

*Estimated Average Burden Hours Per Response:* .5.

*Need For and Use of Information:* This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

**Steve A. Anderson,**

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BILLING CODE 8120-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the statutory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Central Montana Rail, Inc.

[Docket Number FRA-2001-10948]

Central Montana Rail, Inc. (CMR) has petitioned for an extension of its temporary waiver of compliance from the requirements of Title 49 U.S.C. 21103(a), the Federal hours of service law (HSL), for train employees. This provision states that the railroad may neither require nor allow train employees to begin or remain on duty in excess of 12 hours in a 24-hour period without receiving the appropriate 8- or 10-hour statutory off-duty period. However, the HSL contains a provision (49 U.S.C. 21102(b)) that permits a railroad to seek an exemption from the 12-hour limitation if it employs no more than 15 employees subject to the statute. CMR states that it is the railroad's intent to use such a waiver only in unusual circumstances dictated by geographic remoteness, weather, or traffic peaks, and the waiver is not to be used on a daily basis.

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-2001-10948) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, 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), or you may visit <http://dms.dot.gov>.

Issued in Washington, DC, on August 14, 2007.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Informational Filing

In accordance with section 236.913 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received an informational filing from the Union Pacific Railroad Company (UP) to permit field testing of the railroad's processor-based train control systems. The informational filing is described below, including the requisite docket number where the

informational filing and any related information may be found. The document is also available for public inspection; however, FRA is not accepting public comments.

#### Union Pacific Railroad

[Docket Number FRA-2007-27322]

UP has submitted an informational filing to FRA to permit field testing of the railroad's processor-based train control systems identified as Communications Based Train Control (CBTC) and Vital-Train Management System (V-TMS). The informational filing addresses the requirements under 49 CFR 236.913(j)(1).

Specifically, the informational filing contains a description of the CBTC/V-TMS product and an operational concepts document, pursuant to 49 CFR 236.913(j)(1). The CBTC is a locomotive-centric, non-vital system designed to be overlaid on existing methods of operation and intended to provide an improved level of safety through enforcement of authority limits, permanent speed restrictions, and temporary speed restrictions. The V-TMS is a locomotive-centric, vital train control system designed to be overlaid on existing methods of operation and intended to provide a high level of railroad safety through enforcement of authority limits, permanent speed restrictions, and temporary speed restrictions.

UP desires to commence CBTC/V-TMS field testing on or about October 1, 2007, or as soon as practicable thereafter, contingent upon FRA's acceptance and approval of the informational filing.

Interested parties are invited to review the informational filing and associated documents at the following locations:

Web site: <http://dms.dot.gov>. Follow the instructions for a simple search on the DOT electronic Docket Management System, using Docket No. 27322. All documents in the public docket that are associated with the informational filing are available on the Web site for inspection and copying.

DOT Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You may review the 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 August 14, 2007.

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-2006-26283; Notice 2]

#### Britax Child Safety, Inc.; Denial of Petition for Decision of Inconsequential Noncompliance

Britax Child Safety, Inc. (Britax) has determined that certain child restraint systems that it produced in 2006 do not comply with paragraph S5.1.1 of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Britax has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Britax also has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 15, 2006 in the **Federal Register** (71 FR 75609). The National Highway Traffic Safety Administration (NHTSA) received one comment from Advocates for Highway Safety (Advocates). To view the petition and all supporting documents, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter Docket No. NHTSA-2006-26283.

For further information on this decision, contact Mr. Zachary R. Fraser, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5754, facsimile (202) 366-7002.

Affected are a total of approximately 34,355 Marathon Child Restraint Systems (models E9L06, E9W06, and E906) produced by Britax between May 23 and July 28, 2006. Britax recommends that the Marathon be used forward-facing for children weighing between 20 and 65 pounds, and with the tether at all times. FMVSS No. 213 specifies that a child restraint recommended for use above 50 pounds be tested with a 49 CFR Part 572 Subpart S dummy. The Subpart S dummy is a Hybrid III 6 year-old dummy with weights added to the spine. Also, paragraph S5(d) specifies that each child restraint system tested with a 49 CFR Part 572 Subpart S dummy need not meet paragraph S5.1.2,

*Injury Criteria* and paragraph S5.1.3, *Occupant Excursion* of FMVSS No. 213. In addition, paragraph S5.1.1 of FMVSS No. 213 requires that the child restraint system exhibit no complete separation of any load bearing structural element during dynamic testing. When the noncompliant child restraint systems were tested with the weighted 6 year-old dummy, the top tether hook opened and released from the top tether anchor. Britax has corrected the problem that caused the tether hook to release so that it will not be repeated in future production.

Britax believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Britax states that the system has "excellent biomechanical performance \* \* \* even with the opening of the system's top tether hook." Britax says that the systems "exceed expectation with head excursion well below the limit for products in which this performance is actually measured," even though the noncompliant systems are not required to meet head excursion limits. Britax also points out that there was a lower HIC and lower chest acceleration with the top tether hook open than when not open, and "[t]hese results demonstrate that the opening of the top tether dissipates some of the occupant energy and thereby reduc[es] overall biomechanical injury measures."

Britax concludes that the open top tether hook is inconsequential to the system working. Britax states, "The biomechanical results and performance of the other structural components of the Marathon prove that the *system* [emphasis in original] does what is it intended to do—that is, save children's lives."

Advocates commented by expressing their concern about the potential negative impacts on public confidence that failures of this type in actual use and an agency decision granting inconsequential noncompliance could have on the rate of tether use. Advocates also asserted that publicity that may accompany the failure of an upper tether could have a negative impact on consumer confidence and complicate the agency's efforts to educate the public regarding the use of tethers.

#### NHTSA Decision

In reaching our decision, NHTSA has carefully reviewed the subject petition, the Advocates' comments and a similar petition (which Britax attempts to distinguish from its petition) that was submitted to NHTSA in 2002 by another child restraint systems manufacturer, Dorel Juvenile Group (Dorel). (To view

the Dorel petition and all supporting documents, go to: NHTSA Docket No. NHTSA-2002-13014.)

As part of its reasoning, Britax argued that because the Britax Marathon system displayed "excellent biomechanical performance \* \* \* even with the opening of the system's top tether hook" during the NHTSA testing that the noncompliance is inconsequential to motor vehicle safety. NHTSA does not agree with this line of reasoning. As Britax acknowledges, even though the Britax Marathon system met other dynamic test requirements, it did not meet paragraph S5.1.1(a) of FMVSS No. 213 because the system's top tether hook opened and released from the top tether anchorage. The agency has consistently viewed tether strap separation as a load bearing structural failure. A tether strap structural failure is similar to vehicle LATCH anchorage failure; a failure of either one will not provide full occupant protection for children. In requiring upper tethers and anchors, NHTSA noted that, "the tether is especially effective at reducing head excursion and the potential for head impacts." 64 FR 10786. By definition, the child restraint anchorage system consists of both the lower anchorages and the tether. 49 CFR 571.225 S3. This line of reasoning is consistent with NHTSA's decision to deny the previously referenced Dorel petition. Here, because the seat was recommended for weights greater than 50 pounds, the injury criteria applicable in other situations did not apply. This makes structural integrity all the more important. As Britax itself notes (petition at page 2), where the injury criteria do not apply, "there is a reliance on the structural integrity of the restraint to ensure safety of the child occupant \* \* \*"

The agency has taken enforcement action for a similar failure. In 2001, the agency notified Britax of a potential noncompliance due to the detachment of a tether strap during dynamic testing of one of its child restraint models. Britax initiated a recall campaign to provide owners of the affected model with repair kits. In its current petition, Britax stated it did not believe that the failure that resulted in the 2001 recall should be compared to the current failure. Britax's argument for this is that the 2001 failure had the potential for increased forward movement of the head and therefore potential for exceeding head excursion limits whereas the current Marathon "exceeds its biomechanical requirements and expectations." We disagree with this reasoning and believe that the Marathon, while not required to meet a