

543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 20, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-28084 Filed 11-25-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-12479]

Dorel Juvenile Group [Cosco] (DJG); Notice of Appeal of Denials of Inconsequential Noncompliance

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

ACTION: Request for comments on DJG appeal of denials of inconsequential noncompliance.

SUMMARY: This notice asks for public comments on DJG's appeal of NHTSA's denial of its petitions for two inconsequential noncompliances with the Federal safety standard for child restraint systems. This notice simply summarizes DJG's appeal—it does not represent NHTSA's judgment or findings on the appeal. All public comments will be considered along with the information in DJG's appeal and other relevant information as the agency makes its final decision on these petitions for inconsequential noncompliance.

DATES: Comments must be received by NHTSA on or before December 26, 2008.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>.

- Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery or Courier:** U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

SUPPLEMENTARY INFORMATION: Dorel Juvenile Group (DJG), of Columbus, Indiana, the parent company manufacturing Cosco brand child restraints, has appealed a decision by the National Highway Traffic Safety Administration that denied its two applications for a determination that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems" is

inconsequential to motor vehicle safety. This notice of receipt of DJG's appeal is published in accordance with NHTSA's regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Notice of receipt of the petitions for inconsequential noncompliance was published on July 30, 2002 and December 3, 2002 in the **Federal Register** (67 FR 49387 and 67 FR 72025). On July 18, 2008, NHTSA published a notice in the **Federal Register** denying DJG's petitions (73 FR 41397), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

Affected are a total of 3,957,826 child restraints representing 39 models produced from January 2000 through September 30, 2001 due to noncompliance with the post-abrasion tether webbing strength requirement and 54,400 child restraints representing 14 models produced from March 15, 2002 through August 1, 2002 due to noncompliance with the post-light exposure harness webbing strength requirement. The noncompliant tether webbing retained only 55 percent of its new webbing strength when subjected to the abrasion test and so failed to meet the 75 percent strength retention requirement of FMVSS No. 213. The noncompliant harness webbing retained only 37 percent of its new webbing strength when exposed to carbon arc light and so failed the 60 percent strength retention requirement in FMVSS No. 213.

Post-Abrasion Webbing Strength Petition, Denial, and Appeal Summary

In its original post-abrasion test strength retention petition, DJG asserted that the noncompliance is inconsequential to motor vehicle safety because its unabraded webbing strength as well as its post-abrasion webbing strength was sufficiently high and that its abraded strength was far higher than the anchorage strength requirement specified in FMVSS No. 225. In addition, DJG asserted that the abraded webbing strength test procedure was flawed because a minimum abraded breaking strength was not specified.

In its denial, NHTSA made the point that both the unabraded webbing strength and the degradation rate requirements are important from a safety perspective. NHTSA determined that the lack of sufficient breaking strength retention after abrasion signals the distinct probability that the webbing strength would be insufficient throughout a lifetime of use. The high

degradation rate of the DJG tether webbing could abrade to the point where the webbing strength is lower than the tether anchor strength, providing for an unsafe connection to the vehicle. In consideration of the foregoing, NHTSA decided that DJG did not meet its burden of persuasion that this noncompliance was inconsequential to motor vehicle safety.

In its appeal from NHTSA's denial, DJG stated that NHTSA did not respond to all the arguments and data in the denial decision and focused instead on the "high degradation rate" of the webbing and that it may not last the life of these child restraints. DJG states that according to NHTSA's own recommendation for the useful life of child restraints, the majority of the subject noncompliant child restraints are already beyond their useful life, given the passage of time between the filing of DJG's petition and the denial decision. DJG asserts that most of the child restraints at issue are now more than seven years old and beyond their useful life, yet there have been no complaints of tether webbing abrasion or tether webbing failure in crashes. DJG further states that the real world performance of these restraints contradicts NHTSA's assertion that there is a distinct probability that the tether webbing strength would be insufficient throughout a lifetime of use.

DJG also provided tether webbing strength test data of used child restraints from the affected population to demonstrate that the tether webbing is not being abraded in the real world to a strength level corresponding to the post-abrasion test strength of 10,903 N. DJG maintains that the tether webbing strength after 6 to 8 years of use ranges from 82.4 to 99.6 percent of initial breaking strength. DJG states that these test results also show that the tether webbing from compliant and noncompliant used child restraints performed comparably, and demonstrated no problematic degradation.

DJG argued in their appeal of NHTSA's denial that NHTSA had previously granted a petition for a determination of inconsequentiality with respect to tether webbing on certain Evenflo child restraints reasoning that the tensile strength of abraded Evenflo tethers were greater than the measured tensile loads in sled tests and that the Evenflo tether webbing would have complied with the agency's regulation in effect from 1971 to 1979 for both unabraded and abraded webbing for a Type 3 belt. DJG states that they had provided test data in the initial petition to demonstrate that the

same two reasons for which NHTSA granted the application of inconsequential noncompliance applies to the subject noncompliant DJG child restraints and therefore, NHTSA should have also granted the DJG petition.

Finally, DJG cites docketed test results in connection with NHTSA's rulemaking on minimum breaking strength which demonstrates that DJG's tether webbing post-abrasion breaking strength was significantly higher than the new and post-abrasion breaking strength for at least one Britax model in the market at the time. DJG believes that since this Britax child restraint complied with the FMVSS No. 213 requirements, their subject child restraints with a post-abrasion tether breaking strength of more than two times that of the Britax child restraint poses no consequential safety risk.

Post Light Exposure Petition, Denial, and Appeal Summary

In its original post-light exposure test strength retention petition, DJG asserted that the noncompliance is inconsequential to motor vehicle safety because its light-exposed harness webbing breaking strength of 4,539 N far exceeded the corresponding tensile loads in 30 mph dynamic sled tests.

DJG argued that while the webbing (made of nylon fabric) was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's specifications), the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter (specified by the standard for use only for polyester fabric). In addition, DJG asserted that carbon arc light does not have the same spectral characteristics as sunlight and delivers excessive relative photon energy to the test specimen in the ultraviolet and low visual spectrum compared to natural sunlight. DJG contends that light exposure testing using carbon arc light systems is obsolete since, in recent years, these systems have been replaced by Fluorescent UV or Xenon arc systems that resemble natural sunlight characteristics more closely than carbon arc systems. DJG stated that the harness webbing retained 93.5 percent of its initial breaking strength when it was exposed to a xenon arc lamp for 300 hours (3 times longer than that required by the standard).

In its denial, NHTSA noted that the test conditions in FMVSS No. 213 reflect the concern that child restraints will withstand even the most severe crashes which are well above 30 mph. Therefore, NHTSA did not find DJG's assertion that its light exposed harness

webbing strength far exceeds forces in a 30 mph dynamic crash test to be persuasive evidence of the noncompliance being inconsequential to motor vehicle safety. NHTSA also pointed out that carbon arc light filtered by a soda-lime glass filter is not appropriate for webbing made of nylon and so the DJG compliant data was based on testing using an inappropriate filter, and not conducted according to FMVSS No. 213 requirements. NHTSA believes that the test results obtained by the carbon arc test method are an appropriate reflection of the strength capabilities of the DJG webbing and stated that the use of xenon arc lamp for weathering tests of glazing materials under FMVSS No. 205 does not mean that the carbon arc is not indicative of the sunlight spectral power distribution or that it produces invalid weathering results for webbing materials.

In its appeal of NHTSA's denial, DJG reiterated and emphasized the same points made in the original petition. DJG stated that NHTSA's assertion on the use of carbon arc source in light exposure testing was not substantiated and is contrary to the Agency's own conclusion in its recent rulemaking to amend FMVSS No. 205. In the final rule amending that standard, NHTSA concluded that a xenon arc light source had characteristics closer to natural sunlight than carbon arc light source. DJG noted that natural sunlight characteristics are the same for glazing material and harness webbing and so this implies that the xenon arc light source is more appropriate for use in the webbing light exposure tests.

DJG pointed out that NHTSA had previously relied on 30 mph crash test data to grant inconsequentiality petitions with respect to child restraints such as the Evenflo tether webbing described earlier that failed to meet the post-abrasion test requirements. DJG also presented docketed information of NHTSA's compliance test data which showed that the Safeline child restraints had post-light exposure strengths that were lower than that of the DJG webbing, yet the Safeline restraints complied with the standard and were deemed to provide an adequate level of safety because they had a very low initial breaking strength. DJG asserts that this Safeline data demonstrates that DJG's arguments are not theoretical and should not have been dismissed by NHTSA.

Lastly, DJG states that the real world experience of the noncompliant child restraints disproves NHTSA's assertion that the high degradation rate of the harness webbing signals a distinct probability that the webbing strength

would be insufficient throughout its use. DJG noted that though these restraints are now more than seven years old, and generally past their useful life, there have been no complaints regarding harness degradation in these restraints or any known failures of the harness webbing in crashes.

In conclusion, DJG states that real world experience of child restraints at issue in this proceeding has proven that the non-compliant webbing has performed satisfactorily for more than seven years in the field. In addition, DJG contends that recent testing of the breaking strength of the tether webbing in used child restraints confirms that the webbing is not degrading in use from abrasion, exposure to light or any other reason, and is retaining a very high percentage of its original strength. Therefore, DJG believes that NHTSA should grant DJG's appeal of the decision to deny its petitions for a determination that the noncompliance of its tether and harness webbing is inconsequential to safety.

Public Comments

Interested persons are invited to submit written data, views, and arguments on the petition appeal described above. The petition appeal, supporting materials, and all comments received before the close of business on the closing date indicated in the beginning of this notice 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 appeal is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

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

Issued on: November 20, 2008.

Stephen R. Kratzke,
Associate Administrator for Rulemaking.
[FR Doc. E8-28083 Filed 11-25-08; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35199]

Potlatch Land & Lumber, LLC— Change of Control Within Corporate Family Exemption

Potlatch Land & Lumber, LLC (PL&L), has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to undertake

a change of control within its corporate family. PL&L, a newly organized subsidiary of Potlatch Corporation of Spokane, WA (Potlatch), seeks to acquire the stock of 3 short line railroads: St. Maries River Railroad Company (STMA), Warren & Saline River Railroad Company (WSR), and The Prescott and Northwestern Railroad Company (PNW). The stock of the railroads is currently held by Potlatch Forest Products Corporation, another subsidiary of Potlatch, which is being spun off and will be renamed Clearwater Paper Corporation.

The transaction is expected to be consummated on December 13, 2008 (30 days after the exemption was filed).

PL&L states that the transaction is designed to permit Potlatch, through PL&L, to retain indirect control of STMA, WSR, and PNW. PL&L adds that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III rail carriers.

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. Petitions for stay will be due no later than December 5, 2008 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35199, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036.

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

Decided: November 19, 2008.

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

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E8-27991 Filed 11-25-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-21028]

Delivery Acquisition, Inc.—Purchase— Transportation Management Systems, LLC and East West Resort Transportation, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice of Correction.

SUMMARY: This document contains a correction to a decision served and published in the **Federal Register** on July 18, 2008 (73 FR 41401-02). That decision tentatively approved the acquisition of control through purchase of Transportation Management Systems, LLC, f/k/a TMS, Inc. (TMS) and East West Resort Transportation, LLC (EWRT) by Delivery Acquisition, Inc. (Delivery), unless opposing comments were filed by September 2, 2008. No comments were subsequently filed with the Board and the Board's decision approving the proposed acquisition of control thus became effective on September 2, 2008. After the period for filing comments ended, the Board received notification from the applicants in this proceeding that references they had made in the application approved by the Board to operating rights issued by the former Interstate Commerce Commission (ICC) in Docket No. MC-169714 were incorrect, and that the correct number is MC-169174. Accordingly, the July 18 decision is being corrected to reflect the actual docket number of MC-169174, rather than MC-169714.

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 245-0359 [Federal Information Relay (FIRS) for the hearing impaired: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: On September 2, 2008, the Board's approval of Delivery's acquisition of TMS and EWRT became effective. On November 13, 2008, the Board received notification from the applicants that their application misstated that certain of the operating rights held or leased by TMS, and EWRT had been issued by the former ICC in Docket No. MC-169714. The correct docket number is MC-169174.

A copy of this notice will be served on: (1) The U.S. Department of