

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2006-10 and should be submitted on or before March 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Gemini Investors IV, L.P. ("Applicant"), 20 William Street, Wellesley, MA 02481, an SBIC Applicant under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2004)). Gemini Investors IV, L.P. proposes to provide financing in the form of subordinated debt with warrant to purchase 5% of common stock of UMD Technology, Inc. ("UMD"), 1499 SE Tech Center Place, Suite 140, Vancouver, WA 98683. The

financing is contemplated for growth, modernization, working capital and business expansion of UMD.

This investment requires an exemption from the prohibitions in 13 CFR 107.730, Conflicts of Interest, because an affiliated SBIC, Gemini Investors III, L.P. ("Gemini III"), has a controlling equity interest (66% pre-closing, 62.7% post closing) in UMD. Therefore, UMD Technology, Inc. is considered an Associate of the Applicant as defined in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzmán-Fournier,  
Associate Administrator for Investment.  
[FR Doc. E6-2430 Filed 2-21-06; 8:45 am]  
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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-19485; Notice 2]

#### Decision That Nonconforming 2004 Jeep Liberty Multipurpose Passenger Vehicles Manufactured for the Mexican Market Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of decision by the National Highway Traffic Safety Administration that nonconforming 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market are eligible for importation.

**SUMMARY:** This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2004 Jeep Liberty multipurpose passenger vehicle), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision was effective January 26, 2005. The agency notified the petitioner at that time that the subject vehicles are eligible for importation. This document provides public notice of the eligibility decision.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) of Huston, Texas (Registered Importer 90-005), petitioned NHTSA to decide whether 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market are eligible for importation into the United States. NHTSA published notice of the petition on November 3, 2004 (69 FR 64129) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from DaimlerChrysler Corporation (DCC), the vehicle's original manufacturer. DCC addressed issues concerning the absence of advanced airbag systems on the vehicles that are the subject of this petition. DCC observed that the petition states that the Mexican model's passive restraint system is identical to that installed on the U.S.-model. DCC

<sup>15</sup> 17 CFR 200.30-3(a)(12).

explained that the systems are not identical and that this inaccuracy could lead to a public misperception that the Mexican market vehicles are equipped with advanced airbag system capabilities.

The agency notes that DCC did not challenge the similarity of the Mexican model to its U.S.-certified counterpart for the purpose of establishing the Mexican model's eligibility for importation into the United States. DCC observed that it chose to install advanced air bag systems in 2004 Jeep Liberty multipurpose passenger vehicles that it certified for sale in the United States.

The Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress on June 9, 1998 as Public Law 105-178, directed NHTSA to issue a new rule "to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags."

NHTSA issued the new rule (referred to as "the advanced air bag rule") on December 18, 2001 (66 FR 65376). Under the new rule, sled testing is no longer an option to demonstrate compliance with the standard's requirements. In addition, offset, oblique, and full frontal barrier crash tests (using both rigid and deformable barriers) are stipulated for assessing the protection of both belted and unbelted occupants. Other tests are included to prove compliance with airbag low risk deployment and suppression requirements. The test speeds and injury criteria for barrier tests have been revised, and the use of an entire family of test dummies is now included. High volume vehicle manufacturers are subject to certain phase-in requirements and may also voluntarily certify vehicles to the advanced airbag requirements prior to the time when such requirements become mandatory.

Small volume manufacturers (which NHTSA considers Registered Importers to be for FMVSS phase-in purposes), need only meet the new rules for all passenger vehicles manufactured on or after September 1, 2006.

Since the vehicles at issue were manufactured prior to the date when the advanced air bag requirements will go into effect for all passenger vehicles, the agency concluded that the issue raised by DCC was not germane to the issue of whether those vehicles are eligible for importation. Accordingly, the agency decided to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-457 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

### Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 2004 Jeep Liberty multipurpose passenger vehicles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34421]

#### HolRail LLC—Construction and Operation Exemption—In Orangeburg and Dorchester Counties, SC

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of Availability of Final Scope of Study for the Environmental Impact Statement.

**SUMMARY:** On November 13, 2003, HolRail LLC (HolRail) filed a petition with the Surface Transportation Board (the Board or STB) pursuant to 49 U.S.C. 10502 for authority to construct and operate a rail line in Orangeburg and Dorchester counties, South Carolina (SC). The proposed project would involve the construction and operation of approximately two miles of new rail line from the existing cement production factory owned by HolRail's parent company, Holcim (US) Inc. (Holcim), located near Holly Hill in Orangeburg County, to the terminus of an existing rail line of the Norfolk Southern Railway Company (NSR),

located to the south near Giant in Dorchester County.

Based on consultations conducted to date, the Board's Section of Environmental Analysis (SEA) determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the **Federal Register** on July 29, 2005, the Notice of Intent to Prepare an EIS; Notice of Initiation of the Scoping Process; Notice of Availability of Draft Scope of Study for the EIS and Request for Comments. The scoping comment period originally concluded on August 31, 2005, but due to an inadvertent omission in the scoping notice mailed to Federal, state and local agencies, SEA accepted comments from any interested agency through October 28, 2005. After review and consideration of all comments received, this notice sets forth the Final Scope of Study for the EIS. The Final Scope of Study reflects changes to the Draft Scope of Study as a result of the comments, and summarizes and addresses the principal environmental concerns raised by the comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Navecky, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001, or 202-565-1593, or [naveckyd@stb.dot.gov](mailto:naveckyd@stb.dot.gov). Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

**Background:** By petition filed on November 13, 2003, HolRail seeks an exemption from the Board under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a rail line in Orangeburg and Dorchester counties, SC, approximately 40 miles northwest of Charleston and 60 miles southeast of Columbia.

The new rail line would establish alternative rail service at the Holly Hill facility which is presently served only by CSX Transportation, Inc. (CSX). Holcim recently completed an expansion of the Holly Hill plant and has determined that alternative rail access is necessary to achieve the full benefits of the expanded production capacity. HolRail would arrange for a third-party operator to provide rail service, and would employ a contractor to provide maintenance service for the line, or engage the third-party operator to perform this service.