



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0095; Notice 2]

Toyota Motor North America, 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 North America (Toyota) has determined that certain model year (MY) 2023 Subaru Solterra and Toyota bZ4X motor vehicles, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less*. Toyota filed a noncompliance report dated July 29, 2022, and subsequently petitioned NHTSA on August 12, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Toyota's petition.

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Toyota determined that certain MY 2023 Subaru Solterra and Toyota bZ4X motor vehicles do not fully comply with paragraph S4.3(a) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with A GVWR of 4,536 Kilograms (10,000 Pounds) or Less*. (49 CFR 571.110).

Toyota filed a noncompliance report dated July 29, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Toyota petitioned NHTSA on August

12, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Toyota's petition was published with a 30-day public comment period, on May 19, 2023, in the **Federal Register** (88 FR 33272). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2022-0095."

II. Vehicles Involved: Approximately 661 MY 2023 Subaru Solterra and Toyota bZ4X motor vehicles, manufactured between March 30, 2022, and June 3, 2022, were reported by the manufacturer.

III. Noncompliance: Toyota explains that the noncompliance is that the subject vehicles are equipped with a tire information placard that incorrectly identifies the vehicle weight capacity of the subject vehicles and, therefore, do not comply with FMVSS No. 110. Specifically, the tire information placard incorrectly states that the vehicle weight capacity is 925 pounds when it should state that the vehicle weight capacity is 1,045 pounds.

IV. Rule Requirements: Paragraph S4.3(a) of FMVSS No. 110 of FMVSS No. 110 includes the requirements relevant to this petition. Paragraph S4.3 of FMVSS No. 110 provides that each vehicle, except for a trailer or incomplete vehicle, is required to show the vehicle weight capacity on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible, and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible, and prominent, the placard shall be affixed to the

inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard.

V. Summary of Toyota's Petition: The following views and arguments presented in this section, "V. Summary of Toyota's Petition," are the views and arguments provided by Toyota. They do not reflect the views of NHTSA. Toyota describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Toyota explains that the tire information placard on the subject vehicles provides a vehicle weight capacity that is lower than the actual value. Therefore, Toyota says that vehicle owners referring to the incorrect vehicle capacity weight stated on the tire information placard are not at risk of overloading the subject vehicle beyond the vehicle capacity weight. The tire information placard states that the vehicle capacity weight for the subject vehicle is 925 pounds when it should state that the vehicle weight capacity is 1,045 pounds. Toyota says that if a vehicle owner loads a subject vehicle according to the weight stated on the tire information placard, the subject vehicle would still have an additional 120 pounds of weight capacity.

Toyota contends that NHTSA has previously stated that the "intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and prevent overloading"¹ and FMVSS No. 110 states that the purpose of the requirements for tire selection are to "prevent tire overloading."²

Because the tire information placard contains a vehicle weight capacity that is lower than the actual weight capacity, Toyota says there is no risk of overloading if the vehicle owner loads the subject vehicle according to the incorrect value. Toyota adds that all other information on the tire information placard is accurate, and Toyota has corrected the subject noncompliance in current production of the subject vehicles.

¹ See, e.g., Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 *Fed. Reg.* 88728, 88729 (December 8, 2016)

² See 49 CFR § 571.110, paragraph S1.

Furthermore, Toyota says that the owner's manual states the correct vehicle capacity weight, and the tire information placard contains the text "See Owner's Manual for additional information."

Toyota says that NHTSA previously granted a petition submitted by Mercedes-Benz USA, LLC, (MBUSA) that involved a similar noncompliance.³ In that case, the affected vehicles were affixed with a tire information placard that contained the incorrect maximum combined weight of occupants and cargo and, therefore, did not comply with the requirements of paragraph S4.3(a) of FMVSS No. 110. The tire information placard in the MBUSA vehicles contained a higher than intended value for the maximum combined weight of occupants and cargo; however, the tires and load carrying capabilities of the affected MBUSA vehicles exceeded the incorrect value identified by the tire information placard. Toyota says that NHTSA found that the tire capacities of those vehicles were capable of safely handling the additional weight of the higher vehicle weight capacity that was provided without risk of overloading.

Toyota contends that NHTSA should similarly find that the subject noncompliance is inconsequential to motor vehicle safety because the tire information placard on the subject vehicles provides a vehicle weight capacity that is lower than intended. Due to this, Toyota believes that the subject noncompliance does not pose a risk of vehicle overloading because the vehicle and its tires can accommodate more than the incorrect vehicle capacity weight that is stated on the tire information placard.

Toyota concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis:

³ Mercedes-Benz USA, LLC, (82 *Fed. Reg.* 33547, July 20, 2017).

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.⁴ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.⁵ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

FMVSS No. 110 specifies requirements for tire selection to prevent tire overload. The intent of the standard is to ensure that vehicles are equipped with tires appropriate to handle the vehicle manufacturer's designed maximum vehicle weight.

The maximum weight of a vehicle is determined by adding to the vehicle the manufacturer specified maximum weight of occupants and cargo. FMVSS No. 110, paragraph S4.3(a) requires that vehicles be labeled with a "Vehicle Capacity Weight (VCW)" value which is the specified maximum occupant and cargo weight that can be loaded into a vehicle. This value is equal to 68 kg times the vehicle's designated seating capacity plus the rated cargo/payload of the vehicle. FMVSS No. 110, S4.2.1.1 and S4.3.4(b), requires that the vehicle maximum load on the tire shall not be greater than the applicable maximum load rating as marked on the sidewall of the tire or greater than the load rating of the tire at the manufacturer specified cold inflation pressure listed on the tire and loading information placard.

⁴ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

⁵ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

For the subject vehicles, Toyota noted that the vehicle weight capacity values on the placards are incorrect. The vehicle placard on the subject vehicles indicates that the vehicle weight capacity is 925 pounds when it should state that the vehicle weight capacity is 1,045 pounds. These errors would not cause a consumer to load the subject vehicles beyond their original design specifications.

Toyota cited prior NHTSA determinations of inconsequentiality petitions in support of the contention that the noncompliance involved here also had no safety impact. NHTSA notes that it evaluates each petition on its individual facts and does not consider prior determinations as binding precedent.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby granted, and Toyota is consequently exempted from the obligation of providing notification of, and a free 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, this decision 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 vehicles 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)

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Director, Office of Vehicle Safety Compliance.

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