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National Highway Traffic Safety Administration

[Docket No. 94-48; Notice 2]

John Russo Industrial, Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

John Russo Industrial, Inc. (Russo) of San Jose, California, determined that some of its trucks failed to comply with requirements of several Federal motor vehicle safety standards (FMVSS) in 49 CFR Part 571. These are FMVSS No. 113, "Hood Latch Systems," FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles other than Passenger Cars," FMVSS No. 205, "Glazing Materials," and FMVSS No. 207, "Seating Systems." All these noncompliances were discovered on July 13, 1993 during inspection of vehicles by NHTSA's Office of Vehicle Safety Compliance (File NCI 3288). Russo filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Russo also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (now 49 U.S.C. 30118 and 30120) on the basis that the noncompliances were inconsequential as they relate to motor vehicle safety. This notice grants the petition.

Notice of receipt of the petition was published on June 9, 1994 (59 FR 29861), and an opportunity afforded for comment. Comments on the petition were received from Donald W. Beams (Fleet Manager, Vehicle Maintenance Division, Department of General Services, City of San Jose); R. A. Gaffney (a senior member of the board of the California Fire Chief's Mechanics Education Committee); and Darlene E. Skelton. These commenters recommended that the petition be denied. Comments on the safety issues were also received from the Fire Marshal of the State of California, Ronny J. Coleman.

1. FMVSS No. 113, "Hood Latch Systems"

In 1991, Russo completed two vehicles which do not comply with the hood latching requirements in S4.2 of FMVSS No. 113, in that panels opening on the front were not provided with a

second latch position on the hood latch system or with a second hood latch system. With respect to this noncompliance, Russo argued:

[49 CFR 571.113 S3] definition, "Hood means any movable exterior body panel forward of the windshield that is used to cover [an] engine, luggage, storage, or battery compartment." The forward face panels on our vehicles are below the windshield, and are not used as compartment, storage, or any criteria to classify it as a hood.

Paragraph S4.2 of standard 113 states: "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."

The access panels in question are not classified as a hood mechanism, therefore [they] do not need to follow these guidelines. If the panel were left open it would not obstruct the driver's view enough to cause a driving hazard.

Our testing of this design consisted of the air flow testing of up to 78 mph with a head wind of 14 mph that brought the total air speed to 92 mph. Air flow only holds the access panel down more securely. The panel cannot fly up as a result of the air flow.

Panels of similar design are easily found on hundreds of thousands of on-road vehicles including GMC Astro 9500, Chevrolet Titan 90, Ford CLT 9000, Freight Liner cab overs, and many other vehicles * * *.

The Hazmat and Command vehicles are built with windshields which are much larger than those of typical van or cab over engine type vehicles. This large windshield is provided partially as a styling feature and partly to provide exceptional visibility in low speed maneuvering situations. The small area of windshield which would be blocked if the access panel could physically be lifted up by air flow, would not even be in the field of view on typical vehicles in this class.

The City of San Jose disputes Russo's contention that the panel is not a hood, saying that the front compartment "has some storage capacity." Commenters expressed concern that the panel could rise and strike the windshield. The Fire Marshal asks whether a standard has been developed for air flow tests; if no standard exists, the panel's performance in Russo's tests is an inadequate justification for granting the petition.

NHTSA has reviewed Russo's arguments and the comments received. The agency accepts the manufacturer's position that the panels do not cover the engine, luggage or storage space, or battery compartment. The panel, therefore, would not appear to be a "hood" within the meaning of the standard's definition. Even if it were a hood, Russo's 92 mph wind tests provide a measure of assurance that the airflow increases the pressure on the panels, making it unlikely that the wind could blow the panels open. Even if the

panels do blow open, any obstruction to the operator's view is minor and affects visibility only through the lowest portion of the windshield.

2. FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars"

Seventeen vehicles completed or modified by Russo from 1989 through 1991 do not have the label required by S5.3 of FMVSS No. 120, which includes the size designation of the tires, the size designation of the rims, and the cold inflation pressure of the tires. According to Russo, the noncompliances are due to removal of labels after the purchaser took delivery of the vehicles. It commented that

Without waiving this petition for exemption due to inconsequential non-compliance, we will notify the Deputy Chief of the San Jose Fire Dept. of our offer to supply and install new decals if they wish in a coordinated verifiable supervised manner. We shall document it for NHTSA and send NHTSA all copies of the labels.

The City of San Jose comments that it has no records that the labels were installed or removed. Darlene E. Skelton says that the same noncompliance can be found on Russo vehicles provided to fire departments other than those of San Jose. The Fire Marshal notes that Russo has offered to provide the labels.

Russo's provision of the labels is the same remedy that other manufacturers with similar noncompliances have performed in the absence of an inconsequentiality petition. Thus, this action moots the petition for relief from remedy. Russo's notification letter to the Fire Department does not contain all the information required by 49 CFR Part 577, but the omissions (safety warnings, DOT address, etc.) are not critical in this case where there is only one owner, who is aware of the problem and who has contacted NHTSA already with comments on it.

3. FMVSS No. 205, "Glazing Materials"

In 1991, Russo completed two vehicles that do not comply with the glazing materials marking requirements in Section 6 of FMVSS No. 205, which state that windshields must be marked AS-1 and windows to the right and left of the driver's position must be marked AS-2. The subject vehicles have no marking on the windshields, and the markings on the windows to the right and left of the driver's position are AS-3, not AS-2. Russo provided a photocopy of a purchase order for AS-1 windshield glass which it claims were used for the windshields. Russo further provided a copy of a letter from the supplier of the cockpit side windows