longer material that is properly secured with tie downs, as required by FMCSA's cargo securement regulations. A copy of the PINOVA application is in the docket referenced at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on PINOVA's application for an exemption from 49 CFR 393.116(a)(3). The agency will consider all comments received before the close of business on the comment closing date indicated at the beginning of this notice. Comments will be available for examination in the docket at the location listed under the address section of this notice. The agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 29, 2005.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 05–17508 Filed 9–1–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20858; Notice 3]

DOT Chemical, Notice of Appeal of Denial of Petition for Decision of Inconsequential Noncompliance

DOT Chemical has appealed a decision by the National Highway Traffic Safety Administration that denied its petition for a determination that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids,'' is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published on April 14, 2005, in the **Federal Register** (70 FR 19837). On July 18, 2005, NHTSA published a notice in the **Federal Register** denying DOT Chemical's petition (70 FR 41254), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of DOT Chemical's appeal is published in accordance with NHTSA's regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Affected are a total of approximately 50,000 containers of DOT 4 brake fluid, lot numbers KMF02 and KMF03, manufactured in June 2004. FMVSS No. 116 requires that, when tested as referenced in S5.1.7 ''Fluidity and appearance at low temperature,'' S5.1.9 ''Water tolerance,'' and S5.1.10 ''Compatibility,'' the brake fluid shall show no crystallization or sedimentation. The subject brake fluid shows crystallization and sedimentation when tested as referenced in S5.1.7 at –40 °F and –58 °F, sedimentation when tested as referenced in S5.1.9 at –40 °F, and crystallization when tested as referenced in S5.1.10 at –40 °F.

DOT Chemical asserted that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. DOT Chemical stated that there are fiber-like crystals in the fluid, which are borate salts, and

> are a natural part (no contamination) of DOT 4 brake fluid production (just fallen out of solution in some packaged goods) and have not demonstrated any flow restrictions even at extended periods of low temperatures at minus 40 °F. Furthermore, when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures.

NHTSA reviewed the petition and determined that the noncompliance is not inconsequential to motor vehicle safety. In its denial, NHTSA noted that it granted petitions for determinations of inconsequential noncompliance of FMVSS No. 116 to Dow Corning Corporation (59 FR 52582, October 18, 1994) and to First Brands Corporation (59 FR 62776, December 6, 1994). In the case of Dow, the FMVSS No. 116 noncompliance arose from a ''slush-like crystallization'' that dispersed ''under slight agitation or warming.'' NHTSA accepted Dow's argument that its 'slush-like crystallization'' does not consist of 'crystals that are either water-based ice, abrasive, or have the potential to clog brake system components.'' NHTSA concurred with Dow's conclusion that ''the crystallization that occurred ought not to have an adverse effect upon braking.'' In the case of First Brands, the FMVSS No. 116 noncompliance arose from a ''soft non-abrasive gel'' that also dispersed under slight agitation or warming.

NHTSA determined that facts leading to the grants of the inconsequential noncompliance petitions of Dow and First Brands are not analogous to the facts in DOT Chemical's situation. In contrast, DOT Chemical's noncompliance results from ''fiber-like crystals'' made of borate salts. These borate salt crystals did not disperse under slight agitation or warming, but had to be physically removed by filtration. DOT Chemical asserted that ''[f]iltration, using Whatman #40 filter paper (25–30 micron particle size) removed all crystals. The crystals are approximately 30–50 microns in width and 3–5 mm in length.'' DOT Chemical did not explain how it can assure that crystals smaller than 25 microns in width did not remain in the brake fluid.

In its denial of DOT Chemical's petition, NHTSA stated that—even assuming that all larger-sized crystals were removed from the fluid—the agency is concerned that crystals that are of a size smaller than 25 microns by 3–5 mm would remain in the brake fluid. The thread-like nature of this type of crystallization has the potential to clog brake system components, particularly in severe cold operation conditions. Impurities such as these in the brake system may cause the system to fail, *i.e.*, to lose the ability to stop the vehicle over time due to the accumulation of compressible material in the brake lines. These impurities may also result in the failure of individual brake system components due to the corrosive nature of the contaminants themselves.

In consideration of the foregoing, NHTSA decided that the petitioner did not meet its burden of persuasion that the noncompliance it described is inconsequential to motor vehicle safety. Accordingly, its petition was denied.

In its appeal from NHTSA's denial, DOT Chemical states that ''[t]he words and phrases used in the [original] petition were not identical to the descriptions in the previous cases. DOT Chemical wishes to clear up any misunderstandings from the original petition and reword to match the precedent cases.''

DOT Chemical provides the following statements in its appeal:

—Our choice of the word ''crystals'' can also be described as ''slush-like crystallization'' (as in the granted petition in 1994) or a ''soft non-abrasive gel,'' a look at the sample is worth a thousand words or even rubbing the material between the fingers.

—Our ''crystals'' dispersed and/or went completely into solution ''under slight agitation or warming'' (as in the granted petition in 1994).

—Slight Agitation: In DOT Chemical's petition the phrase ''DOT Chemical tested the fluid, agitated the material before testing to insure that the crystals were part of each test'' we believe implied that the

material went into solution when agitated. We simply needed to make sure that the test material was not just decanted brake fluid without ''crystals.'' When agitated, ''crystals'' or ''slush-like crystallization'' was not seen.

—Warming: In DOT Chemical's petition the phrase ''when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures'' we believe implied the warming scenario mentioned in the granted petition cases.

—In the case of the granted petitions stating that ''its 'slush-like crystallization' does not consist of 'crystals that are either water-based ice, abrasive, or have the potential to clog brake system components' '' we believe implies the same thing as our statements ''There is no contamination in this fluid'' and ''the crystals are a natural part (no contamination.''

—In the case of the granted petitions stating that ''the crystallization that occurred ought not to have an adverse effect upon braking'' we believe is carried to an additional degree by DOT Chemical's testing of the material at –40 °F through the viscometer (with dimensions and drawing provided) and stating that the diameter is much smaller than brake system lines. Specific phrases in DOT Chemical's appeal are ''The crystals presented no problems with obstruction,'' ''results again showed no obstruction,'' and ''have not demonstrated any flow restrictions even at extended periods of low temperatures at minus 40 °F.'' Much time was spent on the flow and low temperatures because all tests passed except partial test failures concerning sedimentation and low temperatures.

Interested persons are invited to submit written data, views, and arguments on the petition appeal 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 appeal, 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 appeal is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 3, 2005.

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

Issued on: August 29, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–17479 Filed 9–1–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22236]

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming vehicles imported by registered importers.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Calendar Year 2004 (January 1, 2004 through December 31, 2004) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that NHTSA has decided are substantially similar to vehicles imported into the United States that were not originally manufactured and certified to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are required to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

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

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. 30141(c). Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured for importation into and sale in the United States is decided to contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (*i.e.*, ''recall'') campaign, 49 U.S.C. 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Calendar Year 2004. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR part 573. After December 31, 2005, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current calendar year.

Under 49 U.S.C. 30120(a), a manufacturer may remedy a safety-related defect or noncompliance in a motor vehicle by repairing the vehicle,