



Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0039; Notice 1]

**Ride the Ducks International, LLC, Receipt of Petition for
Decision of Inconsequential Noncompliance**

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

ACTION: Receipt of petition.

SUMMARY: Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996-2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 113, *Hood Latch System*, and Federal Motor Vehicle Safety Standard (FMVSS) No. 302, *Flammability of Interior Materials*. RTDI filed a noncompliance information report dated March 15, 2017. RTDI also petitioned NHTSA on April 12, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to

<https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996-2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with paragraph S4.2 of Federal Motor Vehicle

Safety Standard (FMVSS) No. 113, *Hood Latch System*, and paragraph S2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 302, *Flammability of Interior Materials*. RTDI filed a noncompliance information report dated March 15, 2017, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*. RTDI also petitioned NHTSA on April 12, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of RTDI'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.

II. Vehicles Involved: Approximately 105 MY 1996–2014 Ride the Ducks International Stretch APVs, manufactured between January 1, 1996, and December 31, 2014, are potentially involved.

III. Noncompliance: RTDI explained that the noncompliance is that the subject vehicles were not equipped with a secondary hood latch system, as required by paragraph S4.2 of FMVSS No. 113 and that there are interior components and materials that do not conform to the burn rate requirements of paragraph S2 of FMVSS No. 302.

IV. Rule Text: Paragraph S4.2 of FMVSS No. 113 states in pertinent part:

S4.2 A front opening hood which, in any open position, partially or completely obstructs a driver's forward view through the windshield must be provided with a second latch position on the hood latch system or with a second hood latch system.

Paragraph S2 of FMVSS No. 302 states in pertinent part:

S2 Purpose. The purpose of this standard is to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes.

V. Summary of RTDI's Petition: As background, in 1996, RTDI began to produce APVs. The original Amphibious Passenger vehicles (APVs) are based on military vehicles that were capable of operation over both land and water. The "Stretch" APVs were refurbished by RTDI in accordance with state and U.S. Coast Guard rules and regulations. These vehicles have renewed hulls that are "stretched" over the original chassis frame and original vehicle components that were replaced with modern equipment. RTDI manufactured the stretch APVs until 2005, when RTDI introduced its "Truck" APVs. The truck APVs are based on military cargo vehicles. RTDI has not manufactured any vehicles since 2014.

RTDI described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, RTDI submitted the following reasoning:

1. FMVSS No. 113 specifies, "a front opening hood which, in any open position, partially or completely obstructs a driver's forward view through the windshield must be provided with a second latch position on the hood latch system or with a second hood latch system." 49 C.F.R. § 571.113, S4.2. The purpose of FMVSS No. 113 is to establish requirements for vehicle hood latch systems so that the hood remains secure while the vehicle is operated.
2. FMVSS 302 sets out the burn resistance requirements for materials used in certain parameters within the occupant compartments of vehicles. The stated purpose of FMVSS No. 302 is "to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes." 49 C.F.R. § 571.302, S2.
3. The fire risks that exist in traditional motor vehicles are not the same concerns that present themselves in the APVs. Mitigating the risks of a fire occurring on board an APV are centered around the operation and safeguarding of the engine compartment and passenger egress conditions. The USCG has adopted specific design and operational

requirements for APVs.¹ Pursuant to the USCG regulations, while an APV is operating, the hood is to remain in an "open" position. See 46 C.F.R. § 182.460 ("a space containing machinery powered by, or fuel tanks for, gasoline must have a ventilation system that complies with this section"), 46 C.F.R. § 182.465 ("a space containing diesel machinery must be fitted with adequate means...to provide sufficient air for proper operation of main engines and auxiliary engines.") This requirement is intended to permit a sufficient amount of air flow around the engine compartment which reduces the potential for the engine to overheat and potentially cause a fire.² During operation, the hood of the APV is opened or elevated by approximately four inches. Although the hood of the APV is slightly raised, it has vertical arms which rest on manually operated drop latches. The hood does not pose a risk of opening unexpectedly during operation, even without a secondary hood latch system. The hoods of the APVs are substantially heavier than the hoods of traditional motor vehicles. As a practical matter, it is highly unlikely that the force of the wind against the vehicle could move the

¹ Under the USCG rubric, APVs are classified as "T-Boats" which are small passenger vessels weighing less than 100 gross tons.

² USCG regulations also require that while operating in the water, the engine compartment has the ability to be fully closed. In the event of a fire in the engine compartment, the operator will deploy the hood latch, dropping the hood and closing off the compartment. This feature is designed to contain the fire by preventing the flow of oxygen around the engine.

hood of the APV. In its more than 30 years of operation, RTDI has never received a report or allegation involving the opening of a vehicle's hood while operating either on the public roads or in the public waterways.

4. The APVs also have installed a series of systems designed to protect passengers and allow for ease of egress from the occupant compartment in the event of a fire. The RTDI vehicles have an open-air design with multiple areas of passenger egress. Additionally, and per USCG requirements, all of the vehicles have a fire suppression system installed throughout the vehicle. The fire suppression systems include vent closures, heat detection devices, vapor detection systems and fire extinguishing systems. In the event of a fire in the APV, the operator will activate the fire suppression system which releases the carbon dioxide fire extinguishing agent. The vehicles are also equipped with two portable fire extinguishers and all vehicle operators receive emergency evacuation training on no less than a quarterly basis, per Coast Guard requirements, and often more regularly.
5. By contrast, FMVSS No. 302 is primarily concerned with protecting passengers against vehicle fires that occur due to flames or sparks inside the vehicle. In addition to the safety features described above, the vehicles have

implemented other measures that provide an equivalent measure of safety to vehicle occupants. Smoking is expressly prohibited in the APVs. Passengers are advised of this requirement prior to the start of the tour. On board each vehicle there is a "narrator" or second crew member present. The narrator sits rearward, facing into the occupant compartment and is in continuous view of the passenger's activities at all times while the APV is in operation. The narrator is physically located so that he/she would be able to see and stop a passenger attempting to light a match, flame or smoke on board.

6. In recognizing that APVs have a unique design and may encounter specialized hazard conditions, the USCG employs a "systems approach" to certification for APVs. To meet the USCG requirements, the APVs must have "a level of safety equivalent to that required for a vessel of similar size and service." See Navigation and Vessel Inspection Circular (NVIC) No. 1-01. These requirements are met, "in part through a combination of design requirements and operational restrictions" and by considering "the entire vehicle and its equipment as a complete safety system." *Id.* The RTDI APVs are certified to meet the USCG's fire safety requirements for T-boats.

7. From its inception, the Safety Act has included a provision recognizing that some noncompliances may pose little or no actual safety risk. The Safety Act exempts manufacturers from their statutory obligation to provide notice and remedy upon a determination by NHTSA that a noncompliance is inconsequential to motor vehicle safety. See 49 U.S.C. § 30118(d). In applying this recognition to particular fact situations, the agency considers whether the noncompliance gives rise to "a significantly greater risk than...in a compliant vehicle." 69 Fed. Reg. 19897, 19900 (April 14, 2000). The design and construction of the APVs addresses the potential risks to passenger safety arising from fire-related concerns particular to these vehicles. The safety features present on the APVs provide a level of protection that is, at a minimum, equivalent to the vehicle safety standards so that granting the company's petition would be appropriate.

RTDI concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that RTDI no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after RTDI notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

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