

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA 2001-11041, Notice 3]

**Toyota Motor North America Denial of Appeal of Decision on Inconsequential Noncompliance**

Toyota Motor North America (Toyota), on behalf of Toyota Motor Corporation, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its application for a determination that the noncompliance of certain Toyota vehicles with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," be deemed inconsequential to motor vehicle safety. Toyota has requested 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 in the **Federal Register** on January 9, 2002, (67 FR 1270). On April 15, 2004, NHTSA published a notice in the **Federal Register** denying Toyota's petition (69 FR 20112), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Toyota submitted an appeal of the agency's decision on May 4, 2004.

Toyota manufactured 92,794 MY 2000-2001 Celicas between May 7, 1999 and June 18, 2001 with daytime running lamps (DRLs) that do not meet the FMVSS No. 108 minimum spacing requirements for turn signals. FMVSS No. 108 requires that unless the maximum luminous intensity of the DRL is not more than 2,600 candela (cd) at any location in the beam, the optical center of the turn signal must be at least 100 millimeters (mm) from the lighted edge of the DRL. According to Toyota, the peak intensity of the Celica DRLs is 5,880 cd and the distance between the optical center of the turn signal and the lighted edge of the DRL is 45.6 mm.

To support its original petition, Toyota cited many factors, including that the lighted area of its turn signals is twice the minimum required by FMVSS No. 108, the luminous intensity of the turn signals is 2.8 times the minimum requirement, and an alternative measuring method which would result in 82 mm spacing instead of 45.6 mm. Toyota also conducted an evaluation utilizing contractors which showed that the average subjective rating for the original Celica lamp was greater than the rating for a modified Celica lamp with the required minimum

100 mm spacing, a DRL intensity near the maximum, and a turn signal lamp with the minimum intensity allowed by the regulation. The agency previously considered these factors and noted its reluctance to be persuaded particularly when a noncompliance is so far from specified required levels. Additionally, the agency noted that the reason for specifying a spacing relationship is to lessen the likelihood of motor vehicle crashes, deaths, and injuries by ensuring visibility of a vehicle's turn signal lamps in daylight operation.

In its appeal of the agency's decision, Toyota cited several supporting factors from its original petition and discussed their similarities with a General Motors (GM) petition which the agency granted in 1999 (64 FR 28864). Also, Toyota referenced a NHTSA sponsored research report titled "Daytime Running Lights and Turn Signal Masking" [DOT HS 808 221]. Specifically, Toyota indicated that:

The NHTSA sponsored report concluded that equivalent detection was found between turn signals separated from DRLs by only 50 mm with that of turn signals separated from DRLs by the regulatory minimum of 100 mm, if the intensity of the turn signal located at 50 mm from the DRL was increased to 3 times that of the turn signal that is 100 mm away from the DRL. Toyota believes that although the intensity of its turn signals are 2.8 times the minimum intensity (vs. 3 times in the research) and the separation distance is 45.6 mm (vs. 50 mm in the research), the NHTSA research supports its petition.

The NHTSA sponsored research report found that turn signals larger than the minimum specified area (22 cm<sup>2</sup>) are less likely to be masked by DRL light output than smaller, compliant turn signals [with the minimum specified area]. The lighted area of Toyota's turn signals is 45.1 cm<sup>2</sup>. Toyota performed a field evaluation similar to one done by GM and reported to NHTSA, because of a similar noncompliance regarding a GM DRL spacing problem. Toyota emphasized that NHTSA, in granting GM's petition, cited as a factor, the larger size of the GM turn signals compared to the minimum required size.

The agency has reviewed Toyota's additional arguments as well as the research report cited and the **Federal Register** notice granting the referenced GM petition. There are many differences between the Toyota lamps, the lamps studied in the referenced NHTSA research report, and the GM lamps for which the agency determined the noncompliance to be inconsequential. The GM lamps had values for several parameters that fell within the range studied in the NHTSA research; however, this is not the case for the Toyota lamps in question. The agency notes the following differences:

While the area of Toyota's turn signals (45.1 cm<sup>2</sup>) is slightly more than double

the minimum area requirement of 22 cm<sup>2</sup>, it is significantly less than the 116 cm<sup>2</sup> area of the referenced GM lamps and the 161 cm<sup>2</sup> area of the subject lamps used in the agency's 1994 research report. Toyota incorrectly stated in its appeal that the agency found the larger size of the GM turn signal was an independent reason why the noncompliance was inconsequential. The agency considered and based its inconsequentiality decision on a combination of factors presented by GM. Simply having a turn signal greater in size than the regulatory minimum required was not the sole basis for granting the petition.

The agency's 1994 research report [DOT HS 808 221] found that spatial relations between the turn signal lamp and the DRL had a significant effect on the results; specifically, the condition of abutting lamps was the worst case scenario for masking of the turn signal. Based on this report, Toyota's abutting lamp configuration with a 45.6 mm separation would be considered a worse case for masking compared to the 71 mm separation cited in GM's petition involving a diagonal configuration less severe for masking. Furthermore, in support of its petition, GM measured the photometric output of its turn signals with DRLs activated and compared the results to the photometric output of the turn signals with a portion of the DRLs blocked to simulate the required minimum 100 mm separation. GM utilized a video based photometer and determined the worst case difference in photometric results for a single zone was a 17.5% difference while the average difference in turn signal zonal photometric output was 12.7%. While the agency gave positive consideration to these factors in granting the GM petition, we are unable to do so in this case due to the lamp configuration utilized by Toyota and the absence of any analysis to determine the loss in turn signal photometric output (measured in photometric zone performance) associated with the worst case masking condition of the Toyota Celica lamps. Based on the Toyota Celica lamp configuration, we expect that the level of masking would be appreciably greater than that of the GM lamps involved in the referenced petition.

In summary, when the agency considered GM's petition it found that the available information supported GM's contention that the level of masking was inconsequential to motor vehicle safety. While many factors were involved, all parameters related to the GM lamps were within the ranges specified in the available research

reports. However, the agency is not aware of any turn signal masking research involving lamps smaller than 75 cm<sup>2</sup>. The Toyota Celica turn signal lamps are slightly greater than half that size. Research was performed by the Society of Automotive Engineers in 1978 and 1993; however, neither of these studies involved turn signal areas less than 75 cm<sup>2</sup>. Furthermore, the research report cited by Toyota to support its petition indicates that the lamp configuration on the Toyota Celica increases masking, which is not the case with the GM lamp configuration. Toyota also failed to quantify the level of masking present through analysis of turn signal photometric data as GM did in supporting its petition.

FMVSS No. 108 currently permits DRLs to be deactivated when turn signal lamps are activated, in order to eliminate the effects of masking turn signals where the minimum 100 mm spacing requirement is not met. Additionally, the agency notes that Toyota issued a Technical Service Bulletin (EL011-00) on October 6, 2000 that addressed how to disable DRLs on the Celica for customers that made this request. This procedure does not appear to be complex.

In consideration of the foregoing, NHTSA has decided that the applicant has not met the burden of persuasion regarding the noncompliance described in its appeal, and the non-compliance is consequential to motor vehicle safety. Accordingly, Toyota's application is hereby denied and it must proceed to notify and remedy as required by statute, at no cost to the consumer.

**Authority:** (49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 8, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-19547]

#### Notice of Receipt of Petition for Decision That Nonconforming 2003-2004 BMW X5 Multipurpose Passenger Vehicles, Manufactured From January 1, 2003, Through December 31, 2004, Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003, through December 31, 2004, are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003, through December 31, 2004, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards, are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is December 16, 2004.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

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 shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. ("AMC"), of North Miami, Florida (Registered Importer 01-278) has petitioned NHTSA to decide whether nonconforming 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003-2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and*