be the First Avenue South Bridge. The north terminus would be north of the existing Battery Street Tunnel and will be determined after project scoping to (1) not preclude a possible connection to the south Lake Union vicinity (the Mercer Street Corridor connection to Interstate 5), (2) not preclude a possible realignment of the SR 99 corridor, and (3) not preclude using the existing Battery Street Tunnel and existing Alaskan Way Viaduct facilities.

Improvement to the corridor are considered necessary because the age, design, and location of the existing viaduct make it vulnerable to soil liquefaction and could render the structure unusable in a strong earthquake. Built in the 1950's, the viaduct does not meet current seismic standards. Damage sustained to the structure during a February 2001 earthquake compounded its seismic vulnerability. The structure also does not meet current roadway design standards for lane widths, shoulders, and ramp sight distances and tapers, which contribute to the number and severity of traffic accidents. Four areas along this section of SR 99 are designated High Accident Locations (HAL). The SR 99 Alaskan Way Viaduct is one of two primary north-south limited access routes through downtown Seattle, and is a vital link in the region's roadway system.

Although alternatives have not yet been identified, preliminary alternatives under early consideration include: taking no action, seismic retrofit of the existing structure, in-kind replacement of the current structure, replacement with a new elevated structure of a different configuration, replacement with a tunnel, removal of the viaduct and reconfiguration of the surface street system, adding transit capacity, or combinations of these solutions. The list of alternatives to be addressed in the EIS will be finalized after scoping has occurred.

Letters soliciting comments on the scope of the EIS and describing the purpose, need, and potential alternatives will be sent to appropriate Federal, State, and local agencies, Tribes, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two meetings will be held to identify the scope of issues to be addressed, the major impacts, and the potential alternatives. Both meetings will be conducted on June 28, 2001, at the Mountaineers Club, Olympus Room, 300 Third Avenue West, Seattle, Washington. The first meeting, from 1:00 to 4:00 p.m., will focus on input from agencies and Tribes. The second meeting, from 5:00 to 8:00 p.m., will primarily be for the public. Written scoping comments may be submitted to Carol Hunter (WSDOT) at the address provided above and are requested by July 12, 2001. In addition, a public hearing will be held following circulation of the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this action and the EIS should be directed to FHWA or WSDOT or the City of Seattle at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 18, 2001.

James A. Leonard,

Urban Transportation and Environmental Engineer, Olympia, Washington, for the Division Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7739; Notice 2]

Utilimaster Corporation; Denial of Application for Decision of Inconsequential Noncompliance

Utilimaster Corporation (Utilimaster) has determined that some of its vehicles do not comply with some requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Utilimaster has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** on August 14, 2000 (65 FR 49631). Opportunity was afforded for public comment until September 13, 2000. No public comments were received.

Table 1 of FMVSS No. 108, lists motor vehicle lighting equipment, other than headlamps, required for multipurpose passenger vehicles, trucks, trailers, and buses of 80 or more inches in overall width. The requirements for clearance and identifications are contained in Society of Automotive Engineers (SAE) Standard J592e, ''Clearance, Sidemarker, and Identification Lamps,'' July 1972, which is incorporated by reference in FMVSS No. 108. SAE J592e requires that these lamps provide at least 0.62 candela at 10 degrees down and 45 degrees to the left and right.

Utilimaster determined that, between September 30, 1997 and October 6, 1999, it produced 2,730 walk-in van trucks that do not comply with the aforementioned photometric requirements. These trucks have light emitting diode (LED) front clearance and identification lamps mounted at a 30 degree off-vertical set-back position. The photometric noncompliances were as much as 69 percent below the minimum requirement.

Utilimaster supports its application for inconsequential noncompliance by stating that the lighting array and coverage of the clearance, identification, side marker and parking lamps on the subject vehicles provide (and even exceed) the requisite outboard visibility under FMVSS No. 108 on a systems basis. Although the clearance and identification lamps on the subject vehicles do not meet two requirements in the standard, the petitioner believes that the system of lighting as installed on these vehicles meets the standard's intent of providing a visually safe vehicle. It bases its position on the fact that the company is using a front turn signal and parking lamp that is actually designed to meet the greater photometric angles required of turn signal and clearance lamp applications.

More specifically, the front turn signal and parking lamps mounted on each side of the front of the walk-in vans provide light out to a 45-degree angle both left and right. The light intensity at these greater angles (45 degrees) is 50 percent greater than that required for clearance lamps (0.93 cd minimum compared with 0.62 cd minimum required). In addition, these front turn signal/parking lamps are mounted low on the subject vehicles so that the light output covers the lower angles where the clearance and identification lamps are deficient. Further, the front side marker lamps cover the 45 degree to the front to 45 degree to the rear, downward angles of light, so that there is no degradation of visibility to the side of the vehicle. The light from the side marker lamps exactly parallels the outboard light from the parking lamps.

Utilimaster believes that the noncompliance in no way compromises the safety of vehicles on which the clearance and identification lamps have

been installed as original equipment. It claims that the lighting system as a whole on these vehicles provides functionally equivalent lighting to FMVSS 108 requirements.

We have reviewed the application and disagree with Utilimaster that the noncompliance is inconsequential to motor vehicle safety. Utilimaster replaced an incandescent lamp assembly with one that uses LEDs. LEDs emit a very distinct beam of light along their longitudinal axis with almost no light being emitted laterally. This is very different from incandescent light sources, which usually produce light in a much wider pattern. The 30 degree off-vertical set-back position of the lamps tilts the top of the LED-equipped lamps too far back for them to meet the intensity requirements at 10 degrees down and 45 degrees to the right and left. With the increasing prevalence of LEDs in signal lamp assemblies, we believe it is important to stress to lamp and vehicle manufacturers that LED lamp assemblies' different characteristics must be taken into account. Simply replacing lamps that use incandescent bulbs with similarly-sized LED-equipped lamps could have adverse effects on the performance of the lighting system. In this case, the subject lamps have photometric failures that are as high as 69 percent below the required performance.

To support its application, Utilimaster states that, for the areas in which the clearance and identification lamps are possibly noncompliant, the parking and side marker lamps provide additional light to account for these deficiencies. It states that ''on a system basis, the lighting array and coverage of the clearance, identification, side marker, and parking lamps on the subject vehicles provide—and even exceed—the requisite outboard visibility under FMVSS 108.'' We disagree that the parking and side marker lamps serve as adequate substitutes for the deficient areas in the clearance and identification lamps.

Regarding the clearance lamps, their intended purpose is to show the overall width and height of a vehicle. The front parking lamps do not accomplish this because they are not near enough to the edge of the vehicle nor as high as practicable. We call attention to a September 4, 1996, agency interpretation that was requested by Pace American, Inc. We stated that ''locating a clearance lamp within six to eight inches of the outermost edges of a trailer that is 80 or more inches in overall width does not indicate 'overall width' within the meaning of Standard No. 108.'' The center of the front parking lamps on the subject vehicles is more than 12 inches from the edge of the vehicle. Thus, they do not accurately reflect the width of the vehicle due to their inboard mounting. It is also readily apparent that, because the parking lamps are mounted next to the headlamps, they do not help to indicate the height of the subject vehicles.

Regarding the identification lamps, their intended purpose is to identify vehicles with a width of greater than 80 inches (2032 millimeters). Utilimaster's argument that the intent of the standard is met because the front parking lamps provide light in the areas in which the subject identification lamps are deficient is not convincing. The grouping of the three identification lamps is unique to vehicles wider than 80 inches (2032 millimeters). If these lamps are not visible, the front parking lamps are not sufficient to give the same recognition, as they do not provide the universal message that a grouping of three identification lamps at the top front of the vehicle does.

To support its position, Utilimaster cites four inconsequential noncompliance applications which the agency granted. It believes that they all support its position that the lamps on a vehicle should be viewed as a system, where deficient areas in some lamps can be accounted for with light provided by other lamps. It did not elaborate further on the similar characteristics of their applications.

First, Utilimaster cites a General Motors application in which vehicles had turn signals that failed by 10 percent in a particular zone (group of test points). The agency granted the application based on the fact that the other zones in the turn signal lamp exceed the required light output by 20 percent (61 FR 1663). While Utilimaster's vehicles do have other sources of light to account for some of the deficiencies in the subject lamps, its noncompliances are as much as 69 percent below the required minimum level. This is far below the level of noncompliance exhibited by the vehicles covered by the GM application. Further, the additional light in the noncompliant GM turn signals is provided from other zones in the same lamp, not by some other auxiliary lamp.

The second application Utilimaster cites also resulted in a grant to GM (63 FR 70179). GM produced vehicles in which the center high-mounted stop lamp (CHMSL) is partially obscured by blackout paint on the rear window. One of the reasons the agency gave to support granting the application was that the stop lamps on the vehicles ''far exceed the minimum photometric performance levels.'' The CHMSL and stop lamps are designed to notify other drivers of the same event. The lamps that Utilimaster is trying to supplement with additional light from the parking lamps have a very specific meaning, which will not be conveyed by the front parking lamps.

Utilimaster cites a third application from GM which involves daytime running lamps (DRLs) that were too close to the turn signals. In this case, a factor the agency gave in granting the application (64 FR 28864) was that the turn signal was of greater than usual intensity and would not be masked by the DRL. We don't understand how this reasoning is relevant to Utilimaster's situation.

Finally, Utilimaster cites the grant of an application from the American Transportation Corporation (ATC) regarding noncompliant air brakes (65 FR 1946). The air brake systems did not meet the volumetric requirements for the brake chambers. The vehicles' stopping capability was not compromised by the noncompliance and the agency granted ATC's application based on this. We again don't understand how this reasoning is relevant to Utilimaster's situation.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Its application is hereby denied, and it must notify and remedy the noncompliance as required by the statute.

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

Issued on: June 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-