

### Light Exposure Petition Summary

The noncompliant harness webbing was identified as gray Wellington style #N2216E1-917, lots numbered 2063F, 2100F, and 2140D, manufactured from March 15, 2002 through August 1, 2002. FMVSS No. 213, S5.4.1(b) requires that the webbing of belts provided with a child restraint system meet the requirements of S4.2(e) of FMVSS No. 209. FMVSS No. 209, S4.2(e), requires a breaking strength of not less than 60 percent of the strength before exposure to a carbon arc light when tested by the procedure specified in S5.1(e) of FMVSS No. 209. Following the carbon arc exposure test, the DJG harness webbing retained only 37 percent of the original webbing breaking strength (from 12,371 N to 4,539 N).

DJG pointed out that testing at Veridian<sup>9</sup> (simulating a 30 mph (48 km/h) crash condition) showed a dynamic load of between 846 N and 1,433 N. DJG asserted that its light-exposed harness webbing breaking strength of 4,539 N far exceeded these dynamic loads. DJG argued that without a minimum breaking strength requirement, other webbing with a much lower initial breaking strength could comply with the standard at a much lower breaking strength than the DJG's 4,539 N, as long as it retained 60 percent of the original webbing strength. DJG commented that while its webbing, which was made of nylon fabrics, was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's requirements), the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter (specified by the standard for use only for polyester fabrics). DJG also commented that because the standard relies on carbon arc light for resistance to light testing, the method is obsolete. DJG stated in Exhibit 7 to its petition that after being subjected to a xenon arc lamp for 300 hours the webbing retained 93.5 percent of its initial breaking strength. Therefore, DJG argued that the noncompliance is inconsequential to motor vehicle safety.

### NHTSA Decision on Light Exposure Petition

First, DJG asserted that its light-exposed harness webbing breaking strength of 4,539 N far exceeds forces in dynamic crash testing at 30 mph by a factor of 3.1 to 6.8 times. NHTSA does not find this persuasive. A 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that

child restraints will withstand even the most severe crashes.<sup>10</sup> These are well above 30 mph.<sup>11</sup>

DJG also asserted that under a standard that lacks a specific minimum strength requirement, manufacturers could produce webbing with very low after-exposure strength if the pre-exposure strength was also low. This assertion is theoretical. The agency's FY 2000 to FY 2002 available compliance test data for harness webbing<sup>12</sup> showed that the median strength after light exposure was 10,636 N, and that the median exposed/original webbing strength ratio was 10,636 N/12,594 N or 84 percent, both of which are far superior to DJG's webbing strength after light exposure of only 4539 N and strength ratio of 37%.<sup>13</sup> In order to prevent manufacturers from producing harness webbing with low strengths before and after light exposure, NHTSA established minimum breaking strengths in the June 2006 final rule.

DJG provided test data for its nylon webbing filtered by a soda-lime glass filter. However, the standard specifies that webbing made of nylon fabrics, as in this case, be tested using the Corex-D filter. The soda-lime glass filter is appropriate only for polyester webbing. Therefore, the DJG compliant data was based on testing using an inappropriate light filter, and was not conducted according to FMVSS No. 213 requirements.

Finally, DJG did not substantiate its statement that carbon arc testing is obsolete for testing child restraint webbing materials. NHTSA believes that the test results obtained by the carbon arc test method are an appropriate reflection of the strength capabilities of DJG's webbing. While NHTSA has decided to use a xenon arc lamp for weathering tests of glazing materials under FMVSS No. 205, "Glazing materials,"<sup>14</sup> the conclusion in that rulemaking does not mean that the carbon arc is not indicative of the sunlight spectral power distribution or that it produces invalid weathering results for webbing materials.

In summary, the DJG harness webbing met only 37 percent of the original webbing breaking strength when tested according to the standard with a Corex-

D filter. Such a rapid (over 60 percent) strength degradation is an indication of a quality control problem for that webbing and signals the distinct probability that the webbing strength would be insufficient throughout its use.<sup>15</sup>

In consideration of the foregoing, NHTSA has decided that DJG has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, DJG's application is hereby denied. DJG must fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

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

Issued on: July 14, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Hazardous Materials: Meeting Future Hazardous Materials Transportation Safety Challenges

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of public workshop—"Transporting Hazardous Materials Safely—the Next 100 Years."

**SUMMARY:** PHMSA is hosting a public workshop to identify and discuss strategies for meeting emerging hazardous materials transportation safety challenges, particularly in the development of innovative safety solutions that provide the Department of Transportation, other federal agencies, state agencies, the regulated community, and emergency response organizations with flexible tools to manage and reduce safety risks. The workshop will provide an opportunity for PHMSA and its stakeholders to discuss the future direction of the hazardous materials transportation safety program, with a focus on three broad themes: (1) Safety, Risk Reduction, and Integrity

<sup>10</sup> 55 FR 17970, April 30, 1990.

<sup>11</sup> The forces in a crash increase exponentially as velocity increases.

<sup>12</sup> 70 FR 37734, June 30, 2005; Docket NHTSA-2005-21243-0002.

<sup>13</sup> Of the 109 samples from the FY 2000 to FY 2002 compliance data, only the DJG (Cosco) harness webbing failed to meet the current 60 percent of original strength requirement after exposure to light.

<sup>14</sup> 68 FR 43964, July 25, 2003.

<sup>15</sup> We note that following light exposure, the Dorel harness webbing had a strength of 4539 N. Under the 2006 rule, the minimum strength for new webbing is 11,000 N. That rule did not change the 60 percent strength retention requirement. As a frame of reference, webbing that had a strength of 11,000 N that retained 60 percent of its strength would have a strength of 6,600 N. The Dorel tether webbing had a strength, after exposure to light, of only 4,539 N.

<sup>9</sup> Veridian is now known as Calspan.

Management; (2) 21st Century Solutions: Using New Technology for Improved Safety Controls/Improving Safety Controls for New Technology; and (3) Achieving Balance and Effectiveness—Consistency and Uniformity.

**DATES:** July 31, 2008, starting at 8:30 a.m.

**ADDRESSES:** The workshop will be held at the U.S. Department of Housing and Urban Development Conference Facility, 451 7th Street, SW., Washington, DC 20410. For information on the facilities or to request special accommodations at the workshop, please contact Ms. Maria Howard by telephone or e-mail as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria Howard, 202-266-0225, e-mail [Maria.Howard@dot.gov](mailto:Maria.Howard@dot.gov) or LaToya Moore, 202-366-0656, e-mail [Latoya.Moore@dot.gov](mailto:Latoya.Moore@dot.gov), Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Transportation (DOT), through PHMSA and other DOT operating administrations, is responsible for a comprehensive, nationwide program designed to protect the Nation from the risks to life, health, property, and the environment inherent in the commercial transportation of hazardous materials. This year marks the 100th anniversary of the hazardous materials transportation safety program, which originated with enactment of the Transportation of Explosives and Other Dangerous Articles Act (specifically, “An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles”) on May 30, 1908. The Act charged the Interstate Commerce Commission (ICC) with formulating binding regulations “in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport.” The Act specifically required the marking of every package containing explosives “or other dangerous articles” and prohibited false or deceptive markings, descriptions, or declarations.

Since 1908, the federal program to minimize the risks associated with the commercial transportation of hazardous materials has evolved from its initial focus on the regulation of explosives to a broad and comprehensive safety and security program applicable to a wide

variety of materials and articles shipped by multiple modes of transport across interstate and international boundaries and overseen by an array of federal and state agencies. Hazardous materials are essential to the economy of the United States and the well-being of its people. Hazardous materials fuel automobiles, and heat and cool homes and offices, and are used for farming and medical applications and in manufacturing, mining, and other industrial processes. More than 3 billion tons of regulated hazardous materials—including explosive, poisonous, corrosive, flammable, and radioactive materials—are transported in this country each year. Over 800,000 shipments of hazardous materials move daily by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. These shipments frequently move through densely populated or sensitive areas where the consequences of an incident could be loss of life or serious environmental damage. Our communities, the public, and workers engaged in hazardous materials commerce count on the safety and security of these shipments.

The system of controls and standards developed over the last 100 years has achieved considerable success in reducing the risks posed by the commercial transportation of hazardous materials. As we look to the future, we want to build on this success, particularly in the development of innovative safety solutions that provide the agency, our federal and state partners, the regulated community, and emergency response officials with flexible tools to manage and reduce safety risks.

To this end, PHMSA is hosting a public workshop on July 31, 2008. We are planning an interactive workshop that will engage our stakeholders on a range of topics that we consider critical to the future direction of the hazardous materials transportation safety program. This workshop will provide an opportunity for our stakeholders to suggest ways to improve on our vision and ideas for making the vision a reality. Equally important, the workshop will provide a forum for our stakeholders to identify common issues and problems and suggest synergistic strategies for addressing them. We hope that the workshop will surface a range of views on how to meet the challenges ahead, focusing on three broad areas:

#### **1. Safety, Risk Reduction, and Integrity Management**

With safety as our top priority, the hazardous materials transportation

safety program targets continued reduction in transportation risk, even as the size and complexity of the system grow. The program is challenged to quickly identify emerging risks and develop innovative, flexible, and effective safety controls to address those risks. For example, we are considering whether integrity management principles could be effectively applied to hazardous materials transportation activities to enhance safety. Integrity management is a risk reduction program that promotes continuous improvement in safety performance by requiring companies to collect and use information to guide system-specific planning and implementation of risk controls. PHMSA has successfully implemented integrity management requirements under its Pipeline Safety program, achieving improved safety performance without undue regulatory burden. Quality assurance programs may also be an effective way to identify and address system-wide safety risks.

#### **2. 21st Century Solutions: New Technology for Improved Safety Controls/Improving Safety Controls for New Technology**

A second set of challenges for the hazardous materials transportation safety program reflects the opportunities and risks posed by rapid technological advances. The safety controls developed over the program’s first 100 years need to keep pace with the demands of our fast-moving, far-reaching economy and transportation systems. As we embark on the program’s second century, we are committed to improving the quality, reliability, and timeliness of information guiding all parts of the safety control system, including hazard communication. Because of their capabilities to improve the speed, accuracy, and efficiency of communications, wireless and electronic data systems and tools are rapidly replacing paper-based systems for documenting transactions, tracing shipments, and exchanging commercial information. As the private sector and government agencies transition to paperless systems, adherence to longstanding paper-based requirements places an increasing burden on the system, contributing to freight delays and congestion. At the same time, reliance on paper-based communications may limit the effectiveness of hazard communication and impair or delay response to hazmat incidents and emergencies. Deploying new communication technologies holds the promise of improving safety, even as it reduces regulatory burdens and

improves the performance of the transportation system.

A related challenge is to find ways to quickly develop and implement appropriate safety controls for new materials or technologies that are not covered by current regulatory requirements. Transportation is key to promoting the development and widespread utilization of new technologies. Government and industry must be able to address possible safety risks associated with new materials or technologies without undue delays in authorizing their transportation. One strategy may be for a company to invest in independent, third-party analyses of safety risks associated with a new material or technology that would then form the basis for development of rigorous transportation controls that would be approved by PHMSA pending promulgation of more general regulatory requirements.

### C. Achieving Balance and Effectiveness—Consistency and Uniformity

A third challenge for the hazardous materials transportation safety program is to identify integrated strategies for advancing safety that involve the many regulatory agencies and non-federal jurisdictions with hazardous materials oversight responsibilities. A number of federal agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and the Department of Homeland Security, have regulatory authority over facilities that manufacture, handle, and store hazardous materials outside of transportation. In addition, state and local governments may elect to regulate facilities that manufacture or store hazardous materials within their jurisdictions. Because these agencies and authorities have different interests and goals, regulated entities are sometimes confronted with a myriad of differing and, perhaps, inconsistent requirements that impair productivity and efficiency and could adversely affect safety. At the same time, critical safety issues may not be addressed at all. A broad strategy to more closely integrate all of these programs would enhance system wide risk reduction through information and data sharing, early identification of safety problems, and leveraging of resources.

PHMSA invites all interested persons, including state and local officials, emergency response personnel, and hazardous materials shippers and carriers, to participate in this workshop. We would like to use this forum to

promote a dialogue among all interested stakeholders to help us identify the most appropriate strategies for identifying and addressing emerging transportation safety challenges. If you wish to participate in the public workshop, you must provide your name and organization to Ms. Maria Howard by telephone (202-366-0225) or e-mail ([Maria.Howard@dot.gov](mailto:Maria.Howard@dot.gov)) or Latoya Moore by telephone (202-366-0656) or e-mail ([Latoya.Moore@dot.gov](mailto:Latoya.Moore@dot.gov)) no later than July 24, 2008. Non-federal personnel must also provide the last five digits of their social security numbers. Providing this information will facilitate the security screening process for entry into the building on the day of the workshop. Participants should plan to arrive at 8 a.m. and must present a picture ID to enter the building. Participants do not need to prepare oral comments, but rather, be prepared to take part in an open discussion on the issues outlined above.

Issued in Washington, DC on July 15, 2008.

**Theodore L. Willke,**

*Associate Administrator for Hazardous Materials Safety.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. MC-F-21028]

#### Delivery Acquisition, Inc.—Purchase—Transportation Management Systems, LLC and East West Resort Transportation, LLC

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice Tentatively Approving Finance Transaction.

**SUMMARY:** On June 19, 2008, Delivery Acquisition, Inc. (Delivery) an indirect subsidiary of Vail Resorts, Inc. (VRI), filed an application under 49 U.S.C. 14303 to acquire control, through purchase, of the properties of Transportation Management Systems, LLC f/k/a TMS, Inc.<sup>1</sup> (TMS) and East West Resort Transportation, LLC (EWRT). The application also sought Board authority for VRI to control Delivery, which will become a carrier upon its acquisition of the carrier assets, including operating authorities, of TMS

<sup>1</sup> Pursuant to 49 CFR 365.413, *et seq.* a notice of name change has been furnished contemporaneously to the Federal Motor Carrier Safety Administration reflecting that the correct name of the entity referred to as TMS, LLC in the Board's decision in Docket No. MC-F-20996, served January 10, 2003, is Transportation Management Systems, LLC.

and EWRT. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by September 2, 2008. Applicants may file a reply by September 16, 2008. If no comments are filed by September 2, 2008, this notice is effective on that date.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC-F-21028 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, send one copy of comments to Delivery's representative: Mark A. Davidson, Dufford & Brown P.C., 1700 Broadway, Suite 2100, Denver, CO 80290-2101, and send one copy of comments to TMS's representative: Thomas J. Burke, Jr., Jones & Keller, P.C., 1625 Broadway, Suite 1600, Denver, CO 80202-4727.

**FOR FURTHER INFORMATION CONTACT:** Julia Farr (202) 245-0359 [Federal Information Relay (FIRS) for the hearing impaired: 1-800-877-8339].

**SUPPLEMENTARY INFORMATION:** Delivery is a Colorado corporation and is a newly created direct subsidiary of The Vail Corporation, which is a subsidiary of Vail Holdings, Inc., which is, in turn, a subsidiary of VRI, a Delaware corporation. VRI operates year-round resorts in Colorado and controls, through The Vail Corporation, Grand Teton Lodge Company, a registered motor passenger carrier (MC-6259). Applicants seek authorization under 49 U.S.C. 14303(a)(5) for VRI, as a person in control of a carrier, to acquire control of the assets of EWRT and TMS through Delivery's transaction.

Following the transaction, Delivery will be a carrier. Delivery and Grand Teton Lodge Company will become affiliated carriers through VRI, although none of these carriers will be in control of the others.

Delivery will control, through purchase, the assets, including certificates of public convenience and necessity of EWRT and TMS<sup>2</sup> both of which are Delaware limited liability companies. TMS and EWRT are lessor and lessee, respectively, of the operating rights issued by the former Interstate Commerce Commission in MC-169714 and MC-174332, providing for special

<sup>2</sup> TMS does business under the following trade names: Colorado Mountain Express and/or CME Premier and/or Premier VIP Transportation, and/or Resort Express.