

whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC on October 24, 2005.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-21733 Filed 10-31-05; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 16, 2005, and comments were due by October 17, 2005. No comments were received.

**DATES:** Comments must be submitted on or before December 1, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Richard Walker, Maritime Administration, 400 Seventh Street Southwest, Washington, DC 20590; Telephone: 202-366-5076, FAX: 202-366-6988, or e-mail:

*Richard.walker@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Inventory of American Intermodal Equipment.

*OMB Control Number:* 2133-0503.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Owners of U.S. steamship and intermodal equipment leasing companies.

*Forms:* None.

*Abstract:* This collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment. Further, this collection is intended to assure that containers and related intermodal equipment are obtainable in the event of a national emergency.

*Annual Estimated Burden Hours:* 66 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street Northwest, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC on October 24, 2005.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-20858; Notice 4]

#### DOT Chemical, Denial of Appeal of Decision on Inconsequential Noncompliance

DOT Chemical has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) 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. DOT Chemical

had applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, "Motor Vehicle Safety."

Notice of receipt of the original 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. DOT Chemical appealed, and notice of the appeal was published in the **Federal Register** on September 2, 2005 (70 FR 52469). NHTSA received no public comments.

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 believes 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.

In its denial of DOT Chemical's petition NHTSA stated that 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 of NHTSA's denial, DOT Chemical stated 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 provided 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  $-40^{\circ}\text{F}$  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  $40^{\circ}\text{F}$ ." Much time was spent on the flow and low temperatures because all tests passed except partial test failures concerning sedimentation and low temperatures.

After considering the statements presented by DOT chemical in its appeal, NHTSA has decided to deny the appeal. As NHTSA stated in denying DOT Chemical's original petition, DOT Chemical's noncompliance results from "fiber-like crystals" made of borate salts which did not disperse under slight agitation or warming. DOT Chemical's statement in its appeal that, "when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution *in some cases*" (emphasis added), distinguishes it from petitions NHTSA has granted, where the crystallization consistently dispersed. DOT Chemical in its appeal provided no data indicating that the crystals *always go back into solution* at ambient temperature, including at a test laboratory ambient temperature of  $75^{\circ}\text{F}$  ( $24^{\circ}\text{C}$ ). Further, DOT Chemical provided no data to validate its assertion that the borate salts will not cause any safety problems such as the potential to clog brake system components.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DOT Chemical's appeal of NHTSA's decision on inconsequential noncompliance is hereby denied.

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

Issued on: October 26, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21859; Notice 3]

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

Toyota Motor North America (Toyota) 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. 225, "Child restraint anchorage systems," is inconsequential to motor vehicle safety.

Notice of receipt of the petition for inconsequential noncompliance was published on July 19, 2005, in the **Federal Register** (70 FR 41476). On September 26, 2005, NHTSA published a notice in the **Federal Register** denying Toyota's petition (70 FR 56207), 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 Toyota'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 156,555 model year 2003 to 2005 Toyota Tundra access cab vehicles produced between September 1, 2002 and April 22, 2005. S5(c)(2) of FMVSS No. 225 requires each vehicle that:

(i) Has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 \* \* \* and, (ii) Has an air bag on-off switch meeting the requirements of S4.5.4 of Standard 208 \* \* \* shall have a child restraint anchorage system for a designated passenger seating position in the front seat, instead of a child restraint anchorage system that is required for the rear seat \* \* \*.

The subject vehicles do not have a child restraint lower anchorage in the front seat as required by S5(c)(2).