relate to motor vehicle safety, and that the problem has been corrected either by discontinuation or change of the mold of the affected tires.

Interested persons are invited to submit written data, views, and arguments on the petition described above. 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: April 8, 2005.

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

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–4529 Filed 3–8–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–19996; Notice 2]

Dynamic Tire Corp., Grant of Petition for Decision of Inconsequential Noncompliance

Dynamic Tire Corp. (Dynamic Tire) has determined that certain tires it imported and which were manufactured by Tianjin Wanda Tyre Group Co., LTD do not comply with S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Dynamic Tire has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on January 14, 2005, in the **Federal Register** (70 FR 2707). NHTSA received no comments.

A total of approximately 67,864 tires produced between August 1, 2004 to December 4, 2004 are affected. S6.5(b) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with ''the tire identification number required by part 574 of this chapter.'' Part 574.5(d) requires the date code to be listed such that the first two symbols must identify the week of the year and the third and fourth symbols must identify the year. The noncompliant tires reversed the order of these symbols.

Dynamic Tire believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Dynamic Tire states that ''the production week * * * begins with the 31st week of 2004 which eliminates any possibility of confusion between week and year designation.'' Dynamic Tire further states that the tires comply with all other requirements of the Federal Motor Vehicle Safety Standards.

The agency agrees with Dynamic Tire that the noncompliance is inconsequential to motor vehicle safety. Since the production week begins with the 31st week of 2004, this eliminates any possibility of confusion between week and year designation. In addition, the tires comply with all other FMVSS requirements. Dynamic Tire has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Dynamic Tire's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

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

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–4530 Filed 3–8–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19529; Notice 2]

Toyota Motor North America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Toyota Motor Corporation has determined that the daytime running lamps (DRLs) on certain vehicles it manufactured in 1998–2005 do not comply with S5.5.11(a) of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Toyota Motor North America, Inc. (Toyota), on behalf of Toyota Motor Corporation, 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. Notice of receipt of Toyota's petition was published, with a 30 day comment period, on November 12, 2004, in the **Federal Register** (69 FR 65499). NHTSA received 48 comments.

A total of approximately 75,355 model year 1998–2005 Lexus LX470 vehicles are affected. The DRLs on the LX470s are mounted at 895 mm above the road surface, as measured from the center of the lamps with the vehicles at curb weight, and are provided by the upper beam headlamps operating at a reduced intensity. For this DRL configuration, S5.5.11(a) of FMVSS No. 108 requires that each such lamp have a luminous intensity not less than 500 candela at test point H–V, nor more than 3,000 candela at any location in the beam. However, each LX 470 DRL lamp exceeds the 3,000 maximum candela requirement by approximately 57% with a luminous intensity of roughly 4,720 candela at the maximum point in

the beam. Toyota did not indicate where in the beam this maximum point was located, nor provide any other photometry data to fully define the beam.

Toyota believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota argues that its DRLs have the same or less glare than other permissible DRL configurations. In particular, Toyota compared its DRLs to a configuration that was designed to the requirements that apply to lower mounted upper beam headlamp DRLs. Paragraph S5.5.11(a)(1)(ii) provides that if an upper beam headlamp intended to operate as a DRL is mounted not higher than 864 mm above the road surface, as measured from the center of the lamp with the vehicle at curb weight, it may have a luminous intensity at test point H–V not more than 7,000 candela. Toyota states the following in its petition.

> Toyota conducted subjective evaluations of the glare from the DRLs using 19 contractors for the subject vehicles under various conditions, and confirmed that glare from the subject vehicles is the same or better than vehicles that were modified to meet the maximum DRL luminous intensity permitted by the standard at the height limit of 864 mm. Toyota evaluated the glare from the subject vehicles' DRLs by observing them through the rearview mirror of a small passenger car as well as directly, as from an oncoming vehicle. According to Toyota's evaluation, the subject vehicles received overall ratings above 5 (''lamps are just acceptable'').[1] Accordingly, in the scale, higher numbers indicate less glare.

Toyota further states,

> Toyota calculated the luminous intensity of light from the DRLs striking the rearview mirror of the preceding vehicle mounted 1,120 mm (44 inches) above the ground and 6.1 m (20 feet) in front of the DRL. We also indicated the allowable range of the regulation. * * * The assessment mirror height of 44 inches and distance of 20 feet [2] are the same used in NHTSA's own evaluation as described in the final rule published in the Monday, January 11, 1993 **Federal Register** (58 FR 3500). * * * [W]e can confirm that luminous intensity from the subject vehicle DRL (4,720 candela, 895 mm high) is below the maximum luminous intensity of allowable range up to 864 mm high.

Toyota indicated in its petition that the subject vehicles meet all requirements of the Canadian motor vehicle standards,[3] and that it has received no customer complaints or reports that allege a crash, injury or fatality due to problems arising from DRL glare by these vehicles. Toyota has corrected the problem.

NHTSA received 48 public comments in response to the notice of receipt. One comment from a private citizen supports granting the petition as ''more than reasonable'' but does not address the effect of the noncompliance on motor vehicle safety. The remaining 47 comments recommend denying the petition. The comment from Advocates for Highway and Auto Safety supports denial because

> Toyota's proffered subjective evaluation of glare fails to demonstrate that drivers will not find the noncompliant * * * DRLs * * * to produce either disabling or high discomfort glare that can be a factor in motor vehicle crashes.

The remaining 46 comments favoring denial were from private citizens. Of those, 26 favor denial because of excessive glare, 18 favor denial because of general opposition to DRLs, two favor denial because of potential danger to motorcyclists, and one favors denial because of the inability to distinguish directional light signals.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. As Toyota states in its petition, its evaluation of the glare from the noncompliant lamps was subjective. NHTSA agrees with Advocates for Highway and Auto Safety that this subjective evaluation does not substantiate that drivers will be unaffected by the extent of glare resulting from the 57% higher-than-allowed DRL intensity. The fact that 46 private citizens expressed concern about the noncompliance and its effect on safety, including 26 who specifically mentioned glare, makes even more questionable the non-objective assessment by Toyota under one possible scenario that this noncompliance is not consequential to motor vehicle safety.

The agency also notes that the LX470 is equipped with an ''Adjustable Height Control (AHC)'' that is described by Lexus as: ''AHC raises and lowers the LX470 nearly four inches—approximately two inches above and approximately two inches below normal—at the push of a button. Drivers can choose high, normal or low positions.'' Increasing the ride height of the LX470 by 2 inches (50 mm) under certain driving conditions may further exacerbate the glare experienced by preceding and oncoming drivers as a result of the equivalent increase in DRL height. The one comment by a private citizen that favors granting Toyota's petition does not address the consequences on motor vehicle safety, and therefore is not persuasive.

We have received hundreds of letters from citizens about excessive glare from headlamp-derived DRLs and particularly upper beam-derived DRLs. We have found that the actual intensities of some of these headlamp DRLs on vehicles are as much as 1.35 times the intensities measured when the lamps are photometrically tested in the laboratory—because vehicle voltages up to 14 volts are found on some vehicles (compared to the 12.8 volt lab test voltage). This may help explain why there are so many reports by the public of glare from DRLs.

We believe that manufacturers should be held to the existing location requirements so as not to exacerbate the problem of glare. The DRL intensity requirements in existence since February 10, 1993 were a significant relaxation (*i.e.*, increase in intensity) from that originally proposed on August 12, 1991 (56 FR 38100). Even then, DRL glare was an important issue. Public concerns have caused NHTSA to re-examine the intensity limits for DRLs. Given these circumstances, we cannot find that a noncompliance that substantially increases DRL glare is inconsequential to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its petition is hereby denied. Toyota must now 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 CFR 1.50 and 501.8.

Issued on: March 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

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[1] Toyota indicates in its petition that a rating of 1 indicates ''The headlamps are unbearable,'' while the highest rating of 9 indicates ''The headlamps are just noticeable.''

[2] NHTSA notes that its evaluation was conducted at a distance of 28 feet between the interior rearview mirror and the following vehicles DRLs.

[3] NHTSA notes that CMVSS No. 108 requires headlamps operating as DRLs to be mounted at heights permissible for headlamps (559–1372 mm) and have an intensity within 2000 cd to 7000 cd range. Other lamps operating as DRLs are limited to 3000 cd maximum and a maximum mounting height of 2110 mm.