

the devices incorporated into the lamp combination.

Unified Marine's noncompliance report indicates that the lamps may have incorrectly positioned circuit boards that, consequently, cause insufficient light output to meet the minimum color and photometry requirements of the standard.

Unified Marine believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Unified Marine states that

* * * our light has some deficiencies that are only detectable by highly sensitive testing equipment and not by visual means in actual use and therefore is not a safety issue. Upon review and extensive research, we have found out that the variations are not perceivable to the naked eye, and they are indeed inconsequential as they may only be seen in the laboratory environment. The lights are in no way unsafe in our opinion, and in fact much safer than the millions of conventional lights currently used in the marketplace.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. In our review, we considered the two comments to the **Federal Register** notice, both of which favored denying this petition. One comment was from the Transportation Safety Equipment Institute (TSEI), a non-profit trade association representing North American manufacturers of vehicle safety equipment including vehicle lighting equipment. TSEI stated, "the noncompliance appears to be systemic, pervasive and substantial, thereby creating a significant safety risk to the motoring public." TSEI offered the following as the basis for its assertions:

Unified Marine has failed to provide specific data demonstrating that, with respect to each of the lamp functions that do not meet the photometric requirements, the reduced photometric output at the specified test points and zones [is inconsequential to motor vehicle safety]. * * * Unified Marine suggests that the sealed design of the subject products and the use of LEDs, rather than conventional lights, make its product safer than a fully compliant lamp. * * * [T]he fact that the noncompliant lamps used LED rather than conventional bulbs does not excuse Unified Marine from the photometric and other requirements of FMVSS No. 108. * * * [In addition,] without providing test results or any other supporting documentation or data, Unified Marine argues that its product "has some deficiencies that are only detectable by highly sensitive testing equipment and not by visual means in actual use." * * * TSEI testing of the petitioner's product—using the same "highly-sensitive," industry-standard equipment apparently used by Unified Marine—reveals that it

requirements of FMVSS No. 108. * * * TSEI's own testing data reveal that the subject products overwhelmingly fail the photometric requirements specified in FMVSS No. 108.

The second comment was from Peterson Manufacturing Company (Peterson), a manufacturer of safety lighting equipment for all size vehicles. Peterson provided the following rationale for denial of the petition:

Unified Marine states that the deficiencies are only detectable by "highly sensitive testing equipment" and not by visual means in actual use and therefore is not a safety issue. The photometric testing equipment referred to is common in the lighting industry as most manufacturers rely upon it for consistency, quality and reliability. * * * Unified Marine does not offer supporting test data to substantiate its claim of inconsequential noncompliance. Comparative test data show failures in 5 functions of the 5-function light and 6 functions of the 6-function light. The reflex readings were barely detectable and certainly discernable as failures to the naked eye. The side marker lamp failed 6 of 9 test points (67% failure rate) and the stop and turn function failed 4 of 5 zones (80% failure rate). These are not inconsequential.

NHTSA agrees with the rationale presented by the two commenters. Unified Marine admits that the noncompliances are detectable by testing equipment, and as stated by TSEI and Peterson, this test equipment is the standard used by the lighting industry for consistency, quality and reliability.

Additionally, NHTSA conducted its own testing¹ of two UMI model 50080270 kits (4 lamps) and found numerous photometry failures for this lamp model. For instance, all four stop lamps failed to meet the minimum required photometry for 3 of 5 required zones with failures ranging from 35% to 49% below the minimum required values. Further, all four stop lamps failed to meet the minimum taillamp/stop lamp intensity ratio at all four test points that require a stop lamp intensity of at least 5 times the taillamp intensity. The intensity ratio failures were in the range of 22% to 28% below the required minimum. When tested with an observation angle of 0.2 degrees, all four reflex reflectors exhibited failures at every test point ranging from 92% to 100% below the minimum required values. Further, all four side marker lamps exhibited failures at 45 degree test points with failures ranging from 12% to 76% below the required minimums. Finally, of the two combination lamps that included license plate lamps, both license plate

¹ Calcoast Report No. 108-CCITL-04-1 may be found Docket No. NHTSA-2004-19792.

lamps failed to meet the minimum requirements at the same four (out of eight) required zones. These failures were all more than 73% below the required minimum values. These data show that these lamp models deviate substantially from the photometric requirements specified in FMVSS No. 108.

Unified Marine has not provided convincing objective data regarding the inconsequentiality of its noncompliance. NHTSA believes that the noncompliance margins described above represent a substantial reduction in performance below a minimally compliant device and this reduction is consequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its petition is hereby denied. Unified Marine must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

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

Issued on: February 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-3990 Filed 3-1-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-20274; Notice 1]

Workhorse Custom Chassis, Receipt of Petition for Decision of Inconsequential Noncompliance

Workhorse Custom Chassis (Workhorse) has determined that certain incomplete motor home chassis it produced in 2000 through 2004 do not comply with S3.1.4.1 of 49 CFR 571.102, Federal Motor Vehicle Safety Standard (FMVSS) No. 102, "Transmission shift lever sequence, starter interlock, and transmission braking effect." Workhorse has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Workhorse has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Workhorse's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 42,524 incomplete motor home chassis built between July 2000 and December 31, 2004. S3.1.4.1 of FMVSS No. 102 requires that

if the transmission shift lever sequence includes a park position, identification of shift lever positions * * * shall be displayed in view of the driver whenever any of the following conditions exist: (a) The ignition is in a position where the transmission can be shifted. (b) The transmission is not in park.

Workhorse describes its noncompliance as follows:

In these vehicles when the ignition key is in the "OFF" position, the selected gear position is not displayed. "OFF" is a position not displayed, but located between lock and run. The gear selector lever can be moved while the ignition switch is in "OFF."

Workhorse believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Workhorse states that:

[T]he vehicles will be in compliance with FMVSS No. 102 during normal ignition activation and vehicle operation. Workhorse believes that the purpose of the rule is to provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors. This occurs primarily when the engine is running, and Workhorse's PRNDL is always visible when the engine is running.

Should the shift lever be in any position other than park or neutral, the ignition will not start * * * Should the Workhorse vehicle be in neutral at the time the ignition is turned to start, the display will immediately come on and be visible to the driver.

There are a number of safeguards to preclude the driver from leaving the vehicle with the vehicle in a position other than in the park position. First, if the driver should attempt to remove the key, the driver will discover that the vehicle is not in park because the key may not be removed. * * * If the driver were to attempt to leave the vehicle without removing the key, the audible warning required by FMVSS No. 114 would immediately sound reminding the driver that the key is still in the vehicle.

Workhorse states that this situation is substantially the same as for two petitions which NHTSA granted, one from General Motors (58 FR 33296, June 16, 1993) and the second from Nissan Motors (64 FR 38701, June 19, 1999). Workhorse says, "In both of those cases, the PRNDL display would not be illuminated if the transmission was left

in a position other than 'park' when the ignition key was turned to 'OFF.'"

Workhorse states that it has no customer complaints or accident reports related to the noncompliance.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 1, 2005.

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

Issued on: February 22, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-3991 Filed 3-1-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34638]

San Diego & Imperial Valley Railroad Company, Inc.—Lease and Operation Exemption—BNSF Railway Company¹

San Diego & Imperial Valley Railroad Company, Inc. (SDIV), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with BNSF Railway Company (BNSF), approximately 1.35 miles of BNSF's permanent and exclusive reserved rail freight service easement located between milepost 19.85, west of Escondido, and at or near milepost 21.2, at the eastern end of the rail corridor in Escondido, in San Diego County, CA.

SDIV certifies that its projected annual revenues as a result of this transaction will not result in SDIV's becoming a Class II rail carrier, and further certifies that its projected annual revenues will not exceed \$5 million.

The transaction is expected to be consummated on March 1, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed 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. 34638, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Gary A. Laakso, Esq., Vice President Regulatory Counsel, San Diego & Imperial Valley Railroad Company, Inc., 5300 Broken Sound Blvd., NW., Boca Raton, FL 33487, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

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

Decided: February 22, 2005.

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

Vernon A. Williams,

Secretary.

[FR Doc. 05-3985 Filed 3-1-05; 8:45 am]

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¹ Effective January 20, 2005, the name of "The Burlington Northern and Santa Fe Railway Company" was changed to "BNSF Railway Company."