Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0019; Notice 2]

Utilimaster Corporation, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of Petition Denial

SUMMARY: Utilimaster Corporation (Utilimaster),[1] has determined that certain model year 2009-2011 Utilimaster walk-in van-type trucks manufactured between September 1, 2009 and December 22, 2011 do not comply with paragraph S4.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components*. Utilimaster filed an appropriate report dated December 30, 2011, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, on January 23, 2012, Spartan Motors, Inc.,[2] on behalf of Utilimaster, 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. The

[1] Utilimaster Corporation, a wholly owned subsidiary of Spartan Motors, Inc., is a manufacturer of motor vehicles.
[2] Spartan Motors, Inc., is a manufacturer of motor vehicles.

National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the petition, with a 30-day public comment period, on February 17, 2012, in the Federal Register (77 FR 9726). The only comments received were from Morgan Olson, LLC (Morgan Olson).[3] To view the petition, the comments, 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-2012-0019."

CONTACT INFORMATION: For further information on this decision contact Mr. Tony Lazzaro, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-5304, facsimile (202) 366-7002.

RELEVANT REQUIREMENTS OF FMVSS NO. 206: FMVSS No. 206 paragraph S4.2.1 requires in pertinent part that each sliding door system shall be equipped with either: (a) at least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. The door closure warning system shall be located where it can be clearly seen by the driver.

A "primary door latch" is defined in FMVSS No. 206 paragraph S3 as "a latch equipped with both a fully latched position and a secondary latch position and is designated as a

[3] Morgan Olson, LLC, is a manufacturer of motor vehicles.

'primary door latch' by the manufacturer." A "secondary latched position" refers to "the coupling condition of the latch that retains the door in a partially closed position." FMVSS No. 206 paragraph S3.

A "door closure warning system" is defined in FMVSS No. 206 paragraph S3 as "a system that will activate a visual signal when a door latch system is not in its fully latched position and the vehicle ignition system is activated."

Vehicles involved: Affected are approximately 9,861 Utilimaster model year 2009-2011 walk-in van-type trucks.

Noncompliance: Utilimaster states that the noncompliance is that while the sliding doors on the vehicles are equipped with a door latch system (but not a "Primary Door Latch System"), no door closure warning system, as required by paragraph S4.2.1 of FMVSS No. 206, is installed.

SUMMARY OF UTILIMASTER'S ANALYSIS AND ARGUMENTS: By way of background, Utilimaster recognizes that the sliding door latch requirements contained in paragraph S4.2.1 of FMVSS No. 206 were adopted in February 2007 as part of a broader upgrade to the Agency's existing door latch and retention requirements. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components*, *Final Rule*, 72 FR 5385 (Feb. 6, 2007) [hereinafter 2007 Final Rule]. The effective date of these requirements was September 1, 2009.

As set forth in Utilimaster's noncompliance report, Utilimaster determined that the new latch requirements applied to these vehicles, but were not designed into vehicles built after the effective date. (This omission was the result of Utilimaster's previous misinterpretation as to the applicability of the FMVSS No. 206 amendments to these particular vehicles).

Utilimaster explains that the sliding doors on the subject vehicles are equipped with a door latch that does not meet the above-referenced definition of a "primary door latch" because these vehicles lack a secondary latched position. Thus, these vehicles do not meet the paragraph S4.2.1(a) compliance option. Moreover, these vehicles are not equipped with a "door closure warning system" and, therefore, they do not meet the paragraph S4.2.1(b) compliance option. Utilimaster believes that the omission of a door closure warning system on these vehicles is inconsequential to safety due to the particular characteristics of the sliding doors on these vehicles which, in its view, will immediately provide adequate visual (and audible) feedback to the driver to alert him or her in the event a door is unlatched.

Utilimaster further states that the door has approximately 0.315 inches of engagement into the door seal. Therefore, should the sliding door not be in the latched position, it would be readily apparent to the driver before the vehicle is driven. Even if the driver did not notice the gap in the door prior to

the vehicle being driven, these doors would provide immediate visual feedback to the driver as soon as the vehicle begins to move. The sliding doors on these vehicles are designed to slide longitudinally on a track when the sliding door handle is activated and a small force is applied in the same longitudinal direction. As a consequence, if the sliding door is not fully closed and latched and the driver is not aware, this condition would become immediately apparent to the driver when the vehicle is accelerated from rest, as the sliding door would glide rearward from the force created by the acceleration. Thus, while these vehicles may not meet the express requirements of paragraph S4.2.1 or the definition of a "door closure warning system," Utilimaster asserts they do meet the intent of these requirements. Utilimaster also argues that the use of other visual signals, such as a dash-mounted telltale, might be necessary for vehicles with rear sliding doors, such as minivans or other passenger vehicles, but the sliding doors on the subject vehicles are located in the front within plain view of the driver.

Utilimaster further states that in adopting the upgraded sliding door standards in 2007, the Agency stated that it was

particularly concerned with children riding in the rear seats of passenger vans (minivans or "MPVs").[4]

Utilimaster also states that these vehicles are used exclusively in commercial applications and are driven exclusively by professional drivers (primarily without a passenger). Utilimaster states that these drivers, in addition to having a commercial driver's license, have undergone highly regimented training programs and must adhere to corporate safety policies. This training requires that drivers enter and exit the vehicle from the curb side of the van and fasten the seatbelt when the vehicle is in motion. The repetitive use of the van results in highly repeatable results from one stop to the next. Utilimaster argues that the likelihood that a driver would move the vehicle with the door left inadvertently open is very low and that the likelihood that the driver would be ejected from the driver's seat, through a curb-side door, left unintentionally unlatched, is even less probable.

Utilimaster states that it is not aware of a driver or passenger of its vehicles ever having been ejected from or fallen through an open sliding cab door while the vehicle was in motion. Utilimaster also notes that walk-in vans with sliding

[4] *Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components, Final Rule*, 72 FR 5385, 5387 (Feb. 6, 2007).

doors very similar in design to those on the subject vehicles have been in use for several decades.

Additionally, Utilimaster argues that the sliding doors on these vehicles meet all load test and inertial requirements of FMVSS No. 206, paragraph S4.2, and therefore this noncompliance will not increase the risk of occupant ejection under conditions addressed by such requirements.

In summary, Utilimaster contends that the noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120, should be granted.

COMMENTS: NHTSA published a notice of the petition in the Federal Register to allow an opportunity for members of the public to present information, views, and arguments on the subject petition. As noted earlier, the only comments received were submitted by Morgan Olson, also a manufacturer of walk-in van-type trucks. Morgan Olson reported similar noncompliances with S4.2.1 of FMVSS No. 206 on January 19, 2012 and filed its own Petition for Decision of Inconsequential Noncompliance on February 10, 2012.[5] Morgan Olson commented in support of granting Utilimaster's petition for inconsequentiality. Morgan Olson

[5] *Morgan Olson, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance,* 77 FR 19055 (Mar. 29, 2012).

echoed Utilimaster's arguments and provided information similar to that provided by Utilimaster. The Agency notes that an absence of opposing argument and data does not require the Agency to grant the petition.[6]

NHTSA'S CONSIDERATION OF UTILIMASTER'S INCONSEQUENTIALITY PETITION:

General Principles: Federal motor vehicle safety standards are adopted only after the Agency has determined, following notice and comment, that the standards are objective and practicable and "meet the need for motor vehicle safety." *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118-30120.

However, Congress has recognized that, under some limited circumstances, a noncompliance could be "inconsequential" to motor vehicle safety. "Inconsequential" is not defined either in

[6] *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 507, 510 (Jan. 5, 2010).

the statute or in NHTSA's regulations. Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The relevant issue in determining inconsequentiality is whether the noncompliance in question is likely to significantly increase the safety risk to individuals of accidents or to individual occupants who experience the type of injurious event against which the standard was designed to protect. *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897 (Apr. 14, 2004).

There have been instances in the past where NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety, such as noncompliances concerning labeling where the discrepancy with the safety standard was determined not to lead to any misunderstanding, especially where sources of the correct information were available (e.g. in the vehicle owner's manual). *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004).

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a standard is more substantial and difficult to meet, and the Agency has not found many such noncompliances to be inconsequential. *Id.*

Utilimaster first argues that the sliding doors are located in the front of the vehicle, viewable to the driver, and that a small gap will be apparent to the driver if a door is not fully latched. Moreover, Utilimaster asserts that even if the driver does not notice the gap in the door prior to driving the vehicle, as the vehicle begins to move the door will slide open, alerting the driver.

FMVSS No. 206 requires that a sliding door system be equipped with either (a) at least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. Since the noncompliant vehicles are equipped with a door latch system with a fully latched position (but not a primary door latch system), in order to comply with FMVSS No. 206 the vehicles would also need to have a door closure warning system. Such a system is automatic and does not require the driver to make observations of the door. The subject vehicles do not have such a system. Without a warning system, the driver would have to look away from driving to see a door gap. The Agency does not consider a door gap to be a sufficient alert to the driver that the door is not fully latched.

The Notice of Proposed Rulemaking for the 2007 amendments to FMVSS No. 206 explained the scope of the safety risks associated with the ejection of vehicle occupants through

vehicle doors. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components and Side Impact Protection, Notice of Proposed Rulemaking,* 69 FR 75020, 75024-75025. The Agency noted that "[d]oor ejections, due to non-rollover door openings, account for 23 percent of the total non-rollover ejections with known routes . . . [and of] those ejected through a sliding door, each year approximately 20 people are killed and 30 people are seriously injured, based on the 1995-2003 data from NASS." *Id.* Based on this safety risk analysis, the Agency concluded that "this exposure is [not] acceptable when measures can be taken to minimize the likelihood that a sliding door would open in a crash." 69 FR 75025. Accordingly, the Agency proposed the FMVSS No. 206 side sliding door latch requirements to "assure vehicle occupants that a sliding door is completely closed." 69 FR 75026.

Utilimaster's arguments in support of its petition do not allay these safety concerns. Utilimaster's petition acknowledges that the vehicle driver may not notice the small gap in the door before the vehicle begins to move. Moreover, having the door unexpectedly slide open while the vehicle is driven can create a potential distraction to the driver, especially considering any attempts by the driver to close the door while the vehicle is in motion. In addition, accidents can occur even at low speeds when a vehicle is accelerated into

motion, and may include impact with another vehicle including a vehicle moving at higher speed. Therefore, in light of these safety risks, the Agency finds that the door gap on the subject vehicles is not an acceptable replacement for a door closure warning system.

Utilimaster also asserts that the subject vehicles are exclusively commercial in application and that the drivers of these vehicles are highly trained and must adhere to corporate-mandated safety practices. Utilimaster asserts that the sliding door standards were "particularly concerned with children riding in the rear seats of passenger vans." The Agency believes that corporate operating policies and training do not preclude driver error (inadvertent or otherwise), such as operating the vehicle with the door left inadvertently open or not fastening an occupant's safety belt. Although the Agency did note in the NPRM that it was "[a]dditionally . . . concerned that the individuals with the greatest exposure to sliding door failures are children," 69 FR 75025, the Agency never indicated that child passenger safety was the only safety concern addressed by the standard. Moreover, while Utilimaster states that the subject vehicles are driven primarily without a passenger, Utilimaster's petition implicitly acknowledges that a passenger may be present. In short, the Agency believes that there are valid concerns that occupants of the subject vehicles are exposed to

an increased risk of accidents and injuries, particularly those associated with occupant ejection, compared to occupants of compliant vehicles.

Utilimaster also states that it is not aware of a driver or passenger of its vehicles ever having been ejected from or fallen through an open sliding cab door while the vehicle was in motion. However, the Agency is aware of at least one occupant ejection through an open sliding side door of a commercial vehicle similar to those that are the subject of this petition. A walk-in van-type delivery truck was involved in an accident in 2009 at an intersection in Florida in which the driver of the delivery truck was ejected through an open sliding side door and sustained injuries. The delivery truck, after being stopped at a stop sign, entered the intersection and struck the side of a crossing vehicle causing the vehicles to become engaged and spin together. The delivery truck driver, who was not wearing a safety belt, was ejected into the roadway.[7]

Finally, Utilimaster asserts that the sliding doors on these vehicles meet all load tests and inertial requirements of FMVSS No. 206 S4.2 and therefore, the noncompliance will not increase the risk of occupant ejection under conditions addressed by such requirements. This argument, however, is

[7] Florida Department of Highway Safety and Motor Vehicles; HSMV Crash Report Number 90163273, dated January 6, 2009.

inapplicable to the issue at hand because these standards do not address the performance of an unlatched door. *See, e.g.* 49 CFR 571.206 S4.2.1.1(a), S4.2.1.2(a) and S4.2.1.3(a) (discussing testing when the door latch is in the fully latched position).

Decision: 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, Utilimaster's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

If Utilimaster believes that vehicles it will produce in the future should not be subject to any currently applicable FMVSS No. 206 requirements, Utilimaster may consider petitioning the Agency for rulemaking. The appropriate type of petition to request a change in a rule is one filed under 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Non-Compliance Orders.*

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

Issued on: August 2, 2012

_____

Nancy Lummen Lewis
Associate Administrator
for Enforcement

Billing Code: 4910-59-P

[FR Doc. 2012-19581 Filed 08/08/2012 at 8:45 am; Publication Date: 08/09/2012]