

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****[Docket No. NHTSA 2001-10258, Notice 2]****NovaBUS, Inc.; Denial of Application for Decision of Inconsequential Noncompliance**

NovaBUS, Inc. (Nova) of Roswell, New Mexico, manufactured a number of buses that were equipped with one of two types of auxiliary lamp systems. Both of these lamp systems are wired to flash. Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," requires that all lamps, except those specified, be wired to be steady burning. Nova determined that these buses fail to comply with FMVSS No. 108 and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Nova 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** (66 FR 41307) on August 7, 2001. Opportunity was afforded for public comment until September 6, 2001. No comments were received.

In FMVSS No. 108, paragraph S5.5.10 requires that, other than turn signal lamps, hazard warning signal lamps, school bus warning lamps, and headlamps and side marker lamps wired to flash for signaling purposes, all other lamps shall be wired to be steady burning.

Between January 1994 and March 2001, Nova produced 742 buses with optional deceleration lamps that flash at a rate related to the deceleration of the vehicle. These lamps are amber and are located on the rear center of the bus.

During the same period of time, Nova also produced 1,819 buses with "hoodlum" lamps that flash when the driver activates a switch. The purpose of these lamps is to provide an alert to the police or public that a dangerous situation is occurring on the bus and that the driver requires assistance. These lamps are green and are located on the top front and rear of the bus.

Nova supported its application for inconsequential noncompliance by stating the following:

The [deceleration and hoodlum] lights do not pose a safety risk to the bus, passengers, driver, or other vehicles on the roadway. They in no way interfere with the normal operation of the bus. Their size, location, color, and flashing pattern make it impossible to confuse them with stop and turn lights. There are no other green lights on the vehicle. There is a slight chance the amber lens color may be confused with hazard lights. However, this is not a hindrance as the [deceleration] and hazard lights heighten other drivers' awareness of the bus.

These lights were requested by our customers to help attract attention to the buses in the stated situations. Since the requirement that "all other lamps shall be wired to be steady burning" applies to Nova as an [original equipment manufacturer] but not to our customers, Nova believes these lights would not be changed to be steady burning if a recall process was executed.

Nova no longer offers these options and is now compliant with [FMVSS No. 108].

The agency has reviewed the application and has decided that the noncompliance is not inconsequential to motor vehicle safety. Regarding the flashing amber lamps, the standard states explicitly that only certain original equipment lamps are permitted to flash. The main reason for limiting the flashing function to these lamps is to minimize confusion that may be caused to other drivers who observe the flashing lights. If manufacturers include a flashing function in other lamps, the importance of the safety meaning of required lamps can be diminished. Standardization of lighting functions is paramount to the necessary and instant recognition of their meaning by other drivers.

This concern was expressed by the agency in a March 1996, legal interpretation to the Gillig Corporation (Gillig). Gillig asked whether it was permitted to install four amber lamps that would act as supplemental stop lamps on its buses. These four lamps would flash when the brake pedal was depressed and be extinguished when the pedal was released. The agency stated that this was not permitted, as it could impair the effectiveness of the required red brake lamps. When confronted with an array of red steady

burning lamps (the required ones) and amber flashing ones (the ones Gillig wished to add), the agency said that there is a strong likelihood of momentary confusion in the mind of a driver following the vehicle. Quick understanding of and appropriate reaction to motor vehicle safety signals is fundamental to safe motor vehicle operation.

The agency also expressed a similar view in an August 1999 legal interpretation in response to a request from the law firm of Helfgott and Karas, P.C. A client of this firm wanted to install a steady burning amber lamp in the rear of the vehicle that would be illuminated whenever the ignition was activated and the brake lamps were not activated. In this interpretation, the agency stated that:

Traffic safety is enhanced by the familiarity of drivers with established lighting schemes, which facilitates their ability to instantly and unhesitatingly recognize the meaning a lamp conveys and to respond to it. Any modification to the required lamps or any supplemental lamp that could be perceived to have signals different from the required functions when these functions are operating, or could be perceived incorrectly as signals from required functions would be deemed by us to impair the effectiveness of the required lighting.

Regarding the green "hoodlum" lamps, the agency addressed a similar issue in an April 2001 interpretation to Peter Hoffman of I.D. Lite Products Group, Inc. (I.D. Lite). I.D. Lite asked whether it would be permitted to include a green lamp that highlights signage on commercial vehicles. The agency stated that, because FMVSS No. 108 only allows the use of white, red, or amber lamps, a green lamp would not be permitted.

Also regarding the "hoodlum" lamps, the agency issued an interpretation in the early 1970s (the exact date could not be found in the interpretation database) in response to the Flxible Company (Flxible). Flxible asked whether a flashing "hoodlum warning system" that was requested by the city of Boston, Massachusetts would be allowable. The agency stated that, after January 1, 1972, this lamp would not be permitted because of the requirements limiting the flashing function to certain lamps.

Nova supported its application by stating that the lamps do not pose a safety risk. It does not explain what leads it to believe that there is no possibility of confusing the subject amber lamps with required lamps or why flashing green lamps also would not confuse observers. It does admit that there is "a slight chance" that the amber ones could be confused with the hazard lamps. The fact remains that they will attract attention, while having no readily apparent safety meaning, given that they are unique in the motor vehicle environment. This dilutes driver attention that needs to be focused on the driving task.

In addition, Nova states that because its customers specifically requested these noncompliant lamps and the agency cannot force the customers to return the buses to make them compliant, it would be unlikely they would return the vehicles in a recall campaign. This does not persuade us to grant the application. It is necessary that Nova notify its customers that the vehicles it sold them were noncompliant. It must also explain to the customers why they are noncompliant and the potential consequences of the noncompliance. If a large percentage of owners decide not to return their vehicles for remedy, the agency may investigate whether the Nova notification was adequate, and further action could be required.

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, and that it should not be exempted from the notification and remedy requirements of the statute. Accordingly, its application is hereby denied.

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

Issued on: May 6, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-01-10411; Notice 2]

#### Reliance Trailer Company, LLC; Grant of Application for Decision of Inconsequential Noncompliance

Reliance Trailer Company, LLC, of Spokane, Washington ("Reliance"), has determined that 26 of its dump body trailers, manufactured between February and June 2001, fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 224, "Rear Impact Protection," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports."

On May 29, 2001, Reliance submitted a petition to the agency and requested that it 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.

We published a notice of receipt of the application on August 24, 2001, affording an opportunity to comment (66 FR 44663). We did not receive any comments on the notice. This notice grants the application.

The dump body trailers Reliance manufactured between February and June 2001 do not comply with FMVSS No. 224, "because their wheels were located farther ahead of the 12" wheels back dimension," and hence do not qualify for exclusion from FMVSS No. 224. Paragraph S4 of FMVSS No. 224 defines a wheels back vehicle as a trailer or semitrailer whose rearmost axle is permanently fixed and is located such that the rearmost surface of tires of the size recommended by the vehicle manufacturer for the vehicle on that axle is not more than 305 mm [12 inches] forward of the transverse vertical plane tangent to the rear extremity of the vehicle." Reliance's Part 573 report acknowledged that the 26 affected dump body trailers are not in compliance with FMVSS No. 224, since the rearmost surface of their tires

must be 16"-18" forward of the rear extremity of the trailers to accommodate asphalt lay down equipment used in road construction.

Reliance supported its petition for a determination of inconsequential noncompliance with the following reasons:

1. *The noncompliance has no safety concerns*—Reliance knows "of no rear end collisions, involving injuries, with this type of trailer." Typical hauls of these trailers are short and have minimal amount of time traveling on highways compared with most freight trailers.

2. *There is no practical way to remedy the noncompliance*—"Currently, no one has been able to get paver manufacturers to revise, or users to retrofit all their equipment so that under-ride could be accommodated." Reliance stated that "any device behind the tires will interfere with [the trailer's] operation unless it can be moved out of the way when [the] dumping takes place."

3. *NHTSA granted temporary exemptions to competitors and similarly designed trailers*—Reliance noted that NHTSA granted a renewal of a temporary exemption from FMVSS No. 224 to Beall Trailers of Washington, Inc., another manufacturer of dump body trailers; the agency also granted a temporary exemption to Dan Hill & Associates, and Red River Manufacturing, Inc., manufacturers of trailers having similar interference problems with paving equipment.

4. *Reliance will aggressively proceed to conduct remedial activities*—Reliance will conduct "a review of paving equipment that these trailers mate with to determine if they can be retrofitted or modified to accommodate trailers with tires located within 12" of the rear." Further, Reliance "will aggressively proceed to design, build, test and provide prototypes to determine the feasibility and usefulness of these devices."

Based on the above stated reasons, Reliance requested that the agency grant the inconsequential petition. Our analysis of the Reliance request follows.