

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.*

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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

executed purchase and sale agreements with respect to both segments. Sound Transit explains that it acquired the Lakeview North Segment on September 28, 2004,<sup>1</sup> and that it plans to acquire the Lakeview South Segment on September 28, 2005. Sound Transit states that, pursuant to the purchase and sale agreements, BNSF initially retained an exclusive freight easement with respect to operation of freight trains on the two line segments. It adds, however, that BNSF subsequently transferred its freight common carrier easement with respect to both segments to the City of Tacoma, WA, d/b/a Tacoma Rail, subject to retained trackage rights along a portion of the line it conveyed to the City. *City of Tacoma, Department of*

<sup>1</sup> Sound Transit should have sought acquisition authority (accompanied by any motion to dismiss it wished to file) for the Lakeview North Segment when it acquired it in September 2004. Sound Transit is cautioned in the future to seek authority at the time of the transaction.

*Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL—Acquisition and Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA, STB Finance Docket No. 34555 (STB served Oct. 19, 2004). Sound Transit indicates that it is acquiring the two line segments for the purpose of providing wholly intrastate commuter rail passenger operations, and that it will not be providing rail freight service over the lines.<sup>2</sup>*

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed

<sup>2</sup> For these reasons, Sound Transit has simultaneously filed a motion to dismiss the notice of exemption in this proceeding. The motion will be addressed in a subsequent Board decision.

at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34747, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 16, 2005.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

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