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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0028; Notice 2]

Toyota Motor Engineering & Manufacturing North America, Inc.,
Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of Petition

SUMMARY: Toyota Motor Engineering & Manufacturing North America, Inc., on behalf of Toyota Motor Corporation and certain Toyota manufacturing entities (collectively referred to as "Toyota") have determined that specific model year (MY) 2013-2014 Toyota vehicles do not fully comply with paragraph S4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 302, *Flammability of Interior Materials*. Toyota has filed an appropriate report dated January 29, 2014 as amended on February 20, 2014 pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Michael Cole, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. Toyota's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Toyota 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 public comment period, on March 11, 2014 in the Federal Register (FR 13733). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2014-0028."

II. Vehicles Involved: Affected are approximately 206,271 MY 2012-14 Camry, Avalon, Corolla, Sienna, Tundra, and Tacoma model Toyota vehicles. Refer to the amended report that Toyota filed pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* that Toyota included as attachment to its petition for identification of the associated Toyota manufacturing entities as well as additional details about the vehicles involved.

III. Noncompliance: Toyota explains that the noncompliance is that the front and rear seat cushions and front and rear seat

backs in the subject vehicles fail to fully meet the requirements of paragraph S4 of FMVSS No. 302 because seat cushion and seat back components, when tested separately, failed to meet the burn rate requirements of paragraph S4.3. Toyota identified the noncompliant components as seat heater assemblies. Toyota also states that all other components of the seat required to meet FMVSS No. 302 are in compliance with the standard.

IV. Rule Text: Paragraph S4 of FMVSS No. 302 requires in pertinent part:

S4.1 The portions described in S4.2 of the following components of vehicle occupant compartments shall meet the requirements of S4.3: seat cushions, seat backs, seat belts, headlining, convertible tops, arm rests, all trim panels including door, front, rear, and side panels, compartment shelves, head restraints, floor coverings, sun visors, curtains, shades, wheel housing covers, engine compartment covers, mattress covers, and any other interior materials, including padding and crash-deployed elements, that are designed to absorb energy on contact by occupants in the event of a crash...

S4.2 Any portion of a single or composite material which is within 13 mm of the occupant compartment air space shall meet the requirements of S4.3.

S4.2.1 Any material that does not adhere to other material(s) at every point of contact shall meet the requirements of S4.3 when tested separately...

S4.3(a) When tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 102 mm per minute. The requirement concerning transmission of a flame front shall not apply to a surface created by cutting a test specimen for purposes of testing pursuant to S5.

- (b) If a material stops burning before it has burned for 60 seconds from the start of timing, and has not burned more than 51 mm from the point where the timing was started, it shall be considered to meet the burn-rate requirement of S4.3(a).

V. Summary of Toyota's Analyses: Toyota stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Toyota believes that its testing shows that the seat heater assemblies comply with FMVSS No. 302 when tested as a "composite" as installed in the vehicle, i.e., along with the surrounding FMVSS No. 302 compliant seat cover, plus pad, and foam pad.
2. Toyota believes that its testing and design review of the seat heater assemblies indicates that the chance of fire or flame induced by a malfunctioning seat heater is essentially zero.
3. Toyota believes that the purpose of FMVSS No. 302 is to "...reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes.¹" The noncompliant seat heater assemblies would normally not be exposed to open flame or an ignition source (like matches or cigarettes) in its installed application, because it is installed

¹ Paragraph S2 of FMVSS No. 302 Flammability of Interior Materials

within and surrounded by complying materials that meet FMVSS No. 302.

4. The seat heater assembly is a very small portion of the overall mass of the soft material portions comprising the entire seat assembly (i.e. less than 1%), and is significantly less in relation to the entire vehicle interior surface area that could potentially be exposed to flame. Therefore, Toyota believes that it would have an insignificant adverse effect on interior material burn rate and the potential for occupant injury due to interior fire.
5. Toyota is not aware of any data suggesting that fires have occurred in the field due to the installation of the non-complying seat heater assemblies.
6. Toyota also expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance relating to FMVSS No. 302 requirements.

Toyota additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 302.

Toyota also provided Transport Canada's October 1, 2014, grant letter to exempt it from conducting a recall and remedy

campaign for the identical issue for vehicles that were sold in Canada².

In summation, Toyota believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Toyota 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.

NHTSA DECISION

NHTSA Analysis: NHTSA has reviewed and accepts Toyota's analyses that the subject noncompliance is inconsequential to motor vehicle safety. Specifically, the fact that the front and rear seat cushions and front and rear seat backs in the subject vehicles fail to meet the burn rates requirement, poses little if any risk to motor vehicle safety.

NHTSA's greatest concern was that as a seat heater, the device itself is the most likely ignition source. However, Toyota stated that it is not aware of any data suggesting that vehicle fires have occurred in the field due to the non-complying seat heaters. NHTSA searched its complaints database from the year 2000 to current and also found no complaints concerning the subject vehicles. We did find four Toyota seat heater complaints concerning older vehicles (three Toyota

² Docket ID: NHTSA-2014-0028-0003

Sienna's model years 2006 and two 2004's and a 2007 Toyota Camry). While these complaints appear to show that seat heaters can be potential ignition sources, the hazard does not appear to be widespread or an issue with the subject vehicles. Toyota also conducted various testing to show that the seat heater element would not act as an ignition source when overdriven electrically, nor would it accommodate a flame rate beyond what is permitted by FMVSS No. 302 when exposed directly to an open flame in the installed condition (as a composite). Toyota also demonstrated that the seat heater is a very small portion of the overall mass of the seat assembly and that NHTSA has granted prior inconsequentiality petitions for similar issues.

Based on its review of Toyota's submission, the agency has concluded that the "seat heaters" in the noncompliant vehicles are unlikely to pose a flammability risk. This conclusion is consistent with Transport Canada's review of the identical issue. NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's safety concern for the flammability of interior materials. Rather, it represents NHTSA's assessment of the gravity of this specific noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to create a risk to safety. NHTSA is not aware of any occupant injuries regarding these seat heaters.

Based on the foregoing, NHTSA has decided that Toyota has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety.

To avoid confusion, NHTSA would like to note that an existing NHTSA safety recall campaign involving approximately 3,233 Toyota vehicles is unaffected by this inconsequential noncompliance decision. That safety recall campaign is being conducted by an independent motor vehicle distributor that modified Toyota vehicles with defective aftermarket seat heaters that can malfunction and burn holes in the seating materials. For more information refer to NHTSA Recall ID Number 14V-743 at: <http://www.safercar.gov>.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Toyota has met its burden of persuasion that the FMVSS No. 302 noncompliance is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby granted and Toyota is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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. Therefore, any decision on this petition only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve Toyota distributors and dealers 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 Toyota notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe, Acting
Director,
Office of Vehicle Safety Compliance.

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