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 $-40°$ 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.

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° F (24° 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.

[FR Doc. 05–21723 Filed 10–31–05; 8:45 am]

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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).

In its original petition, Toyota asserted that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota stated that it considered whether rear-facing child restraints could be used in the noncompliant vehicles, and ''is unaware of any rear-facing child restraints that require lower anchorages in the vehicle.'' Toyota further stated,

> Most, if not all rear facing child restraints (even those with lower anchorage systems), have belt paths which allow the child restraint to be secured properly in the front passenger seat of the subject vehicles utilizing the front passenger seatbelt. We also note that child restraint manufacturers provide instructions with their child seats (even lower anchorage equipped child seats) on how to install their restraint with the seatbelt. In addition, all Toyota Tundra vehicles provide instructions on how to install child restraints with the seatbelt.

NHTSA reviewed the petition and determined that the noncompliance is not inconsequential to motor vehicle safety. In its denial, NHTSA noted that the absence of LATCH anchorages compromises the overall level of safety of child restraints. FMVSS No. 225 requires a simple, uniform system for installing child restraints that increases the likelihood of proper installation. Prior to FMVSS No. 225, many child restraints were improperly installed, increasing the safety risk to children riding in the improperly installed child restraints. Therefore, NHTSA stated that it is reasonable to conclude that noncompliant vehicles do not offer the same level of safety as compliant vehicles because of the increased risk of improper child restraint installation.

In its original petition, Toyota further pointed out that model year 2000 to 2002 Tundra access cab vehicles have a front passenger airbag on-off switch as standard equipment but not lower anchorage system because they were produced prior to the effective date of the FMVSS No. 225 lower anchorage requirement with which the subject vehicles noncomply. Toyota asserted that,

> considering child restraint installation in the front passenger seat, the 2003–2005 MY vehicles (subject vehicles) are no different than the 2000–02 MY vehicles and further, it follows that the subject vehicles are no less safe than the 2000–02 MY vehicles.

In its denial, NHTSA made the point that the noncompliant vehicles offer a lower level of child passenger safety than those which comply with the requirements of FMVSS No. 225, which is why the standard was promulgated.

Toyota further stated,

> [We] also considered whether a lower anchorage child restraint can be mistakenly installed in the front passenger seat attempting to utilize the lower anchorage. Upon investigating the seat bight of the subject vehicles, we believe a current vehicle owner or subsequent owner could easily observe that no lower anchorage bars exist. We would also note that there are no portions of the seat frame within the seat bight of the front passenger seat that may be mistaken for lower anchorage bars.

NHTSA determined that this argument by Toyota is beside the point in terms of consequentiality to safety. Additionally, through NHTSA's child passenger safety working group, many examples of misuse have been presented. Parents who mistakenly believe their vehicles had LATCH (pre-2002 vehicles) had used seatbelt latch plates, drilled holes through the nylon webbing of the seatbelt or seatbelt buckle stalk, and attached seats to the seat support structure or other places within the vehicle that could be hooked to, all in attempts to secure the child restraint using the LATCH system. NHTSA pointed out that in this particular case, the owner's manual for the Toyota Tundra provides instruction for installing a child restraint using the LATCH system, even though one is not available. A parent might take an improper action, as described previously, in an attempt to ''find'' the LATCH system or ''create'' a LATCH system, resulting in the improper installation of the child restraint. Therefore, NHTSA determined that the lack of the required LATCH system is consequential to safety.

Finally, Toyota noted that it had not received customer complaints regarding the absence of a front passenger seat child restraint lower anchorage system, nor had it received any reports of a crash, injury or fatality due to this noncompliance. NHTSA noted that it does not consider the absence of these reports to be compelling evidence of the inconsequentiality of this noncompliance to safety.

In consideration of the foregoing, NHTSA decided that Toyota 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, Toyota states that the subject vehicles ''have 3 rear designated seating positions with *two rear seat child restraint lower anchorage* systems [emphasis original], and a manual air bag on-off switch to disable the front passenger air bag, but no child restraint lower anchorage system in the front passenger seat.''

Toyota further states:

> Based on [NHTSA's statements in its petition denial], Toyota believes the agency may have misunderstood the situation regarding the subject vehicles. The subject vehicles have two LATCH positions in the rear seats. The owner's manuals for these vehicles are correct, since it [sic] provides instructions for installing child restraints using LATCH in the rear seats, and provides instructions for installing child restraints for the front passenger seats using the seat belt.
>
> The issue in question is the airbag cut-off switch installed pursuant to FMVSS 208 S4.5.4. FMVSS 225 requires that if this airbag cut-off switch is installed a LATCH position must be provided in the front passenger seat, in lieu of one of the rear LATCH positions. As stated previously, the subject vehicles do not have a LATCH in the front passenger seat, but has [sic] two rear LATCH positions. Thus, the difference between the subject vehicles and competitive models with two LATCH positions in the rear seats and no LATCH in the front passenger seat is that the subject vehicles have airbag cut-off switch allowed under FMVSS 208 S4.5.4, while the competitor models do not have this switch.
>
> In the **Federal Register** notice, based on the type of reasoning used by the agency, the agency seemed to imply that the non-compliance remedy to this situation is the installation of a LATCH position to the front passenger seat. However, we believe the agency should understand that the likely remedy is to remove the airbag cut-off switches. Further, Toyota has not received any customer complaints regarding the airbag cut-off switch, and Toyota believes that the vehicle owners of the subject vehicles consider them a useful feature.
>
> In conclusion, since the subject vehicles have two LATCH systems in the rear seats, the vehicles comply with the intent of the standard and the vehicles are no less safe than vehicles which comply with the requirements of FMVSS 225 without a cut-off switch.

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: December 1, 2005.

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.

[FR Doc. 05–21724 Filed 10–31–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–15651]

Federal Motor Vehicle Safety Standards; Replacement Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of interpretation and termination of rulemaking.

SUMMARY: This document provides an interpretation concerning how our standard for lamps, reflective devices, and associated equipment applies to replacement equipment. It represents the continuation of a process that began with the publication of a notice of draft interpretation in July 2003, and included the publication of a notice of interpretation in October 2004. We are providing this interpretation in response to requests that we reconsider the October 2004 notice of interpretation on this subject in several areas. This document also announces termination of a rulemaking announced in that notice of interpretation.

FOR FURTHER INFORMATION CONTACT: Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

FMVSS No. 108 specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles. Under the standard, vehicle manufacturers are required to certify that a new vehicle meets, among other things, FMVSS No. 108's requirements with respect to lamps, reflective devices, and associated equipment. In addition, FMVSS No. 108 also applies to lamps, reflective devices, and associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which the standard applies. Thus, FMVSS No. 108 is both a vehicle standard and an equipment standard.

The purpose of FMVSS No. 108 is to reduce crashes and deaths and injuries from crashes, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. The agency has addressed the safety need for the various requirements included in FMVSS No. 108 in many rulemakings over the years.

October 2004 Notice of Interpretation

On October 8, 2004, NHTSA published in the **Federal Register** (69 FR 60462) a notice of interpretation concerning how Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* applies to replacement equipment. The interpretation addressed requests for interpretation in two letters submitted by Calcoast-ITL (Calcoast), a testing company. Our notice of interpretation reflected consideration of public comments on a July 2003 notice of draft interpretation.[1]

Requests for interpretation. The first Calcoast letter asked whether replacement lamps are required to have all the functions of original lamps. The letter also asked whether replacement lamps for the rear of a vehicle may have the rear reflex reflectors in a location that is inboard from that in the original lamps. The second Calcoast letter asked a series of questions regarding whether it is permissible for replacement lamps to use alternative light sources, *i.e.*, those that are different from those specified by the original equipment (OE) manufacturer.

Primary interpretation. In responding to the issues raised by Calcoast, our interpretation focused primarily on the meaning of the following language, set forth in paragraph S5.8.1 of the standard:

> Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard.

We said that this language applies to individual replacement lamps or other items of replacement equipment, not sets of lamps or equipment. We concluded therefore that compliance of each individual replacement lamp or other item of replacement equipment is determined based solely on the properties and characteristics of the individual lamp or combination lamp, without consideration of other lamps that may be included as part of a set. That is, in the case of a replacement lamp designed or recommended for a particular vehicle and sold as part of a set of two lamps, the lamp would not comply with FMVSS No. 108 if, when installed on one side of the vehicle, it would take the vehicle out of compliance with the standard.

Retention of required functions. We concluded that replacement lamps are required to have all the functions of the original lamps.

Location of required functions. Given that FMVSS No. 108 requires that reflex reflectors be located ''as far apart as practicable,'' we concluded that replacement lamps that have the effect of moving the reflex reflectors closer together would clearly not be ''as far apart as practicable,'' and therefore would not conform to the standard.

Use of alternative light sources. On the issue of use of alternative light sources for replacement lighting equipment, we concluded that replacement lighting (other than replacement headlamps) may utilize a different type of light source than that of the original equipment lighting, provided that the replacement lighting equipment meets the requirements of the standard for that type of lamp and does not take the vehicle out of compliance.

With respect to replacement headlamps, however, we stated that we were adhering to a March 13, 2003 letter of interpretation to Mr. Galen Chen. That letter stated that headlamps

[1] 68 FR 42454; July 17, 2003.