

safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class O operator's license from Nebraska, which allows him drive any non-commercial vehicle except a motorcycle.

Jeffrey M. Wood

Mr. Wood, 50, has had ITDM since 2000. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Christopher T. Worsley

Mr. Worsley, 29, has had ITDM since 2002. His endocrinologist examined him in 2006 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Worsley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Fredrick J. Young

Mr. Young, 37, has had ITDM since 2005. His endocrinologist examined him in 2005 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Young meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2006 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated earlier in the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹ The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified in the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

¹ Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule," but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: December 5, 2006.

Rose A. McMurry,

Associate Administrator, Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26280; Notice 1]

The Braun Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

The Braun Corporation (Braun) has determined that certain wheelchair lifts it produced in 2005 through 2006 do not comply with S6.4.9 of 49 CFR 571.403, Federal Motor Vehicle Safety Standard (FMVSS) No. 403, "Platform lift systems for motor vehicles." Braun has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Braun has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Braun's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 15,992 model NL, NCL, and NVL wheelchair lifts produced between April 1, 2005 and July 19, 2006. S6.4.9.7 of FMVSS No. 403 requires:

When tested in accordance with S7.12.1, each handrail must withstand 445 N (100 pounds force) applied at any point and in any direction on the handrail without more than 22 mm (1 inch) of displacement relative to the platform surface. After removal of the load, the handrail must exhibit no permanent deformation.

In addition, S6.4.9.9 of FMVSS No. 403 requires:

When tested in accordance with S7.12.2, each handrail must withstand 1,112 N (250 lbf) applied at any point and in any direction on the handrail without sustaining any failure, such as cracking, separation, fracture, or more than 100 mm (4 inches) of displacement of any point on the handrails relative to the platform surface.

The noncompliant lifts do not meet the displacement requirements of S6.4.9.7 and S6.4.9.9.

Braun believes that the noncompliance is inconsequential to

motor vehicle safety and that no corrective action is warranted. Braun states the following:

The non-complying wheelchair lifts continue to meet the requirements set forth in the Americans with Disabilities Act (ADA). In other words, they are able to withstand "a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure." * * * The Braun Corporation has never received a claim or complaint of handrail failure resulting in an injury. * * * [T]he handrails have been utilized hundreds of millions, if not billions of times without incident. * * * [A]ny modifications, or upgrades imposed to ensure compliance with FMVSS 403 would appear to provide a statistically insignificant enhancement."

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below 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 is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 12, 2007.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8

Dated: December 7, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26281; Notice 1]

The Braun Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

The Braun Corporation (Braun) has determined that certain wheelchair lifts it produced in 2005 through 2006 do not comply with S6.1.3 of 49 CFR 571.403, Federal Motor Vehicle Safety Standard (FMVSS) No. 403, "Platform lift systems for motor vehicles." Braun has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Braun has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Braun's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 12,940 model NL, NCL, and NVL wheelchair lifts produced between July 6, 2005 and July 19, 2006. S6.1.3 of FMVSS No. 403 requires:

A visual and audible warning must activate if the platform is more than 25 mm (1 inch) below the platform threshold area and portions of a passenger's body or mobility aid is on the platform threshold area defined in S4 when tested in accordance with S7.4.

The threshold warning systems of the noncompliant lifts are unable to detect occupancy throughout the entire platform threshold area defined in S4. Braun has corrected the problem that caused these errors so that they will not be repeated in future production.

Braun believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Braun explains that "the sensitivity of the system used to detect occupancy has been found to be diminished through the center of the threshold area." Braun states:

[I]t is virtually impossible for a wheelchair to transit the entire depth of the threshold

warning area without triggering the warning. * * * [A] rolling wheelchair cannot conceivably get to an area of attenuated threshold sensitivity without first triggering the warning. In addition, the rolling wheelchair cannot conceivably roll off the outer end of the threshold warning area without again triggering the warning.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below 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 is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 12, 2007.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Dated: December 7, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

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