

Standard No. 101 *Controls and Displays*: replacement of the instrument cluster and cruise control lever with U.S.-model components.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lamps, and (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: reprogramming to activate the theft prevention warning system.

Standard No. 208 *Occupant Crash Protection*: (a) reprogramming to activate the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection*: Inspect vehicles and replace any non-complying part with U.S. model parts. The petitioner states that the vehicles are equipped with side impact air bags identical to those found on U.S.-certified models.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent

possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 25, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2000-7818; Notice 2]

Evenflo Company, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Evenflo Company, Inc., of Vandalia, Ohio, has determined that 999,515 child restraint systems that it manufactured fail to comply with S5.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," which incorporates S5.1(d) of FMVSS No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance reports." Evenflo 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 on August 29, 2000, in the **Federal Register** (65 FR 52471), with a 30-day comment period. NHTSA received no comments.

FMVSS No. 213, S5.4.1(a) "Performance Requirements," requires that:

The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209, have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS No. 209.

Evenflo has determined that certain child restraints it manufactured may have tether straps which fail the webbing strength requirements of FMVSS No. 213, S5.4.1(a). The child restraints containing the noncompliance are Ultara (model numbers 234, 235, 236, 237, 238, and 239), Secure Comfort (model number 247), Champion (model

number 249), Medallion (model numbers 251, 254 and 259), Horizon (model numbers 420, 421, 425, and 426), Conquest (model numbers 428, and 429) and Tether Kits (model number 628). These child restraints and tether kits were manufactured between January 1, 1998 and May 30, 2000. A total of 959,514 convertible child seats and 40,001 tether kits are in noncompliance with this requirement.

Evenflo supports its application for inconsequential noncompliance with the following:

"In March 2000, Evenflo received a PE [Preliminary Evaluation] from NHTSA relating to a potential noncompliance of tether webbing after being subject to abrasion as specified in S5.1(d) of FMVSS No. 209 (referenced in S5.4.1(a) of FMVSS No. 213). According to NHTSA, based upon testing conducted by NHTSA at SGS U.S. Testing, the Elizabeth Mills black tether webbing (vendor style #7635) retained only 67.1 percent of its unabraded strength. Section S5.4.1(a) of FMVSS No. 213 requires webbing used to attach a child restraint to a vehicle to have a breaking strength after abrasion of not less than 75 percent of the unabraded webbing strength.

In April 2000, Evenflo reviewed testing results from ongoing testing at Elizabeth Webbing Mills that showed all 82 test results acceptable on tests conducted from January 28, 1998 to March 13, 2000. The control chart showed the process to be in statistical control.

Evenflo visited SGS U.S. Testing in Fairfield, New Jersey to review the testing process and obtain samples of the potential nonconforming tether webbing material tested. SGS U.S. Testing did not keep the test samples and had not finished its test report.

Evenflo then tried to obtain samples from our finished good warehouse close to the date code tested by SGS U.S. testing. Exact matches of the date code could not be found. Samples of a close date code were then tested at the following independent test labs: Indiana Mills (IMMI), Magill, ACW, and Elizabeth Webbing Mills. The test results yielded a variety of results from 56 to 88 percent of unabraded strength. A follow up of the test results revealed differences in test set-ups and test equipment.

Concurrently, Evenflo conducted sled testing of abraded and unabraded tethers at Veridian to determine if [there] was a safety concern with the tethers in use in the field. All test results shared the same basic performance for abraded and unabraded tethers. The testing demonstrated at least a 90 percent margin on tensile strength after abrasion (mean tensile strength after abrasion is 3,101 pounds and the maximum tensile load in sled testing was 1,616 pounds). According to Evenflo, the sled test results clearly demonstrate that there were no potential safety issues associated with abraded or unabraded tethers on the child restraint systems, and that there is more than an adequate margin of safety to protect against failures during reasonably expected usage.

Elizabeth Webbing Mills discovered an error in the manufacture of its test equipment. An angle specified for 85 degrees on the equipment was actually built to 90 degrees. Testing with the correct angle revealed a significant effect on the webbing Evenflo used but not on the webbing used by Evenflo's competitors.

To verify and understand this effect, Evenflo performed a multi-factor factorial design of experiment. The design of experiment confirmed the effect of Evenflo's webbing material relative to other tether material and the percent unabraded test, but also identified a test set-up within FMVSS No. 213 and FMVSS No. 209 that would yield potentially passing results. A question of what was the proper test weight, 1.5 or 2.33 Kg. to use in the testing process was identified.

Evenflo then requested an official interpretation from NHTSA as to the correct test weight to be used. A verification test was conducted to confirm the test set-up identified by the multi-factor factorial design of experiment. On June 19, 2000, the testing did not reveal an acceptable pass rate and as a result Evenflo has stopped manufacture and shipment of child restraint systems using this Elizabeth Webbing Mills style of webbing and is filing this section 573, non-compliance information report."

Under 49 U.S.C. 30118(d) and 30120(h), NHTSA may exempt manufacturers from the Act's notification and remedy requirements when it determines that a noncompliance is inconsequential to motor vehicle safety. Evenflo states that it believes that the noncompliance here should be found to be inconsequential because the products meet the intent of the FMVSS No. 209 and FMVSS No. 213 performance requirements. Evenflo also stated that its testing has established that even in the severely abraded condition, child restraints with this tether webbing, which was manufactured by Elizabeth Webbing Mills (EWM), pass dynamic sled testing with over a 90 percent strength safety margin. Finally, Evenflo asserts that the EWM webbing tethers are stronger before abrasion than the tethers of other major U.S. child restraint manufacturers. Only when the EWM webbing tethers are severely abraded is their strength reduced to that of the competitors' tethers. This accounts for the EWM webbing tethers' noncompliance with the 75 percent strength retention requirement, but, according to Evenflo, it has no effect on the safety of the EWM webbing tethers in real world use.

The agency has reviewed Evenflo's application, analyzed Office of Vehicle Safety Compliance's (OVSC) data, and other data pertaining to breaking strength and abrasion of webbing used in child restraint systems and adult seat

belt assemblies. The agency also evaluated child restraint data obtained in the 2001 New Car Assessment Program (NCAP), and Transport Canada's dynamic and static load distributions data on tether anchorages and hooks.¹ Results of this analysis show that the Evenflo dynamic tests at Veridian produced tether loading consistent with measured tether loads in agency testing. Based on its analysis, the agency has determined that the webbing used in Evenflo's child restraints achieved the performance previously specified in FMVSS No. 209 and FMVSS No. 213 during 1971–1979 for webbing in the unabraded condition and after abrasion conditioning.

Furthermore, the agency notes that from 1971 to 1979, FMVSS No. 213 was "Child Seating Systems," and Type 3 seat belt assembly minimum breaking strength requirements were used to determine compliance for resistance to abrasion. During that period, the minimum breaking strength for a Type 3 belt for webbing connecting pelvic and upper torso restraints to attachment hardware when the assembly had a single webbing connection was 17,793 N. The minimum value after abrasion was 75% of this value, or 13,345 N. Evenflo's EWM unabraded tether webbing strength of 20,426 N, and the EWM abraded strength of 13,706 N, both surpass the previous requirements for Type 3 webbing.

For these reasons, the agency has decided that Evenflo has met its burden of persuasion that the noncompliance at issue is inconsequential to safety and its application is granted. Accordingly, Evenflo is hereby exempted from the notification and remedy provisions of 49 U.S.C. sections 30118 and 30120.

NHTSA believes that the absence of minimum breaking strength requirements for unabraded webbing in child restraint systems in the current version of FMVSS No. 213 is inappropriate. We plan to initiate rulemaking to amend FMVSS No. 213 to require a minimum breaking strength for webbing used in child restraint systems. The breaking strength requirements are needed to ensure that all child restraints being introduced into the market have adequate webbing strength to provide child safety protection over their lifetime.

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

¹ Docket No. NHTSA–1999–6160–19.

Issued on April 25, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34194]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) from UP's milepost 2.3 in Omaha, NE, to milepost 76.0 in Sioux City, IA, for a distance of 73.7 miles.¹

The transaction was scheduled to be consummated on April 15, 2002. The temporary trackage rights will allow BNSF to bridge its train service over the UP line while BNSF's main line is out of service due to maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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. 34194, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael E. Roper, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

¹ On April 10, 2002, BNSF filed a petition for exemption in STB Finance Docket No. 34194 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF requests that the Board permit the proposed temporary overhead trackage rights arrangement described in the present proceeding to expire on April 30, 2002. That petition will be addressed by the Board in a separate decision.