

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA-03-14810; Notice 2]

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

Evenflo Company, Inc. ("Evenflo") of Vandalia, Ohio, 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 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 in the **Federal Register** (68 FR 56375) on September 30, 2003, with a 30 day comment period. NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

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 supported 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 engineers<sup>1</sup>) of vehicles to ensure that the non-compliance would have no adverse affect 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 points<sup>2</sup> 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 none of these tests did the tether hook malfunction or improperly perform in any manner. Evenflo is confident that the non-compliance has no adverse impact of the dynamic performance of the child restraints.

Based on the above, Evenflo argued that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Evenflo requested that it be exempted from the notice and remedy procedures of the Vehicle Safety Act.

<sup>1</sup> 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).

<sup>2</sup> 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.

**Agency Decision**

NHTSA has reviewed Evenflo's application and the comment provided by Advocates, and has concluded that the noncompliance is inconsequential to safety for the following reasons.

In its comments to the receipt of application notice published by NHTSA, Advocates stated:

Advocates appreciates the amount of testing that was conducted and the evidence supplied by Evenflo. However, we are concerned about whether purchasers and actual users of child restraints equipped with noncompliant tether hooks are able to properly attach those hooks to vehicle tether anchors without difficulty. Proper attachment and ease-of-use of the noncompliant tether hooks to vehicle tether anchors should be demonstrated by consumers in real world situations, not trained engineers. The engineers are already familiar with the design and performance of the noncompliant tether hooks and they have a technical background not shared by the average person. Engineer testing, therefore, may not accurately reflect problems confronted by untrained consumers when attempting to engage the noncompliant tether hooks. While Advocates does not wish to overstate the issue, the presentation in the agency notice provides no basis on which to conclude that purchasers and users will not encounter difficulties in attaching the noncompliant tether hooks despite the success of the Evenflo engineers.

To resolve this issue, Evenflo should provide information confirming that real-world users of these tether hooks are not having difficulty attaching the tether hooks. Some form of blind test protocol using untrained consumers would be appropriate.

On November 5, 2003, Evenflo submitted supplemental information in response to the comments provided by Advocates. Evenflo observed the installation of a compliant and a non-compliant tether hook into various vehicles by 30 individuals. The candidate installers may have had some personal experience installing tether hooks to their personal vehicles, but they did not have any special training or knowledge. The installers were not told in advance the reason for the installation test, nor were the tether hooks identified in any way to differentiate them for the installer. None of the installers experienced any difficulties with either tether hook. NHTSA believes that the results of the additional tests conducted by Evenflo satisfactorily address the concerns raised by Advocates.

NHTSA agrees with Evenflo that the magnitude of the noncompliance—at most, 0.39 millimeters—is so small that it will not adversely affect a consumer's ability to use his/her tether, and thus, will have no material effect on safety. NHTSA notes that Detail A of Figure 11

of FMVSS No. 213, "Interface Profile of Tether Hook," specifies numerous dimensional limits for the tether hook, not only the overall tether hook height limit of 20 mm that is the subject of this inconsequential noncompliance application. Importantly, Detail A of Figure 11 specifies dimensional limits for the inside portion of the tether hook that actually attaches to the vehicle tether anchorage. NHTSA believes that adherence to these dimensional limits provides assurance that the tether hook will be able to be properly fastened onto the vehicle anchorage, even if the overall height of the tether hook is up to 0.39 mm greater than the 20 mm allowed in the standard. The tether hooks in question complied with these internal dimensional requirements, and NHTSA does not believe that the minor discrepancy in overall height will result in a safety problem in real-world applications.

In its application, Evenflo stated:

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 FMVSS No. 213) 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 none of these tests did the tether hook malfunction or improperly perform in any manner. Evenflo is confident that the non-compliance has no adverse impact of the dynamic performance of the child restraints.

As noted earlier, NHTSA has determined that the magnitude of the noncompliance is so small that it will not adversely affect a consumer's ability to use (attach/detach) his/her tether. Similarly, and as demonstrated by the lack of test failures observed by Evenflo during dynamic testing conducted using tether hooks that exceed the maximum height requirement, NHTSA does not believe that the additional fraction of a millimeter in overall tether anchorage height will result in any perceptible negative affect on the performance of the child restraint in a crash scenario.

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. 30118 and 30120.

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

Issued on: June 24, 2004.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards.*

[FR Doc. 04-14873 Filed 6-29-04; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Washington State University (WB968-6/8/04), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04-14816 Filed 6-29-04; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 24, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before July 30, 2004 to be assured of consideration. The TRIP forms can be reviewed at <http://www.treas.gov/trip>.

## Departmental Offices/Terrorism Risk Insurance Program (TRIP)

*OMB Number:* New.

*Form Numbers:* TRIP 01 and TRIP 02.

*Type of Review:* New collection.

*Title:* Terrorism Risk Insurance Program Loss Reporting.

*Description:* Information collection made necessary by the Terrorism Risk Insurance Act of 2002 and Treasury implementing regulations to pay Federal share to commercial property and casualty insurers for terrorism losses.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 100.

*Estimated Burden Hours per Respondent/Recordkeeper:* 28 hours, 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 4,200 hours.

*Clearance Officer:* Lois K. Holland, (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 04-14794 Filed 6-29-04; 8:45 am]

**BILLING CODE 4811-16-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 1023

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

**DATES:** Written comments should be received on or before August 30, 2004 to be assured of consideration.