 inches per minute to 39.5 inches per minute in six tests conducted on two different samples of the polyester fiberfill in question.

Cosco supports its application for inconsequential noncompliance with the following:

As the non-complying polyester fiberfill is incorporated into a pillow located in the child restraint near the top of the pad; it is a vertical surface. This configuration makes the likelihood of ignition from cigarettes or any other similar ignition source virtually nil.

Complying materials encase the relatively small amount of non-complying polyester fiberfill. The amount of potentially non-complying polyester fiberfill incorporated in the pillow is 0.0951 pounds. The various Touriva convertible child restraints range in weight from approximately eight to ten pounds. This means that approximately one percent of the child restraint is potentially non-complying. Furthermore, as is confirmed in the NHTSA tests which identified the non-complying polyester fiberfill, the material encompassing the non-complying polyester fiberfill complies with the FMVSS 302 Flammability Standard. This includes the fabric covering the surface of the pad, the polyurethane foam in the pad, the fabric backing of the pad, and the polypropylene shell itself. Thus, the only way the non-

complying fiberfill would be exposed to a source of ignition that has not already consumed the child restraint is if the cover of the pillow is torn, exposing the fiberfill, and an ignition source then finds its way to this exposed fiberfill. The probability of such a sequence of events occurring is virtually nil. These facts make the potential of the non-complying polyester fiberfill in the pillow contributing to an injury or death even less likely.

Cosco has no reports of the burning of a cover of one of the suspect models (or any other child restraint system cover). All occupant protection studies which Cosco has reviewed, indicate an almost infinitesimal risk of injury or death by vehicle fires in total, at least in collisions. Cosco is unaware of any data on fires of the interior of vehicles unrelated to collisions.

The agency has reviewed Cosco's application and has decided that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees with Cosco that the noncompliant polyester fiberfill material incorporated in the pillow of noncompliant Touriva child restraint systems is unlikely to pose a flammability risk due to the unlikelihood of exposure to an ignition source given the pillow's vertical orientation on the child restraint, the fact that the noncompliant material is fully encased by materials which comply with the flammability requirements of FMVSS No. 302, and the very limited quantity of noncompliant material used in construction of the child restraint.

The agency granted an application for inconsequential noncompliance submitted by PACCAR, 57 FR 45868 (October 5, 1992), in which the circumstances were analogous to those presented in the Cosco application. PACCAR manufactured 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.

NHTSA disagrees with Cosco's assertion that the risk of injury or death in vehicle fires due to collisions is "infinitesimal." Nevertheless, although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the polyester fiberfill 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 decided that Cosco has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its application is granted. Accordingly, Cosco 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: May 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98-15037 Filed 6-4-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33597]

Great Western Railway of Colorado, LLC—Acquisition and Operation Exemption—Great Western Lines, LLC

Great Western Railway of Colorado, LLC (GWC), a Class III rail carrier, has filed a verified notice of exemption to acquire approximately 23 miles of rail line from Great Western Lines, LLC.¹ The line involved in the acquisition transaction is located in Colorado as follows: (1) between milepost 76.5, at Fort Collins, and milepost 98.9 at Greeley; and (2) the Burlington Northern Railroad Company's former interchange track at Loveland, between the end of the track and a point 10 feet south of Tenth Street in Loveland.

The transaction was to be consummated on or shortly after May 14, 1998, the effective date of the exemption.

¹ GWC certifies that the projected revenues do not exceed those that would qualify as a Class III rail carrier. GWC also certifies that the projected annual revenue will not exceed \$5 million.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33597, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

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Decided: June 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 98-15066 Filed 6-4-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33598]

OmniTRAX, Inc.—Control Exemption—Northern Ohio & Western Railway, LLC

OmniTRAX, Inc. (OmniTRAX), a noncarrier holding company has filed a notice of exemption to control Northern Ohio & Western Railway, LLC (NOW), a Class III rail carrier. OmniTRAX is proposing to acquire all of the issued and outstanding stock of NOW.

The transaction was scheduled to be consummated on May 14, 1998, the effective date of the exemption.

Applicant currently controls 9 Class III railroad subsidiary operating in 7 states: Central Kansas Railway LLC and Kansas Southwestern Railway LLC, in Kansas; Chicago Rail Link LLC and Manufacturers' Junction Railway LLC, in Illinois; Georgia Woodlands Railroad LLC, in Georgia; Great Western Railway of Colorado LLC, in Colorado; Great Western Railway of Iowa LLC, in Iowa; Newburgh and South Shore Railroad Limited, in Ohio; and Panhandle Northern Railroad LLC, in Texas.

OmniTRAX states that: (i) the railroads do not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the ten railroads with each other or any railroad in their corporate family; and (iii) the

transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33598, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP 1455 F Street, N.W., Suite 225, Washington, DC 20005.

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Decided: June 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33611]

Union Pacific Railroad Company—Petition for Declaratory Order—Former Missouri-Kansas-Texas Railroad Line Between Jude and Ogden Junction, TX

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board (Board) is instituting a declaratory order proceeding and requesting comments on the petition of the Union Pacific Railroad Company (UP), for an order declaring that the Board lacks authority under 49 U.S.C.