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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0039; Notice 2]

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

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

ACTION: Denial of petition.

SUMMARY: Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996-2014 RTDI Stretch Amphibious passenger vehicles (APVs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 113, *Hood Latch System,* and 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 noncompliances are inconsequential as they relate to motor vehicle safety. This document announces the denial of RTDI's petition.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz at (202) 366-5310 regarding FMVSS No. 302, and Neil Dold at (202) 366-7352 regarding FMVSS No. 113; Office of Vehicle Safety Compliance, NHTSA, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. Overview: RTDI has determined that certain MY 1996-2014 RTDI APVs do not fully comply with paragraph S4.2 of FMVSS No. 113, *Hood Latch System* (49 CFR 571.113), and paragraph S2 of FMVSS No. 302, *Flammability of Interior Materials* (49 CFR 571.302). 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 these noncompliances are inconsequential as they relate to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** (82 FR 43452) with a 30-day public comment period, on September 15, 2017. No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: http://www.regulations.gov/. Then follow the online search instructions to locate docket number "NHTSA-2017-0039."

II. Vehicles Involved: Approximately 105 MY 1996-2014 RTDI Stretch APVs, manufactured between January 1, 1996 and December 31, 2014 are potentially involved.

III. Noncompliances: RTDI explained that the noncompliances are 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 Requirements: Requirements from FMVSS No. 113 and 302 are relevant to this petition. Specifically, paragraph S4.2 of FMVSS No. 113 requires that 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. Paragraphs S2 and S4 of FMVSS No. 302 explain that the 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. FMVSS No. 302 lists the components of vehicle occupant compartments that shall meet the burn rate requirements of the standard and specifies the maximum allowable burn rate of material under specified test conditions.

V. Summary of RTDI's Petition: RTDI states that it began to produce APVs in 1996 by performing extensive modifications to General Motors (GM) amphibious military trucks, which

were originally designated with product code DUKW per GM's nomenclature.[1] The resulting "Stretch" APVs were refurbished by RTDI in accordance with state and U.S. Coast Guard rules and regulations. RTDI has not manufactured any vehicles since 2014.

RTDI described the subject noncompliances as the lack of a secondary hood latch system and the failure of certain materials in the passenger compartment to meet burn resistance requirements. RTDI stated its belief that the noncompliances are inconsequential as they relate 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 CFR 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 even if the primary latch fails or is not properly engaged. The absence of a secondary latch increases the possibility that the hood may open during vehicle operation and prevent the driver from seeing the road ahead.
2. The U.S. Coast Guard has adopted specific design and operational requirements for APVs.[2] Pursuant to U.S. Coast Guard regulations, while an APV is operating on water, the hood is to remain in an "open" position. *See* 46 CFR 182.460 ("a space containing machinery powered by, or fuel tanks for, gasoline must have a ventilation system that complies with this section"), 46 CFR 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

[1] NHTSA notes that the ability of the DUKW to transport troops, supplies or equipment across both land and water made them indispensable in World War II and the Korean War. The modifications performed by RTDI, which included replacement of the original drivetrain and enlarging the hull or body, were such that the end product was a newly manufactured vehicle employing donor parts.

[2] Under the U.S. Coast Guard rubric, APVs are classified as "T-Boats" which are small passenger vessels weighing less than 100 gross tons.

amount of air flow around the engine compartment, which reduces the potential for the engine to overheat and potentially cause a fire.[3] During waterborne 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 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.

3. FMVSS No. 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 CFR 571.302, S2.

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 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.

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[3] U.S. Coast Guard regulations also require that while operating in the water, the engine compartment can 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.

Additionally, and per U.S. Coast Guard 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 U.S. Coast Guard requirements, and often more regularly.

4. 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. Onboard each vehicle there is a "narrator" or second crew member present. The narrator sits rearward, facing into the occupant compartment and in continuous view of the passengers' 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.

In recognizing that APVs have a unique design and may encounter specialized hazard conditions, the U.S. Coast Guard employs a "systems approach" to certification for APVs. To meet U.S. Coast Guard 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 U.S. Coast Guard fire safety requirements for T-boats.

5. 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 FR 19897, 19900 (April 14, 2000). The design and construction of the APVs address the potential risks to passenger safety arising from fire-related concerns 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 noncompliances are inconsequential as they relate to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

VI. Supplemental Information: On October 10, 2017, RTDI, per a request from NHTSA's Office of Chief Counsel, provided the following supplemental information:

Regarding FMVSS No. 113, RTDI asserted that:

1. From the driver's seat with the hood open in the normal operating position there is no obstruction to the driver's view. When in the "open" position, the hood is elevated at an angle of approximately 4.5 inches to 5 inches. The tip of the bow of the APV remains visible with the hood open or closed. There is no visual obstruction to the driver when the hood is in the "open" position.
2. The vehicle's engine requires the hood to remain partially open to provide sufficient air flow to the engine. The engine's air supply is forced through the forward opening of the

engine hood. The radiator has a reverse fan which draws fresh air through the radiator to keep the engine cool.

3. The hood incorporates a stand which rests on a cam lever that is mechanically operated by a cable and handle located in the driver's compartment. To close the hood, the driver simply pulls a handle which rotates the cam and closes the hood. The driver would only need to close the hood in the event of a fire in the engine compartment to cut off the supply of oxygen.

4. The hood itself weighs approximately 139 pounds. Given the heavy weight of the hood and low operating speeds of the APVs (maximum 50 miles-per-hour (mph)), these features preclude the hood from unexpectedly opening due to air flow lifting the hood open and forcing it upward. The design of the engine hood has been in service for nearly 30 years, without incident. During testing, as much as 69.5 pounds of force was needed to lift the hood assembly. RTDI's consultant completed an analysis of the aerodynamic loading of the unlatched hood for the subject vehicles and reviewed the parameters for the force of air flow that potentially would cause an unlatched hood to open. This analysis was done by determining the applied aerodynamic forces due to lift and drag. The resulting moments about the hood hinge were then compared to the moments created by the weight of the hood. The overall goal was to determine the air speed (combined vehicle and headwind speed) necessary for the moments created by aerodynamic forces to exceed that of the moment created by weight.

   The hood consists of a flat steel plate which is 49.5 inches long, 53.5 inches wide, and weighs approximately 139 lbs. Calculations for aerodynamic forces utilized flat plate assumptions with an aspect ratio of 1.08. Under the worst-case scenario, RTDI's consultant estimated that the hood angle of attack (AoA) will not exceed +5° during use; however, calculations were completed up to and including 10° in an excess of caution. All calculations utilized highly conservative assumptions and approximations.

Below is a bulleted summary of the RTDI consultant's findings:

- Under normal fully-loaded driving conditions, the hood sits at a zero or slightly negative AoA. Given these conditions, no lift can be generated on the flat plate. Thus, there is no critical speed sufficient to pivot the hood open.
- At the maximum projected AoA (5°), an air speed of at least 100 mph would be needed to generate sufficient aerodynamic forces to begin to open the hood.
- Even at 10° AoA, double that expected in normal use, a minimum air speed of 70 mph is necessary to potentially open the hood. This speed is still beyond the maximum combined (vehicle and headwind) air speed that would be seen by these vehicles in normal operation.

Regarding FMVSS No. 302, RTDI asserted that:

1. It had not certified each of the individual components and materials listed in FMVSS No. 302, S4.2 to the burn rate requirements of S4.3. However, all of the materials used in the occupant compartment of the APVs do follow the guidance provided by the U.S. Coast Guard in NVIC 1-01: Guidelines For The Certification Of DUKW Amphibious Vehicles. The NVIC recommends that:

   > Operators should consider highway requirements and land use when selecting the type of fire extinguishing system. Pre-engineered automatic systems may be required to shut down the engine when activated. This could pose a safety hazard if the DUKW is equipped with power steering and or brakes and the shutdown occurs in traffic.

   The fire protection system, as well as other safety devices of the RTDI APVs, are designed to take into consideration the various hazards the vehicle may encounter in different operating zones (i.e. system approach).
2. The risk of fire associated with APVs stems primarily from mechanical and electrical faults serving as mechanisms for ignition. The risk of fire above deck is mitigated

through constant visual monitoring by the onboard crew of the passenger compartment, as well as enforcement of a "No Smoking" policy. To satisfy U.S. Coast Guard requirements for commercial operations on water, RTDI APVs are outfitted with a robust fire protection system not normally found on land based vehicles, including the presence of fire extinguishers on board each vehicle. In addition, the construction of the APVs takes into account the particular risks associated with a vehicle that operates both on road and in the water. For example, traditional automotive wire is not allowed. Instead, marine electrical wire is required to be used, which is specifically designed for harsh environments: it is flexible yet heavily coated, resistant to corrosion and less likely to chafe and cause fires.

Below is a list of U.S. Coast Guard fire protection standards which the RTDI APVs meet. Although these standards are promulgated by the U.S. Coast Guard, they are all aimed at fire prevention and mitigation and would prevent a fire from occurring on the road as well as in the water.

- 46 CFR 185.504 Emergency Instructions List Posted
- 46 CFR 176.810 (a) and (7) / 181.450 Fire and Smoke Detection System
- 46 CFR 176.810 / 176.810 (b) and (1) Portable Fire Extinguishers
- 46 CFR 181.500 Date Cylinder Hydro Tested
- 46 CFR 181.520 Proper Location
- 46 CFR 176.810 (a) and (b) Fixed Fire Extinguishing System
- 46 CFR 181.400 Annual Service
- 46 CFR 182.465 (h) Engine Power / Ventilation Shut Down
- 46 CFR 182.425 Exhaust Systems
- 46 CFR 176.804 Fuel System
- 46 CFR 182.460 Tank Space Properly Vented
- 46 CFR 182.450 (e) Fuel Tank Vent
- 46 CFR 182.15-35 Vent Opening
- 46 CFR 182.440 (b/4) Independent Fuel Tank Ground
- 46 CFR 182.455 (b/4) Shut Off Valve (Tank/Engine)
- 46 CFR 182.20-40 (b/5) Fuel Tank Hose
- 46 CFR 182.20.30 (d) Flexible Hoses (SAE J-1942)
- 46 CFR 182.470 Ventilation of Machinery Spaces
- 46 CFR 182.470/182.460 (e)
- 46 CFR 182.15-45 Closure Devices for Spaces w/Fixed CO2
- 46 CFR 182.710 / 182.40-1 Vital Systems Piping
- 46 CFR 182.720 / 182.40 Non-Metallic Piping

- 46 CFR 183.310 Primary Power and Lighting System
- 46 CFR 183.376 Grounding
- 46 CFR 176.806/183.310/183.350/183.354 Batteries / Alternators
- 46 CFR 183.330/183.05-15/183.10-15 Switchboards and Distribution Panels
- 46 CFR 183.340/183.05-45/183.05-50/183.10-20 Cable /Wiring
- 46 CFR 176.810 (b) (2) Fixed CO2 Certificate

3. The fire protection features satisfying the list of requirements cited above are also relevant to the prevention or suppression of fire during on road use of the APVs and all RTDI operators are trained in the use of these systems for both land and water operation. The design and construction of the APVs is consistent with the requirements set out above. Further, RTDI APV operators hold both commercial driver's licenses and U.S. Coast Guard certified vessel captain licenses. As the purpose of FMVSS No. 302 is to "reduce deaths caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes," the measures taken to mitigate against the outbreak of fires in the APVs per U.S. Coast Guard regulations also mitigate against the risk of fire contemplated by the FMVSS.
4. The APVs meet all U.S. Coast Guard requirements related to fire prevention and emergency response, which provides an equivalent level of protection from the risks contemplated by FMVSS No. 302.
5. In recall 17V-193, RTDI determined that the amphibious vehicles it manufactured between 1996 and 2014 do not meet the requirements of FMVSS No. 302.
   To view NTHSA's information request to RTDI and RTDI's full response including pictures and further vehicle information please refer to the docket.

VII. NHTSA's Analysis: The agency has reviewed RTDI's petition and provides the following analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the agency has not found many such

noncompliances inconsequential.[4] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[5] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."[6] "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."[7]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[8] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of

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4 *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

5 *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

6 *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

7 *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

8 *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[9]

RTDI has not met its burden of demonstrating that the noncompliance with FMVSS No. 113 is inconsequential. In regards to FMVSS No. 113, RTDI says that as a practical matter, the hood on these vehicles is heavier than hoods on traditional vehicles and because of the weight it is highly unlikely that the force of the wind against the vehicle could move the hood. As the agency understands the hood design, the hood simply rests in the down position due to its weight and the effects of gravity. RTDI explained that "the hood incorporates a stand which rests on a cam lever that is mechanically operated by a cable and handle located in the driver's compartment. To close the hood, the driver simply pulls a handle which rotates the cam and closes the hood." RTDI also explained that the hood on these vehicles must remain in an elevated open position at all times while operating (i.e., while on public roads and on waterways) in order to provide the engine with sufficient air flow. The agency is concerned, regardless of hood position (i.e., fully closed or normally elevated), that any irregularities in the roadway (i.e., humps, bumps, debris or pot holes) could cause the hood to bounce up and down from its resting place. In its normal partially opened position, and with no hood latching system, there is an increased risk that the hood on these vehicles could inadvertently fly open when encountering the right combination of vehicle loading, road geometry, road debris, vehicle speed, and wind speed.

RTDI had a consultant conduct an aerodynamic loading analysis to look at the possibility of the hood lifting, due to vehicle and wind speeds, and hood angle of incline. The actual analysis was not provided to the agency, but a summary of the results was provided by RTDI. The analysis concluded that under "normal fully-loaded driving conditions" and a wind speed in the range of 70-100 mph, based on different hood elevation levels, the hood could begin to open. The agency is unable to fully assess whether the consultant's analysis supports RTDI's claims

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[9] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

because the underlying data, calculations, and supporting assumptions were not provided to the agency in a manner sufficient to accept the consultant's analysis. Even if the agency were to accept the consultant's analysis, the agency would remain concerned about the safety risk. For example, a vehicle traveling at or near the 50 mph maximum speed that encounters a strong wind gust could foreseeably experience total wind speed at or above the wind speed range of 70-100 mph, causing the hood to open and obstructing the driver's view.

RTDI stated that in 30 years it has never received a report or allegation involving the opening of the hood while operating on the public roads or in public waterways. From a safety perspective, the agency believes that the absence of prior reports or allegations of the hood opening under operation is not sufficient justification to ensure it will not happen in the future.

RTDI also stated that the presence of a secondary hood latch system is unnecessary because operating these vehicles with the hood slightly elevated diminishes the potential for a fire to occur in these vehicles. FMVSS No. 302 and FMVSS No. 113 are separate safety standards addressing separate safety needs. FMVSS No. 302 specifies burn resistance requirements for materials used in the occupant compartments of motor vehicles and FMVSS No. 113 establishes the requirement for providing a hood latch system or hood latch systems to reduce the risk of the hood opening and obstructing the driver's view. Reducing the probability of a vehicle fire is not an appropriate justification for not meeting the safety requirements of FMVSS No. 113.

RTDI also has not met its burden of demonstrating that the noncompliance with FMVSS No. 302 is inconsequential to safety, particularly without having provided information on the burn rates of the materials in the occupant compartment. The purpose of FMVSS No. 302 is to establish a burn rate for materials to reduce severity and frequency of burn injuries, allow the driver time to stop the vehicle, and increase occupant evacuation time.

FMVSS No. 302 differs from U.S. Coast Guard standards in that FMVSS No. 302 has a burn rate requirement for interior materials while U.S. Coast Guard standards focus on

containment of fires originating in the engine and fire suppression. In response to an inquiry by the agency, RTDI stated that each of the individual components and materials within the boundaries of the occupant compartment of the subject APVs has not been certified to the burn rate requirements of paragraph S4.3 of FMVSS No. 302; however, it meets the standards and follows the guidelines provided by the U.S. Coast Guard. RTDI stated that the APVs are equipped with fire suppression systems and that the operators of the subject APVs hold both commercial driver's licenses and U.S. Coast Guard certified vessel captain licenses and are trained to identify and suppress a fire, should one occur.

While U.S. Coast Guard regulations are intended to mitigate some of the same fire risks as FMVSS No. 302, there are other potential sources of fire that the U.S. Coast Guard regulations do not address. In addition to fires originating in the engine compartment, NHTSA is concerned about other sources of fire, such as a fire originating from a vehicle crash, that may occur when the vehicle is operating on a roadway. Having trained personnel on board the subject APVs does not necessarily mitigate the need for compliance with FMVSS No. 302. Without information on the actual burn rates of the materials used in the vehicles' occupant compartment, NHTSA cannot evaluate whether the factors cited by RTDI mitigate the noncompliance to the point that it is inconsequential to motor vehicle safety. For instance, if the materials used in the occupant compartment are highly flammable, trained personnel may not have sufficient time to use a fire extinguisher in the event of a fire, or activate the fire suppression systems.

Lastly, RTDI also stated that it has a strict "No Smoking" policy and that the operators and crew monitor the passengers accordingly. Having a "No Smoking" policy does not necessarily appropriately mitigate safety risk in the subject APVs. A "No Smoking" policy would not prevent fires from other sources, even assuming that such a policy is always followed. Further, NHTSA cannot rely on RTDI's policies as a means to mitigate safety risks because later operations/owners may not implement on the same policies.

VIII. NHTSA's Decision:

In consideration of the foregoing, NHTSA finds that RTDI has not met its burden of persuasion that the noncompliances with FMVSS No. 113 and 302 in the subject vehicles are inconsequential to motor vehicle safety.

Accordingly, RTDI's petition is hereby denied and RTDI is consequently obligated to provide notification of, and a free remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

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

Joseph Kolly,

Acting Associate Administrator for Enforcement.

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