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 19, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–19093 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice Publishing Substantive Criteria for Evaluation of Applications under the Railroad Rehabilitation and Improvement Financing Program (RRIF)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Evaluation Criteria for RRIF Program.

SUMMARY: FRA is publishing this notice in response to Congressional direction contained in section 9003(j) of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requesting the agency to identify the substantive criteria and standards used by the DOT/FRA to determine whether to approve or disapprove applications submitted under the RRIF Program. This information is being provided by publication in the **Federal Register** and posting on the DOT/FRA website, as required by the statute.

FOR FURTHER INFORMATION CONTACT: Joseph Pomponio, Director, Office of Freight Programs, Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590. Telephone: 202–493–6051, e-mail: *Joseph.Pomponio@fra.dot.gov.* Cynthia Walters, Attorney, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590. Telelphone 202–493–6064, e-mail: *Cynthia.Walters@fra.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Congress recently amended sections 502 and 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 *et seq.*), in SAFETEA–LU (Pub. L. 109–59). These amendments address DOT's RRIF program, which authorizes the Secretary of Transportation (Secretary) to disburse money through direct loans and loan guarantees to various entities. RRIF loans and loan guarantees are used to acquire, improve or rehabilitate intermodal or rail equipment and facilities, refinance debt that was undertaken for such purposes, or to develop or establish new rail or intermodal facilities. The SAFETEA–LU amendments expand the total available program obligations from $3.5 billion to $35 billion and make several other program changes. The Secretary's authority to administer this program has been delegated to the Administrator of FRA (49 CFR sections 1.49(t) and 260.1, Program Authority).

In addition to the RRIF program changes, SAFETEA–LU requires the Department, within thirty days after enactment of the statute, to publish in the **Federal Register** and post on the Department's Web site the substantive criteria and standards used by the Secretary to determine whether applications will be approved or disapproved for RRIF loans. The substantive criteria responsive to the request of Congress are the subject of this notice and are described below.

FRA's Substantive Criteria for Evaluation of RRIF Applications

FRA is providing the criteria and standards used to determine whether to approve or disapprove an application submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976. These criteria are drawn from the legislation authorizing the RRIF program (45 U.S.C. 821 *et seq.*) and program implementing regulations (49 CFR part 260). The words used below to describe the criteria differ from the statute and the regulations only for purposes of brevity. This notice does not contain any new criteria or impose any new legal requirements or have any legal effect other than to satisfy the mandate from Congress to issue this notice. Determinations are made based on the following criteria and standards, as more fully set forth in the statute or the regulations, evaluated individually and considered collectively.

- The statutory eligibility of the applicant and the project (49 CFR 260.3, definition of applicant and 49 CFR 260.5, eligible purposes);
- The creditworthiness of the project, including the present and probable demand for rail services and a reasonable likelihood that the loan will be repaid on a timely basis. (49 CFR part 260, Subpart B–FRA policies and procedures for Evaluating Applications for Financial Assistance)
- The extent to which the project will enhance safety. (49 CFR 260.7(a))
- The significance of the project on a local, regional, or national level in terms of generating economic benefits and improving the railroad transportation system. (49 CFR 260.7(c))
- The improvement to the environment that is expected to result directly or indirectly by the implementation of the project. (49 CFR 260.7(b)) and
- The improvement in service or capacity in the railroad transportation system or the reduction in service-or capacity-related problems that is expected to result directly or indirectly from the implementation of the project (45 U.S.C. 822(c))

Issued in Washington, DC on September 19, 2005.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05–19094 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21859; Notice 2]

Toyota Motor North America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Toyota Motor North America (Toyota) has determined that certain model year 2003 through 2005 vehicles that it produced do not comply with S5(c)(2) of 49 CFR 571.225, Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child restraint anchorage systems.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Toyota has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published, with a 30 day comment period, on July 19, 2005 in the **Federal Register** (70 FR 41476). NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

Affected are a total of approximately 156,555 model year 2003 to 2005 Toyota

Tundra access cab vehicles produced between September 1, 2002 and April 22, 2005. S5(c)(2) of FMVSS No. 225 requires each vehicle that

> (i) Has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 * * * and, (ii) Has an air bag on-off switch meeting the requirements of S4.5.4 of Standard 208 * * * shall have a child restraint anchorage system for a designated passenger seating position in the front seat, instead of a child restraint anchorage system that is required for the rear seat * * *.

The subject vehicles do not have a child restraint lower anchorage in the front seat as required by S5(c)(2).

Toyota believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota states that it considered whether rear-facing child restraints could be used in the noncompliant vehicles, and ''is unaware of any rear-facing child restraints that require lower anchorages in the vehicle.'' Toyota further states,

> Most, if not all rear facing child restraints (even those with lower anchorage systems), have belt paths which allow the child restraint to be secured properly in the front passenger seat of the subject vehicles utilizing the front passenger seatbelt. We also note that child restraint manufacturers provide instructions with their child seats (even lower anchorage equipped child seats) on how to install their restraint with the seatbelt. In addition, all Toyota Tundra vehicles provide instructions on how to install child restraints with the seatbelt.

The public comment by Advocates in response to the **Federal Register** notice states that Toyota's rationale ''does not obviate the fact that front passenger seating positions were required to be equipped with LATCH [lower anchors and tethers for children] because LATCH systems more readily ensure the proper installation of child restraints and, therefore, are safer than using vehicle seat belts,'' as well as being likely to lead to increased child restraint use due to ease of use.

NHTSA agrees with Advocates that the absence of LATCH anchorages compromises the overall level of safety of child restraints. FMVSS No. 225 requires a simple, uniform system for installing child restraints that increases the likelihood of proper installation. Prior to FMVSS No. 225 many child restraints were improperly installed, increasing the safety risk to children riding in the improperly installed child restraints. Therefore, it is reasonable to conclude that noncompliant vehicles do not offer the same level of safety as compliant vehicles because of the increased risk of improper child restraint installation.

Toyota further points out that model year 2000 to 2002 Tundra access cab vehicles have a front passenger airbag on-off switch as standard equipment but not lower anchorage system because they were produced prior to the effective date of the FMVSS No. 225 lower anchorage requirement with which the subject vehicles noncomply. Toyota asserts that,

> considering child restraint installation in the front passenger seat, the 2003–2005 MY vehicles (subject vehicles) are no different than the 2000–02 MY vehicles and further, it follows that the subject vehicles are no less safe than the 2000–02 MY vehicles.

Advocates responds by pointing out that the promulgation of FMVSS No. 225 was justified by the additional safety it would provide. ''[F]ewer child deaths and many fewer injuries are expected to result from widespread use of the LATCH system. * * * [and] it will result in far fewer children being exposed to the risk of riding in an improperly installed child restraint.'' NHTSA agrees with Advocates that the noncompliant vehicles offer a lower level of child passenger safety than those which comply with the requirements of FMVSS No. 225, which is why the standard was promulgated.

Toyota further states that it considered

> whether a lower anchorage child restraint can be mistakenly installed in the front passenger seat attempting to utilize the lower anchorage. Upon investigating the seat bight of the subject vehicles, we believe a current vehicle owner or subsequent owner could easily observe that no lower anchorage bars exist. We would also note that there are no portions of the seat frame within the seat bight of the front passenger seat that may be mistaken for lower anchorage bars.

In response to this assertion, Advocates states that it is ''beside the point that vehicle owners will not mistakenly attempt to use the nonexistent LATCH system * * * The issue is that the noncompliance * * * denies owners and parents the safer LATCH alternative that is required by law.''

NHTSA agrees that this argument by Toyota is beside the point in terms of consequentiality to safety. Additionally, through NHTSA's child passenger safety working group, many examples of misuse have been presented. Parents who mistakenly believe their vehicles have LATCH (pre-2002 vehicles) have used seatbelt latch plates, drilled holes through the nylon webbing of the seatbelt or seatbelt buckle stalk, and attached seats to the seat support structure or other places within the vehicle that can be hooked to, all in attempts to secure the child restraint using the LATCH system. In this particular case, the owner's manual for the Toyota Tundra provides instruction for installing a child restraint using the LATCH system, even though one is not available. A parent might take an improper action, as described previously, in an attempt to ''find'' the LATCH system or ''create'' a LATCH system, resulting in the improper installation of the child restraint. Therefore, the lack of the required LATCH system is consequential to safety.

Finally, Toyota notes that it has not received customer complaints regarding the absence of a front passenger seat child restraint lower anchorage system, nor has it received any reports of a crash, injury or fatality due to this noncompliance. NHTSA does not consider the absence of these reports to be compelling evidence of the inconsequentiality of this noncompliance to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby denied.

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

Issued on: September 19, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–19092 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34747]

Central Puget Sound Regional Transit Authority—Acquisition Exemption—BNSF Railway Company

The Central Puget Sound Regional Transit Authority (Sound Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from BNSF Railway Company (BNSF) two lines of railroad, totaling approximately 22.35 miles on the Lakeview Subdivision located in Pierce County, WA. The rail lines are as follows: (1) The Lakeview North Segment, between milepost 2.15 in Tacoma and milepost 8.9 in Lakeview, and (2) the Lakeview South Segment, between milepost 8.9 in Lakeview and milepost 24.5 in Nisqually.

At the time of filing of the verified notice, Sound Transit and BNSF had