

information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI)"; (2) mark each affected page "CBI"; and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

## VII. Grant Administration

All applicable Federal laws, rules, and regulations will apply to projects that receive Marine Highway grants. How soon after award a project is expected to expend grant funds and start construction, acquisition, or procurement will be considered on a case-by-case basis and will be specified in the project-specific grant agreement. DOT reserves the right to revoke any award of Marine Highway grant funds and to award such funds to another project to the extent that such funds are not expended in a timely manner and in accordance with the project schedule. DOT's ability to obligate funds for Marine Highway grants expires on September 30, 2010.

## Appendix A

Additional Information on Applying Through Grants.gov. Applications for Marine Highway grants must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at <http://www.grants.gov>. If interested parties experience difficulties at any point during the registration or application process, please call the Grants.gov Customer Support Hotline at 1-800-518-4726, Monday-Friday from 7 a.m. to 9 p.m. Eastern Time. Registering with Grants.gov is a one-time process; processing delays may occur for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to avoid delays that may preclude submitting an application by the deadline specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. In order to apply for a Marine Highway grant under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a Data Universal Numbering System Number.* A Data Universal Numbering System (DUNS) number is required for Grants.gov registration. The Office of Management and Budget requires

that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life-cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1-866-705-5711 or by applying online at <http://www.dnb.com>.

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at <http://www.ccr.gov>.

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS number to complete this step. For more information about the registration process, go to [http://www.grants.gov/applicants/get\\_registered.jsp](http://www.grants.gov/applicants/get_registered.jsp).

4. *Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC at your organization must log into Grants.gov to confirm your AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the Marine Highway grant opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 20.816, which is titled America's Marine Highway Grants.

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24-48 hours after submitting your electronic application, you should receive an email validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

Note: When uploading attachments please use generally accepted formats such as .pdf, .doc, and .xls. While you may embed picture files such as .jpg, .gif, or .bmp, in your files, please do not save and submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

Unforeseen Grants.gov Technical Issues. If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline, you must contact Michael Gordon at 202-366-5468 or [Michael.Gordon@dot.gov](mailto:Michael.Gordon@dot.gov) within 24 hours after the deadline and request approval to submit your application by alternate means. In that circumstance, Department staff will request that you email the complete grant application along with your DUNS number, and provide a Grants.gov Help Desk tracking number(s) obtained prior to the deadline. After Department staff review all of the information submitted as well as contact the Grants.gov Help Desk to validate the technical issues you reported, Department staff will contact you to either approve or deny your request to submit a late application. If the technical issues you reported cannot be validated, your application will be rejected as untimely. To ensure a fair competition for limited funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology environment.

Dated: August 10, 2010.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Secretary, Maritime Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0106; Notice 1]

### CFMOTO Powersports, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

CFMOTO Powersports, Inc. (CFMOTO),<sup>1</sup> agent for the Chunfeng Holding Group Hangzhou Motorcycles Manufacturing Co., LTD. (formerly known as Zhejiang CFMOTO Power Co., Ltd. (CHG)) has determined that certain model year 2005-2009 CHG Model CF250T-3(V3) and CF250T-5(V5)

<sup>1</sup> CFMOTO Powersports, Inc., a Minnesota Corporation, is an importer of motor vehicles.

motorcycles that CFMOTO imported did not fully comply with paragraph S5.2.1 of 49 CFR 571.123 Federal Motor Vehicle Safety Standards (FMVSS) No. 123, *Motorcycle Controls and Displays*. CFMOTO has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CFMOTO 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 CFMOTO'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 6,405 model year 2005–2009 CHG model CF250T–3(V3) and CF250T–5(V5) motorcycles,<sup>2</sup> produced January 1, 2005, through December 31, 2009.

Paragraph S5.2.1 of FMVSS No. 123 requires in pertinent part:

S5.2.1 *Control location and operation*. If any item of equipment listed in Table 1, Column 1, is provided, the control for such item shall be located as specified in Column 2, and operable as specified in Column 3. Each control located on a right handlebar shall be operable by the operator's right hand throughout its full range without removal of the operator's right hand from the throttle. Each control located on a left handlebar shall be operable by the operator's left hand

throughout its full range without removal of the operator's left hand from the handgrip. If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar. If a scooter with an automatic clutch is equipped with a supplemental rear brake control, the control shall be on the right side and operable by the operator's right foot. A supplemental control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard. If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, as specified in Table 1, Item 11, and in this paragraph.

Item 11 from:

TABLE 1—MOTORCYCLE CONTROL LOCATION AND OPERATION REQUIREMENTS

Equipment control—column 1	Location—column 2	Operation—column 3
11. Rear wheel brakes .....	Right foot control ..... Left handlebar for a motor-driven cycle and for a scooter with an automatic clutch.	Depress to engage. Squeeze to engage.

See S5.2.1 for requirements for vehicles with a single control for front and rear brakes, and with a supplemental rear brake control.

CFMOTO explains that the noncompliance is that, the rear wheel brake control is located on the left handlebar instead of as a right foot control as required by paragraph S5.2.1 FMVSS No. 123.

CFMOTO provided the following arguments to support their contention that the subject noncompliance is inconsequential to motor vehicle safety:

The subject vehicles were certified as scooter type motorcycles by the CHG. CHG believed that the vehicles met all of the requirements for a scooter under FMVSS No. 123. As a result of the scooter certification the rear wheel brake was placed on the left handlebar.

The placement of the rear brake on the left handlebar should be deemed by the NHTSA as an inconsequential noncompliance, based on the history and safety records of the vehicles. No consumer complaints and no warranty claims or incident reports have been received by CFMOTO or CHG that relate to the lack of a right foot actuated rear wheel brake.

One of the main reasons consumers have been attracted to the subject vehicles is that they have the appearance of a motorcycle and the operation or function of a scooter. Aside from a lack of pass-through leg area, the vehicles are scooters in all technical respects. It is the scooter functionality that has been the driving force behind consumer demand for the vehicles.

Individuals with disabilities prefer the left hand rear brake controls to those of a foot operated actuator. Similarly, many consumers want to upgrade from a scooter to a motorcycle without the complexities of operating a motorcycle and therefore choose the subject vehicles.

In summation, CFMOTO believes that the described noncompliance is inconsequential to motor vehicle safety. Therefore, CFMOTO requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

CFMOTO also stated that CHG has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

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:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If

<sup>2</sup> CFMOTO's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt CFMOTO as a manufacturer (motor vehicle importers are defined as manufacturers by 49 U.S.C. 30102(5)(B)) of motor vehicles from the notification

and recall responsibilities of 49 CFR Part 573 for all 6,405 of the affected vehicles. However, the agency cannot relieve CFMOTO's distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into

interstate commerce of the noncompliant vehicles under their control after CFMOTO recognized that the subject noncompliance existed. Those vehicles must be brought into conformance, exported, or destroyed.

comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

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:* September 13, 2010.

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

Issued on: August 6, 2010.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35380]

#### San Luis & Rio Grande Railroad— Petition for a Declaratory Order

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

**ACTION:** Institution of declaratory order proceeding; request for comments.

**SUMMARY:** In response to a petition filed by the San Luis & Rio Grande Railroad (SLRG), the Board is instituting a declaratory order proceeding under 5 U.S.C. 554(e) and 49 U.S.C. 721 to determine whether the Board's jurisdiction preempts the land use code of Conejos County, Colo. (County) that might otherwise apply to SLRG's proposed operation of a containerized truck-to-rail solid waste transload

facility at Antonito, Colo. No responses to the petition have been filed. As discussed below, the Board will provide SLRG an opportunity to supplement its filing and will seek public comments in response, with a particular focus on, but not limited to, issues related to the Clean Railroads Act of 2008, 49 U.S.C. 10501(c)(2), 10908-10910 (CRA).

**DATES:** SLRG's opening statement is due August 27, 2010. Comments are due September 27, 2010. SLRG's reply to comments is due October 12, 2010.<sup>1</sup>

**ADDRESSES:** Filings may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. FD 35380 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each comment filed in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to SLRG's representative, John D. Heffner, 1750 K Street, NW., Suite 200, Washington, DC 20006. When SLRG files its reply to comments, one copy of that filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each commenter.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site. FOR FURTHER INFORMATION, CONTACT: Joseph H. Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.]

**SUPPLEMENTARY INFORMATION:** SLRG's petition for declaratory order concerns its transload facility in the County. SLRG explains that it has hired a contractor, Alcon Construction, Inc. (Alcon), to operate the facility. According to SLRG, Alcon intends to transfer sealed containers or bags of contaminated dirt from trucks originating at Los Alamos National Laboratory in New Mexico to railcars. SLRG would then transport the dirt from Antonito to an interchange with

Union Pacific Railroad at Walsenburg, Colo., for movement to its final destination at Clive, Utah. SLRG states that Alcon would function as its agent and that SLRG would be responsible for marketing, liabilities, expenses, safety, security, and compliance with applicable laws.

There has been citizen opposition to the facility, and SLRG's efforts to reach an agreement with the County have failed. According to SLRG, County officials have indicated that compliance with the local land use code could take an indefinite amount of time. The facility is ready, and SLRG had planned to begin operations there on May 25, 2010. The County, however, filed a complaint on May 24, 2010, in County Court, Conejos County, seeking to enjoin operations at the facility. That complaint has since been removed to Federal court, where it remains pending. In the complaint, the County claims that SLRG has violated the County's land use code.

SLRG seeks an order from the Board declaring that, due to Federal preemption under 49 U.S.C. 10501(b), the facility is not subject to the County's land use code. According to SLRG, the facility meets the requirements for § 10501(b) preemption because the proposed activities are transportation and they would be performed under the auspices of a rail carrier. SLRG argues that transportation includes activities integrally related to transportation, such as its plans here to load, unload, and temporarily store materials. Further, SLRG asserts that it is a rail carrier, as the Board authorized it to acquire and operate a line of railroad in 2003.

In addition, petitioner argues that the proposed operations at its facility are not subject to the CRA, which, if applicable, would restrict the Board's jurisdiction over the facility. See 49 U.S.C. 10501(c)(2)(B), 10908-10910. First, SLRG argues that the dirt would remain in its original shipping containers (sealed bags) and that the CRA only applies to activities outside of original shipping containers. 49 U.S.C. 10908(e)(1)(H)(i). Second, SLRG claims that the dirt is not subject to the CRA because it is "government-generated dirt" as opposed to industrial waste.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. As there is a controversy here, a declaratory order proceeding is being instituted to obtain supplemental information from petitioner and to invite public comment on the issues. Filings should focus particularly on whether SLRG's containers are original shipping

<sup>1</sup> SLRG's petition included a proposed expedited schedule for presentation of evidence and legal argument. Because of the novel issues raised in this proceeding, however, the Board has chosen to seek public comment. A decision in the matter will be issued after thorough consideration of all submissions.