requirements in FMVSS No. 103. RTDI explained that the APVs are ''open-air'' (*i.e.,* without side and rear glass windows) and because of this will never encounter any physical conditions that would produce fog buildup on the windshield. RTDI explained, that in the unlikely event that fog did accumulate on the windshield, the APVs have windshield wipers to clear the surface and that the vehicle operator can also manually lower the windshield for better visibility. RTDI mentioned that frost and ice should not be an issue because the APVs are only operated on a seasonal basis and not during winter months in any of the locations they operate.

In a separate inquiry to RTDI, the Agency learned that APVs are equipped with plastic side windows that can be deployed to partially enclose the vehicle's interior during periods of inclement weather and that these vehicles are not equipped with air conditioning systems but are designed with interior heating units.

The Agency does not agree with RTDI's judgment that the subject APVs, designed without a defogging or defrosting system, achieve the same purpose as FMVSS No. 103. During times of inclement weather when the side curtains are deployed and the front windshield is in the up position, the vehicle is not in a fully ''open-air'' configuration as suggested by RTDI. If fog were to develop on the windshield, and the vehicle is being driven on public roadways at posted speeds, the driver would not be able to safely lower the front windshield to address the problem, as explained by RTDI. Furthermore, RTDI mentioned that the APVs are only operated on a seasonal basis and not during winter months, however, the vehicles were designed with heating systems which would suggest they can be operated at times when the outside temperature is too cool for passenger comfort or when or frost conditions may occur. In all events, RTDI has not provided sufficient information for NHTSA to determine that the conditions underlying the regulatory requirement at issue will not occur during operation of the subject APVs.

NHTSA notes that FMVSS No. 103 was amended in 1985 to explicitly provide in § 4(b) that passenger cars, multipurpose passenger vehicles, trucks, and buses manufactured for sale in the non-continental United States may, at the option of the manufacturer, have a windshield defogging system which operates either by applying heat to the windshield or by dehumidifying the air inside the passenger compartment of the vehicle, in lieu of meeting the requirements specified by paragraph (a) of this section (50 FR 48772, Nov. 27, 1985). While this section of FMVSS No. 103 does not apply to the RTDI vehicles at issue, the reasons for this amendment are relevant to RTDI's proffered rationale that vehicles operated only in warmer months need not have a windshield defogging system. The 1985 amendment was promulgated in response to a petition filed by an entity located in the Virgin Islands alleging that windshields in that locale fog up very badly in damp weather, creating a serious safety hazard in vehicles which do not have defogging systems. The petitioner requested that manufacturers be required to install defogging systems in passenger cars sold in the Virgin Islands. NHTSA reviewed the climatic conditions of the Virgin Islands as well as other non-continental areas of the United States and determined that the petitioner's claim that climatic conditions conducive to frequent windshield fogging were accurate. In these climes, fogging occurs when a cool windshield contacts warm, moist air and the water vapor in the air condenses in the form of a liquid on the windshield. NHTSA further found these areas to be characterized by high temperatures and high humidity and windshield fogging would be especially likely to occur in the morning hours.

Given the operating regime of the RTDI vehicles, where high humidity is likely to be encountered along with higher temperatures, NHTSA is concerned, that under some combinations of interior and exterior environmental conditions (*i.e.,* air temperatures, humidity and dew point) fog could begin to build on the windshield. There are many factors, both inside and outside of the vehicle that can contribute to temperature, humidity and dew point variations, the root cause of fog. The human body gives off heat and is continually exhaling warm moist air which is a key contributor to the development of fog on internal motor vehicle windows. If an APV is fully loaded with passengers, the heater is activated because the temperature is cool outside, and the side windows and front windshield are closed, these conditions could be cause for a fog build-up on a windshield. This situation could be exasperated if a rainstorm quickly passed by the location where an APV was operating, which dropped the ambient temperature rapidly and added moisture to the surrounding environment.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that RTDI has not met its burden of persuasion that the subject FMVSS No. 103 noncompliance in the subject vehicles is 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, that noncompliance 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.

[FR Doc. 2021–22972 Filed 10–20–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0038; 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 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 104, *Windshield Wiping and Washing Systems.* 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.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, NHTSA, telephone: (202) 366–7352, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. *Overview:* RTDI has determined that certain MY 1996–2014 RTDI Stretch APVs do not fully comply with paragraph S4.2.2 of FMVSS No. 104, *Windshield Wiping and Washing Systems* (49 CFR 571.104). 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.

Notice of receipt of RTDI's petition was published in the **Federal Register** (82 FR 38993) with a 30-day public comment period on August 16, 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–2017–0038.''

II. *Vehicles Involved:* Approximately 105 MY 1996–2014 RTDI 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 manufactured without a windshield washing system, as required by paragraph S4.2.2 of FMVSS No. 104.

IV. *Rule Requirements:* Paragraph S4.2.2 of FMVSS No. 104 includes the requirements relevant to this petition. Each multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965) (incorporated by reference, see § 571.5), except that the reference to ''the effective wipe pattern defined in SAE J903, paragraph 3.1.2'' in paragraph 3.1 of SAE Recommended Practice J942 (1965) shall be deleted and ''the pattern designed by the manufacturer for the windshield wiping system on the exterior surface of the windshield glazing'' shall be inserted in lieu thereof.

V. *Summary of RTDI's Petition:* As background, RTDI began to produce APVs in 1996 by performing extensive modifications to General Motors amphibious military trucks originally designated as DUKWs. 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. 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 noncompliance as the absence of a compliant windshield washer system 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. 104 specifies, in relevant part, that ''each . . . [vehicle] shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965).'' 49 CFR 571.104, S4(a), S4.2.2. This FMVSS is designed to ensure that when activated, the windshield washing system is capable of reaching a sufficient portion of the exterior surface of the windshield, as designed by the manufacturer. The standard establishes minimum performance requirements for the windshield wiping and washing systems so that the vehicle operator is able to sufficiently see through the windshield. The APVs have features installed that are designed to achieve the same purpose as the standard. If there is debris present on the windshield, the driver is able to engage the vehicle's windshield wipers to clear the windshield's exterior surface. Further, the windshield of the APVs have a unique design that allows the driver to fully lower and raise the windshield glass. In the event that the windshield wipers could not clear the surface of the windshield, the driver has the option of lowering the windshield. Under either option, the visibility of the operator would not be compromised.

2. In the water portion of the vehicles' tours, the APVs are required to have the windshield lowered during operation, per U.S. Coast Guard regulations. The Coast Guard has recognized that in the event of an accident on the water, a raised windshield could impede passenger egress. Consequently, the Coast Guard has issued guidance which provides that the windshields of APVs be ''designed to fold down with minimal force to allow egress.'' U.S. Coast Guard Navigation and Inspection Circular (NVIC) 1–01, inspection of Amphibious Passenger Carrying Vehicles, p. 24. Further, the APV's exteriors, including the windshields, are washed after each tour, removing any debris that may have accumulated during the last tour.

3. 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). As described above, the specialized design of the APVs and the vehicles' pattern of use does not expose the vehicles to conditions that could create an increased safety risk when compared to a vehicle that has a windshield washing system installed.

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.

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. 104, RTDI asserted that:

a. As per U.S. Coast Guard NVIC 1–01 ''Guidelines for the Certifications of Amphibious Vessels,'' for the purposes of emergency egress the windshields of APVs should be designed to fold down with minimum force. The RTDI vehicles' front windshields are hinged at the bottom and there is a mechanical lever linked to the windshield frame. To quickly and safely lower or open the windshield, the driver simply lifts upward or pulls downward on the mechanical lever. The action of lowering and raising the windshield takes little effort as there are gas springs incorporated into the hinge which minimizes the weight and force involved in operating the windshield. Testing revealed the highest peak measurement at 22.6 lbs. of force. RTDI drivers often open the windshield when the vehicle is stopped or in slow moving heavy traffic and at a low rate of speed to allow fresh air into the driver and passenger space. The U.S. Coast Guard inspects and tests the windshield opening feature annually.

b. RTDI has established operational safety guidelines for the use of the drivers open/close feature. RTDI's guidelines states that an operator should not open the windshield ''unless the visibility through the windshield becomes obstructed, the opening and closing of the front windshield should only take place when the vehicle is traveling at a slow rate of speed (*i.e.,* slow moving traffic conditions) and/or when the vehicle comes to a complete stop.''

VII. *NHTSA's Analysis:* NHTSA has considered RTDI's arguments and has determined that RTDI has not met its burden of demonstrating that the subject noncompliance is inconsequential. The Agency responds to RTDI's arguments below.

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.[1] Potential performance failures of safety-

[1] *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).

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.[2] 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.'' [3] ''[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.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] 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 inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6]

For safe viewing through the front windshield, FMVSS No. 104 requires both a windshield wiping system and a washing system. The Agency believes that both systems are critical, and at times must work together, to ensure a clear view through the windshield. The purpose of the washing system is to aid the wiping system in the event that dust, dirt, mud, or other obstructions occur and the wipers are not sufficient to quickly and properly clear the windshield.

RTDI stated that the features of the APVs achieve the same purpose as the standard without a windshield washing system. According to RTDI, if debris is present on the windshield the driver can engage the windshield wiping system to clear the windshield exterior surface. RTDI also explained that in the event the windshield wipers could not clear the surface of the windshield the driver has the option of lowering the windshield.

The Agency does not agree with RTDI's assessment that the subject APVs are designed to achieve the same purpose as the standard without a windshield washing system. The Agency understands that these vehicles can be operated on public roadways at speeds up to 50 miles per hour. It is not uncommon while traveling at posted speeds to encounter conditions where the windshield wipers and the washing system must be used together to maintain forward visibility through the windshield. One good example of such a condition occurs shortly after a rain shower has ended, the roads are still wet, and other vehicles operating on the roadway are throwing up water spray and road dirt that can accumulate on following vehicle windshields. In this situation, both the windshield wipers and windshield washing systems would be required for safe operations.

Furthermore, in a follow-up response to a request from the Agency, RTDI informed the Agency that its safety guidelines only permit the driver to open and close the windshield should visibility become obstructed, and only when the vehicle is traveling at a slow rate of speed or is stopped. Thus, if the vehicle is moving at higher speeds under conditions as mentioned above, the Agency believes it would present a safety concern to lower the windshield.

VIII. *NHTSA's Decision:* In consideration of the foregoing, NHTSA finds that RTDI has not met its burden of persuasion that the subject FMVSS No. 104 noncompliance in the subject vehicles is 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, that noncompliance 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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[2] *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).

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

[4] *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'').

[5] *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).

[6] *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).

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0086]

Pipeline Safety: Pipeline Transportation; Hydrogen and Emerging Fuels Research and Development (R&D) Public Meeting and Forum

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of virtual public meeting and forum.

SUMMARY: This notice announces a virtual public meeting and forum titled: ''Pipeline Transportation and Emerging Fuels R&D Public Meeting and Forum.'' The public meeting and forum will serve as an opportunity for pipeline stakeholders to discuss research gaps and challenges in pipeline safety and emerging fuels, including hydrogen transportation. Furthermore, it will also serve as a venue for PHMSA, public interest groups, industry, academia, intergovernmental partners, and the public to collaborate on PHMSA's future R&D agenda.

DATES: The Pipeline Transportation and Emerging Fuels R&D Public Meeting and Forum will be held November 30, 2021, through December 2, 2021. Members of the public who wish to attend the public meeting and forum must register between October 15, 2021, and November 15, 2021. Individuals requiring accommodations, such as sign language interpretation or other aids, are asked to notify PHMSA no later than November 1, 2021. Individuals will have an opportunity on a first come first