

track or any connection to the general system. MUNI has agreed to a long-term lease with UPRR to operate and maintain the respective shared crossings and interlockings in accordance with FRA standards. MUNI is seeking a permanent waiver of compliance from certain CFR parts of title 49, specifically Part 223 Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses Part 238 Passenger Equipment Safety Standards, and part 219 Control of Alcohol & Drug Use (as a light rail operation, MUNI adheres to an accepted drug policy established by the FTA).

Since FRA has not yet completed its investigation of MUNI's petition, the agency takes no position at this time on the merits of MUNI's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board to participate in the board's consideration of MUNI's waiver petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2003-15988) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on September 24, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-03-14810; Notice 1]

Evenflo Company, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Evenflo Company, Inc. ("Evenflo") of Vandalia, Ohio, has determined that as many as 742,736 child restraint systems and 633 accessory tether kits may 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." 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.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120, and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 213, Paragraph S5.9(b) requires "In the case of each child restraint system manufactured on or after September 1, 1999 and that has components for attaching the system to a tether anchorage, those components shall include a tether hook that conforms to the configuration and geometry specified in Figure 11 of this standard." Figure 11 specifies that the height of the tether hook shall not exceed a maximum of 20 millimeters.

In its Part 573 Report filed with the agency on February 3, 2003, Evenflo stated that "On the afternoon of January 28, 2003, a company seeking to supply Evenflo with tether hooks for child restraints advised Evenflo that it believed some of the tether hooks currently used by Evenflo, as well as other child restraint manufacturers, did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). Evenflo undertook an investigation, and on

January 31, 2003 determined that some tether hooks supplied by SX Industries of Canton, Massachusetts did not meet Evenflo's engineering specifications and did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). A percentage of the hooks sampled by Evenflo measured between 20.11 and 20.39 millimeters." Evenflo estimates that, based on its sampling of products, between 70 percent and 80 percent of the 742,736 child restraints and 636 accessory tether kits manufactured between June 15, 2002 and January 30, 2003 contain the subject noncompliance.

Evenflo believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Evenflo supports its application for inconsequential noncompliance with the following:

Installation Testing Confirms Non-Conformance Will Not Adversely Affect Use of Tethers. In connection with this matter, Evenflo undertook installation testing on 207 different models (after eliminating duplicate tests on the same model performed by different test engineers¹) of vehicles to ensure that the non-compliance would have no adverse effect on the ability of consumers to use their tethers. For this testing, Evenflo chose two of the tether hooks in its possession which exhibited the greatest non-conformance (those that were furthest from the requisite 20 millimeters specified in the Standard). These hooks measured 20.30 mm and 20.38 mm. Although 207 different models of vehicles were examined, where applicable, all three tether attachment points² in each vehicle were separately evaluated (resulting in 586 unique data points). In every one of the 586 unique installation points the non-conforming tethers properly attached to the vehicle's tether attachment point * * * Based upon this testing, it is clear that the non-compliance is transparent to consumers, and will in no way adversely affect the consumer's ability to use his/her tether.

Dynamic Sled Testing Conclusively Demonstrates No Adverse Performance In Child Restraints. Although Evenflo cannot be certain of the number, we estimate that at least one hundred (100) dynamic sled tests were conducted (using the protocol set forth in FMVSS213) on restraints which likely would have been equipped with tether hooks that did not meet the dimensional requirements of S5.9(b) and Figure 11. In

¹ The testing, which was conducted by two different test engineers, resulted in 21 vehicles of the same model and model year being tested by each test engineer. The duplicates of these tests appear in the attached test reports, but were eliminated from the numbers provided herein (to prevent testing conducted on the same model vehicle from being counted twice).

² As can be seen from the attached test reports, some vehicles had less than three tether attachment points, and some vehicles had more than three attachment points. For each vehicle tested, the test engineers tested every tether attachment point in the vehicle which they could locate.