adoption of quiet technology, as appropriate; and (6) shall allow for modifications of the IOA based on experience if the modification improves protection of national park resources and values and of tribal lands (49 U.S.C. 40128(c)(2)(D)–(I); 14 CFR 136.11(b)(4)–(9)).

Since the Act does not directly address the issue of IOA transferability, the FAA must determine whether allowing transferability of IOA from one operator to another is consistent with the Act's provisions and overall goals. As discussed below, the FAA finds that permitting the transferability of IOA is neither consistent with provisions of the Act nor its overall goals.

Congress required ATMPs to be established over units of the national park system and abutting tribal lands to ensure that the agencies analyze the environmental impact of commercial air tours upon such land and ''develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands'' (49 U.S.C. 40128(b)(1)(B); 14 CFR 136.9(a)). Under the Act, commercial air tours are not permitted until an ATMP is completed for the park, unless the operator is an existing air tour operator as defined in the Act and receives IOA, has received authority to operate under a part 91 letter of authority (49 U.S.C. 40128(a)(3); 14 CFR 136.7(g)), or has received authority to operate as a new entrant prior to the completion of the ATMP (49 U.S.C. 40128(c)(3)(C); 14 CFR 136.11(c)).

Congress set up the IOA process as a way of ensuring that those commercial air tour operators conducting commercial air tours over national parks at the time of Act's enactment would not be put out of business while the FAA, in cooperation with NPS, analyzed the environmental impact of the air tours on the national park unit and developed an ATMP. The IOA then ends 180 days after the ATMP is adopted.

IOA is granted to specific operators over specific parks. Those operators who conducted commercial air tour operations in the 12 months preceding enactment (April 5, 2000) over the particular units of the park system for which they are applying for authority qualify for IOA. Those operators receive an allocation equal to the number of operations they conducted in the 12-month period preceding enactment, or an average, based on the three years preceding enactment. Thus, under the terms of the Act, only existing operators initially quality for IOA.

Additionally, a particular operator's IOA may not exceed the number of allocations earned by that operator for a calendar year, unless it was increased pursuant to the Act's provisions, which require concurrence between the FAA and NPS. The FAA and NPS may grant such increases under limited circumstances, and the allocations involved in the increase are not subject to sale.

Given the specificity of the IOA authority and the limitations placed on that authority, FAA has concluded that Congress did not intend for the operators to possess it as a valuable right to be bought and sold. IOA was designed as a temporary solution to allow operators already conducting air tours at the time of the enactment of the Act to continue to operate pending completion of the ATMP. If we allow IOA to be transferred, however, then operators may grow an existing business by adding allocations to their current allotment without FAA and/or NPS approval.

Issued in Washington, DC, on June 22, 2006.

**James W. Whitlow,**

*Deputy Chief Counsel.*

[FR Doc. 06–5746 Filed 6–23–06; 3:24 pm]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2005–21859; Notice 4]**

### Toyota Motor North America, Inc., Denial of Appeal of Decision on Inconsequential Noncompliance

Toyota Motor North America, Inc. (Toyota) has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its petition for a determination that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child restraint anchorage systems,'' is inconsequential to motor vehicle safety. Toyota had applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, ''Motor Vehicle Safety.'' This notice announces and explains our denial of Toyota's appeal.

**Background**

NHTSA's notice of receipt of Toyota's original petition was published on July 19, 2005 in the **Federal Register** (70 FR 41476). On September 26, 2005, NHTSA published a notice in the **Federal Register** denying Toyota's petition (70 FR 56207), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Toyota appealed, and notice of the agency's receipt of the appeal was published in the **Federal Register** on November 1, 2005 (70 FR 65970). NHTSA received two public comments. One was from Advocates for Highway and Auto Safety and the second was from Toyota, the petitioner.

Affected are a total of approximately 156,555 model year (MY) 2003 to 2005 Toyota Tundra access cab vehicles produced between September 1, 2002 and April 22, 2005, referred to in this notice as ''the subject vehicles.''

A child restraint anchorage system consists of two lower anchorages and a tether anchorage that can be used to attach a child restraint system to a vehicle. These systems are sometimes referred to as LATCH (Lower Anchorages and Tethers for Children) systems and are intended to help ensure proper installation of child restraint systems.

NHTSA's regulations require the installation of a LATCH system in the front passenger seats of vehicles that have an optional on-off switch for the front passenger air bag and that satisfy certain other requirements. Specifically, S4.5.4 of FMVSS No. 208 allows installation of an air bag on-off switch under one of two conditions—the vehicle has no forward-facing rear seating positions or there is not enough room in the rear seat (less than 720 mm) to permit the proper installation of a rear-facing child seat.

Further, S5(c)(2) of FMVSS No. 225 requires that 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 have an air bag on-off switch but do not have the child restraint lower anchorage in the front seat as required by S5(c)(2). As Toyota recognizes, the vehicles are noncompliant.

Toyota contends that this noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. In its petition, Toyota stated that 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 stated,

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.

In denying Toyota's original petition, NHTSA pointed out that the absence of required LATCH anchorages compromises the overall level of child passenger safety. FMVSS No. 225 requires a simple, uniform system for installing child restraints that increases the likelihood of proper installation. Information available to NHTSA when it was developing FMVSS No. 225 indicated that child restraints were being improperly installed with great frequency, increasing the safety risk to children riding in the improperly installed child restraints. The purpose of FMVSS No. 225 was to increase the likelihood of proper installation of child restraint systems by requiring easy-to-use anchorage systems. This was explained in **Federal Register** notices on FMVSS No. 225. Therefore, NHTSA denied Toyota's petition, as vehicles lacking required LATCH anchorages do not offer the same level of safety as compliant vehicles because of the increased risk of improper child restraint installation.

Toyota's original petition further pointed out that model year 2000 to 2002 Tundra access cab vehicles produced prior to the effective date of the FMVSS No. 225 lower anchorage requirement have a front passenger airbag on-off switch as standard equipment but no lower anchorage system in the front seat. In light of this fact, Toyota asserted 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.

In response, NHTSA explained that the promulgation of FMVSS No. 225 was justified by the additional safety it would provide, i.e., that fewer child deaths and 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 injury while riding in an improperly installed child restraint. Whether a noncompliant vehicle that lacks a required safety device offers safety comparable to that provided by a vehicle manufactured prior to the effective date of the requirement to install that device is irrelevant to the consequentiality of noncompliance with the new requirement. Rather, the relevant inquiry focuses on the differences in safety between a vehicle that does comply with the new requirement and the vehicles that are the subject of a petition for a decision that the noncompliance is inconsequential to motor vehicle safety under 49 U.S.C. 30118 and 30120. Here, NHTSA concluded that the subject vehicles offer a lower level of child passenger safety than those meeting the requirements of FMVSS No. 225.

Toyota further stated in its petition 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.

NHTSA rejected this argument, explaining that whether vehicle owners may or may not mistakenly attempt to use the nonexistent LATCH system fails to address the issue that the noncompliance denies owners and parents the safer and legally required LATCH alternative. Additionally, NHTSA pointed out that its child passenger safety working group presented many examples of misuse. Parents with vehicles manufactured before the September 1, 2002 compliance date for the LATCH requirement who mistakenly believed their vehicles had a LATCH system 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 that was not present.

Finally, Toyota noted in its original petition 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 responded that it 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 decided that Toyota did not meet its burden of persuasion that the noncompliance it described is inconsequential to motor vehicle safety. Accordingly, NHTSA denied the petition.

In its appeal from NHTSA's denial, Toyota states that ''it appears there has been some miscommunication regarding the subject vehicles and presence of lower anchorage systems (LATCH).'' Toyota proceeds to state that the noncompliant vehicles have two LATCH positions in the rear seats, and it is only in the front passenger seat that there is no LATCH system. Toyota further states, ''the difference between the subject vehicles and competitive models with two LATCH positions in the rear seats and no LATCH in the front passenger seat is that the subject vehicles have [an] airbag cut-off switch allowed under FMVSS 208 S4.5.4, while the competitor models do not have this switch.'' [1]

Toyota reiterates that it has not received any customer complaints, and concludes that ''the vehicles comply with the intent of the standard and the vehicles are no less safe than vehicles which comply with the requirements of FMVSS 225 without a cut-off switch.'' The company states that, rather than remedying the noncompliance by installing LATCH anchorages in the front seat of the subject vehicles, ''the likely remedy is to remove the air bag cut-off switches.'' Toyota adds that it has not received complaints regarding the on-off switches and that the company believes that owners of the subject vehicles consider the switches a useful feature.

In response to Toyota's appeal, Advocates for Highway and Auto Safety (Advocates) commented. Advocates states that, apart from what it submitted with its original petition, Toyota has provided no new evidence demonstrating the inconsequential nature of its noncompliance. The group also offers its views on the legality and safety consequences of removing the air bag on-off switch.

Toyota supplemented its appeal by filing a letter reiterating its statement from its appeal that the noncompliant vehicles have two LATCH positions in the rear seats, leaving only the front passenger seat with no LATCH system. The company also explains in the letter

[1] So far as NHTSA is aware, the noncompliance of the subject vehicles is unique in that no other vehicle has an on-off switch but no LATCH. The competitor models that have rear seating areas of the dimensions necessary to make an on-off switch permissible are in compliance with the rules relevant here either because they have no switch and no LATCH anchorages in the front seat or they have both the switch and the required anchorages.

its views on the legality of removing the on-off switch.

NHTSA notes that the possible remedy a manufacturer may choose to address a particular noncompliance is not a determining factor in NHTSA's decision on whether that noncompliance is inconsequential to safety. Accordingly, this decision does not address the remedy that Toyota may choose to address this noncompliance. To do so here would be premature.

*Decision*

After carefully considering the arguments presented in this matter, NHTSA has decided to deny the appeal. Toyota has presented no new data or information that would cause NHTSA to change its initial decision, and it has not made a persuasive case that the initial denial was incorrect.

NHTSA is fully aware (as it was at the time of the initial denial) that the noncompliant vehicles have two LATCH positions in the rear seats. However, that fact does not render the absence of the anchorages in the front seat inconsequential. Regardless of the availability of the LATCH positions in the rear seats, the noncompliance creates a greater risk of improper child restraint installation than would be present if the required anchorages had been installed in the front seat. The fact that anchorages exist in the rear seats does not lessen the risk that one who chooses to install a child restraint, whether rear-facing or forward-facing, in the front seat will do so improperly and may have no bearing on a person's decision to use the front seat for that purpose.

Moreover, the rear seating area dimensions of the subject vehicles dictate that the front seat is the only place available for installation of a rear-facing child restraint system. NHTSA's regulations permit an air bag on-off switch in these vehicles because the rear seat dimensions cannot accommodate a rear-facing child seat. Accordingly, the rear LATCH positions are irrelevant to the use of rear-facing child restraints since these restraints cannot be installed in the rear seating positions of the subject vehicles. Owners of the subject vehicles wishing to use rear-facing restraints are restricted to the front seat for that purpose. However, given the lack of anchorages in the front seat, the persons installing child restraints and the children occupying those rear-facing restraints are denied the safety advantages that the anchorages would provide in helping to ensure proper installation of the child restraints. FMVSS No. 225 requires that the additional protection afforded by anchorages be provided wherever air bag on-off switches are installed, and the absence of those anchorages is consequential to the safety of the small children whose safety depends on proper installation of the child restraint systems in the vehicles in which they ride.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion, either in its initial petition or in its appeal of the denial of that petition, in establishing that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Toyota's appeal of NHTSA's decision on the inconsequential noncompliance petition is hereby denied. This decision constitutes final agency action, and the petitioner has no right to further administrative review of NHTSA's denial.

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

Issued on: June 22, 2006.

**Nicole R. Nason,**

*Administrator.*

[FR Doc. E6–10179 Filed 6–27–06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[NHTSA–2006–24872]**

### Proposed Guidelines for Impaired Driving Records Information Systems Section 2007(c) Implementing Guidelines

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed guidelines on impaired driving records information systems.

**SUMMARY:** This notice sets forth proposed guidelines on the types and formats of data that States should collect relating to drivers who are arrested or convicted for violation of laws prohibiting the impaired operation of motor vehicles, as directed by Section 2007(c) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

**DATES:** Written comments may be submitted to this agency and must be received by July 28, 2006.

**ADDRESSES:** Comments should refer to Proposed Guidelines on Impaired Driving Records Information Systems and be submitted to Docket No. NHTSA–2006–24872.

**FOR FURTHER INFORMATION CONTACT:** For programmatic issues: Ms. De Carlo Ciccel, Highway Safety Specialist, Impaired Driving Division, NTI–111, or Ms. Heidi Coleman, Chief, Impaired Driving Division, NTI–111, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1694. For legal issues: Ms. Nygina T. Mills, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1834.

**SUPPLEMENTARY INFORMATION:**

## Background

Annually, more than a million drivers are arrested for alcohol-impaired driving. While States bear the primary responsibility for enacting and enforcing impaired driving laws and for adjudicating and sanctioning offenses, they sometimes lack the most effective tools to manage their programs. A comprehensive data system containing records of impaired driving arrests and convictions would enable a State to make more effective traffic safety decisions. The ideal system should contain timely, accurate, complete, consistent, integrated, accessible and secure information. The less timely citation data are, the less their utility. Citation data that are not accurate or complete (e.g., misspelled name, incorrect charge) can result in dismissed cases or reduced charges and can complicate linkage to other traffic records system components such as driver license files. Citation data that are not consistent can lead to charges that vary by jurisdiction or by law enforcement agency. Data that are not accessible or that cannot be integrated or linked almost always require more time, effort and resources to process and complete, and can delay or interfere with the adjudication process. Data that are not secure can lead to system-wide failures and data corruption.

NHTSA's experience indicates that a successful *Impaired Driving Records Information System* requires significant efforts by a State to generate, transmit, store, update, link, manage, analyze, and report information on impaired driving offenders and citations. Such a system should include impaired driving-related information that is collected and managed by the system's stakeholders. Key system stakeholders include law enforcement agencies, the Department of Motor Vehicles (DMV), and the judicial system. A fully