reporting number 3824.99.9397 effective January 27, 2022'' in lieu thereof.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–01732 Filed 1–27–22; 8:45 am]

BILLING CODE 3390–F2–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0098; Notice 2]

Toyota Motor 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 North America, Inc., (Toyota) has determined that certain model year (MY) 2019 Toyota Tacoma motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* Toyota filed a noncompliance report dated September 5, 2019. Toyota subsequently petitioned NHTSA on September 27, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Toyota's petition.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0661, *jack.chern@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Toyota has determined that certain MY 2019 Toyota Tacoma Double Cab motor vehicles do not fully comply with paragraph S4.1 of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). Toyota filed a noncompliance report dated September 5, 2019 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota subsequently petitioned NHTSA on September 27, 2019, 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 January 3, 2020, in the **Federal Register** (85 FR 415). Three 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–2019–0098.''

II. Vehicles Involved

Approximately 70 MY 2019 Toyota Tacoma Double Cab motor vehicles, manufactured between July 25, 2019, and July 30, 2019, are potentially involved.

III. Noncompliance

Toyota explains that the noncompliance is that the subject vehicles are missing seat belt labels on the rear center seat belt assemblies and therefore, do not meet the requirements set forth in paragraph S4.1 of FMVSS No. 209. Specifically, the label which is sewn to the rear center seat belt may have been mistakenly removed by a worker while scanning the code on the label.

IV. Rule Requirements

Paragraph S4.1(j) of FMVSS No. 209 includes the requirements relevant to this petition. Each seat belt assembly shall be permanently and legibly marked or labeled with the year of manufacture, model, and name or trademark of manufacturer or distributor, or of importer if manufactured outside the United States.

V. Summary of Toyota's Petition

The following views and arguments presented in this section are the views and arguments provided by Toyota. They do not reflect the views of the agency.

Toyota described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

Toyota submitted the following views and arguments in support of the petition:

1. The noncompliant seat belt assemblies were properly installed, and due to Toyota's replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur:

Toyota stated that the primary purpose of the seat belt label required by S4.1(j) of FMVSS No. 209 is to identify the seat belt in the event it needs to be replaced. Toyota contends that there are other means to identify the seat belt without looking at the label, and these methods are equally effective in identifying the correct seat belt to install in a vehicle in the event a replacement is needed.

According to Toyota, all the noncomplying seat belts were installed as original equipment in the subject vehicles and are unique to the Tacoma rear center seat; they cannot be properly installed in any other Tacoma seating positions and are not used on any other Toyota or Lexus models (Service replacement parts are not affected and contain required labels). Toyota also states that manufacturing processes and the unique properties of this center rear belt assembly match the correct rear center seat belt with the rear seat that is tied to a specific VIN. Toyota states this assures that an incorrect seat belt will not be installed in a vehicle during its assembly. If a seat belt replacement is needed, the service parts system would also preclude the purchase and installation of an improper replacement seat belt assembly. Toyota's petition contends that seat belt assembly service parts are ordered through the Toyota authorized dealership system using the seat belt assembly part number or the VIN and that replacement parts for the subject seat belt assemblies are not distributed through the general automotive aftermarket; they are only sold by Toyota dealers. Toyota also states that the seat belt retractor has a separate label with the supplier part number, which can further help identify the seat belt during replacement.

The Toyota petition further states that when a purchaser orders a seat belt replacement part, the installation instruction, usage, and maintenance instructions are included in the service parts packaging and clearly identify that the seat belt is for a Toyota Tacoma and identify the seat belt installation location. According to Toyota, these instructions comply with paragraph S4.1(k) of FMVSS No. 209.

Given the purpose of paragraph S4.1(j) of FMVSS No. 209 Toyota believes there are alternative methods as noted above that can be used to identify seat belts if they need to be replaced.

Therefore, Toyota states that the noncompliant seat belts as installed in the vehicle do not present a safety risk, and the chance of an incorrect seat belt being installed in a vehicle is essentially zero.

2. In the event of a recall the seat belt installed in each vehicle can be identified based on the VIN:

Another purpose of the labeling requirement in the standard is to allow for easier identification of a seat belt in

the event a safety recall is initiated. Toyota states that traceability in the Toyota production system ensures the seat belts can be easily identified without the label specified in paragraph S4.1(j) of FMVSS No. 209.

Toyota again stated that each seat section and the center rear seat belt has a label with a code which is scanned into the seat supplier's system and tied to the VIN for traceability. In the event of a safety recall for this part, Toyota believes the VIN is a sufficient means of identifying the potentially affected vehicles. Therefore, Toyota states the absence of the label specified in the standard poses no risk to motor vehicle safety.

3. The seat belt complies with all other requirements of FMVSS No. 209:

The noncomplying seat belt assemblies may lack the required marking or labeling, but Toyota states all of the seat belt assemblies meet all other requirements of the standard. According to Toyota, there is no impact to performance, functionality, or occupant safety.

4. Toyota is unaware of any owner complaints, field reports, or allegations of hazardous circumstances concerning missing seat belt labels in the subject vehicles:

Toyota has searched its records for reports or other information concerning the rear center seat belts in the subject vehicles. No owner complaints, field reports, or allegations of hazardous circumstances concerning missing seat belt labels were found.

5. Toyota believes NHTSA has granted similar petitions for inconsequential noncompliance:

Toyota cited four FMVSS No. 209 petitions for inconsequential noncompliance related to seat belt assemblies:

- Chrysler Corporation, 57 FR 45865 (October 5, 1992)
- TRW Inc., 58 FR 7171 (February 4, 1993)
- Bombardier Motor Corporation of America, 65 FR 60238 (October 10, 2000)
- Oreion, 80 FR 5616 (November 21, 2014)

VI. Public Comments

Three comments were received. One was from Mr. Edward Thomas. The other two were from Toyota. Mr. Thomas stated his belief that Toyota's petition should be denied for the following reasons:

1. The four petitions that Toyota cites as being similar are not equivalent or substantially similar to Toyota's case. In only one of the cited cases was the label missing, and that case (Bomardier) involved a low speed vehicle which was only sold by that company in the U.S. market. In the cited cases involving Oreion, another low speed vehicle, only the production date was missing from the label. In TRW's case, about 40 vehicles had labels with model numbers for the front right and front left reversed. Only the Chrysler case involved a substantial number of vehicles, and there, the correct part number appeared on the belt assembly; the only missing information is information that is no longer required by FMVSS 209.

2. In addition to content, S4.1(j) of FMVSS No. 209 requires that the seat belt assembly be permanently marked or labeled. If a label can be mistakenly removed, then it likely did not meet the permanency requirement.

3. Some consideration should be given to the fact that at some point many of subject vehicles will end up in a salvage yard where the belts will be removed and offered for sale. Without the labels, the chances of them being installed in different seating positions and vehicles is increased.

4. The number of vehicles involved were manufactured over a six-day period. A recall to correct the noncompliance should not pose and undue hardship on the world's largest and wealthiest auto manufacturer. The seat belt assemblies do not need to be replaced, a simple label with the required information could be applied to the retractor housing in order to bring vehicles into compliance.

Toyota submitted a comment on June 24, 2020, to offer supplemental reasoning in support of its petition because Toyota filed a separate noncompliance report on May 4, 2020, indicating that certain replacement seat belt assemblies may not have been packaged with an installation instruction sheet or may have been packaged with an incorrect instruction sheet intended for a different seat belt assembly. The aforementioned 70 Tacoma vehicles are also affected by the noncompliance report filed by Toyota on May 4, 2020.

Because the label is sewn to the rear center seatbelt and has been removed while scanning the code on the label, NHTSA inquired if ripping the label off would weaken the webbing at the stitch location. Therefore, on December 7, 2020, NHTSA requested Toyota provide additional information about how the label was removed and whether it affects the webbing strength. In response to the agency's request, Toyota conducted additional testing and analysis to demonstrate that there is no weakening effect on the seat belt stitching after removing the label by tearing. Toyota held an online meeting on December 17, 2020, to show its findings to the agency and subsequently, submitted the supplemental information discussed during the online meeting into the docket on December 21, 2020.[1] Toyota concluded in this submission that the pull forces needed to tear the label are much lower than the force needed to affect the seat belt stitching.

VII. NHTSA's Analysis

1. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the ''Safety Act'') with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory FMVSS 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. 49 CFR 1.95.

NHTSA adopts an FMVSS only after the agency has determined that the performance requirements are objective, practicable, and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with an FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. It, therefore, established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.,* recall) obligations. 49 U.S.C. 30118(d) & 30120(h). The agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set out at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after

[1] *see Toyota submission of supplemental information to NHTSA–2019–0098; https://www.regulations.gov/document?D=NHTSA-2019-0098-0005.*

notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor Part 556 defines the term ''inconsequential.'' The agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement should not lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available. *See, e.g.,* General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (December 20, 2016).

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the agency has not found many such noncompliances inconsequential.[2] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[3] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [4] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [5]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[6] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant or a consumer who is exposed to the consequence of that noncompliance.[7] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

2. Analysis and Response to the Public Comment From Mr. Thomas

In response to the public comment from Mr. Thomas,[8]

a. NHTSA agrees with Mr. Thomas that the four petitions that Toyota cites are not equivalent or substantially similar to Toyota's case. An important consideration in determining inconsequentiality is the safety risk posed to individuals. NHTSA uses the prior petitions cited by the manufacturer as a reference only and does not depend upon the prior petitions for its basis for determining whether to grant or deny an inconsequential petition. The facts of any petition are almost always unique, requiring each petition to be considered on its own merits. In this case, it does not have any impact on the agency's decision-making process.

b. S4.1(j) of FMVSS 209 requires that the seat belt assembly be ''permanently'' marked or labeled. NHTSA has never defined ''permanently affixed'' as part of a regulation; but specifically, NHTSA has said that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions. Depending on where the label is affixed, various methods of attachment, such as sewing or heat transfer graphics, may meet these criteria.[9] Toyota's marking label is sewn to the rear center seat belt, which may meet the ''permanency'' criteria.

c. Mr. Thomas contended that a possible safety consequence of the noncompliance would occur if the subject vehicles end up in a salvage yard where the belts will be removed and offered for sale, and without the labels, the chances of them being installed in different seating positions and vehicles is increased. According to Toyota, all the noncomplying seat belts were installed as original equipment in the subject vehicles and are unique to the Tacoma rear center seat; they cannot be properly installed in any other Tacoma seating positions and are not used on any other Toyota or Lexus models. Toyota further explained that these seat belt assemblies installed in another seating position or vehicle would not fit properly, meaning that there would be both visual and physical incompatibilities. Such incompatibilities would include color mismatch, slack in the webbing, incorrect webbing length to allow proper functioning, incompatible bracketry, and/or an incorrect installation angle that would prevent the webbing from being retracted from the assembly altogether. In addition,

[2] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[3] *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).

[4] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[5] *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'').

[6] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[7] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

[8] *See Edward Thomas Response to NHTSA–2019–0098; https://www.regulations.gov/document?D=NHTSA-2019-0098-0003.*

[9] *See Interpretation Letter to Mr. Todd Mitchell, 3/19/2001; https://isearch.nhtsa.gov/files/22512.rbm.html.*

service replacement parts are not affected and contain required labels. Therefore, because these seat belt assemblies were configured specifically for installation in the subject vehicles, NHTSA does not find the likelihood that they will be removed from the subject vehicles and installed in other seating position or vehicles to be a safety concern based on the specific facts of this case.

d. Mr. Thomas stated that the number of vehicles involved (70 maximum) were manufactured over a six-day period (July 25–30, 2019). A recall to correct the noncompliance should not pose an undue hardship on the world's largest and wealthiest auto manufacturer. In general, an important consideration in determining inconsequentiality is the safety risk posed to individuals, not the quantity of vehicles affected. Since all the seat belt assemblies meet all other performance requirements of the standard, neither a small nor a big number of affected vehicles will play a decisive factor in the agency's justification to grant or deny an inconsequentiality petition. Mr. Thomas also stated that the seat belt assemblies do not need to be replaced; a simple label with the required information could be applied to the retractor housing in order to bring the vehicles into compliance. Toyota has stated that the seat belt retractor indeed has a separate label with the supplier part number, which can further help identify the seat belt during replacement.

3. Analysis and Response to the Comments From Toyota

Toyota filed a separate noncompliance report on May 4, 2020, indicating that certain replacement seat belt assemblies may not have been packaged with an installation instruction sheet or may have been packaged with an incorrect instruction sheet intended for a different seatbelt assembly. Because of this additional noncompliance report, Toyota submitted a comment on June 24, 2020,[10] to offer supplemental reasoning in support of its petition. While some of the replacement assemblies covered by the May 4, 2020, noncompliance report are designed to be installed on the same model/MY Tacoma vehicles as the 70 Tacoma vehicles that are the subject of its September 27, 2019, petition, Toyota stated that it checked the service history and CARFAX reports on all 70 of these Tacoma vehicles and none of them have replaced the rear center seat belt according to that information. As the replacement seat belt assemblies in Toyota part distribution centers that are affected by the issue described in the May 4, 2020, noncompliance report have been held, and their distribution prevented, it is highly unlikely that any of the aforementioned 70 Tacoma vehicles could be repaired using a replacement assembly affected by this missing or incorrect instruction sheet. Since the replacement seat belt assemblies of the affected 70 Tacoma vehicles have been held and their distribution prevented, NHTSA agrees that any future replacement assembly will not be affected by this missing or incorrect instruction sheet.

Because the label is sewn to the rear center seat belt and has been removed while scanning the code on the label, NHTSA requested that Toyota provide additional information on December 7, 2020, about how the label was removed and whether it affects the webbing strength. In response, Toyota submitted another comment on December 21, 2020,[11] explaining that they conducted additional testing and analysis to show that there is no visible effect on the seat belt stitching after removing the label by tearing it from where it was stitched. Measured pull forces in Toyota's testing also indicate that the label tears at a much lower pull force than the force required to tear apart the seat belt stitching. The agency agrees that the removal of the label would not affect the webbing strength at the stitch location.

NHTSA also believes that should the seat belts be the subject of a recall, the combination of traceability in the Toyota production system, along with the additional markings on the seat belt assemblies, would ensure that the seat belts can be easily identified without the label specified in paragraph S4.1(j) of FMVSS No. 209.

Toyota also stated that each seat section, and the center rear seat belt, has a label with a code which is scanned into the seat supplier's system and tied to each affected vehicle's VIN for traceability. In the event of a safety recall for this part, Toyota believes the VIN is a sufficient means of identifying the potentially affected vehicles. Therefore, the agency agrees that, for the facts specific to this petition, the absence of the label specified in the standard poses no risk to motor vehicle safety.

[10] *See Toyota Motor North America—Comments; https://www.regulations.gov/document?D=NHTSA-2019-0098-0004.*

[11] *See Toyota Comments 12–21–2020; https://www.regulations.gov/document?D=NHTSA-2019-0098-0005.*

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the subject FMVSS No. 209 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 vehicle 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.

Finally, NHTSA would like to make clear that granting this petition in no way indicates a judgement by the agency that there is not a safety need for the FMVSS requirement(s) in question. In addition, the granting of the current petition in no way indicates NHTSA's judgment in any future inconsequential noncompliance petition, regardless of the level of similarity with the current petition request.

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

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–01794 Filed 1–27–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.