

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of part 541, and has concluded that the antitheft device proposed for this line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its new vehicle line for MY 2003 exactly the same system that is currently installed on its Carline 3, Carline 5, Carline 7, X5 and MINI vehicle lines. The agency granted BMW's petition for modification of its Carline 7 beginning with MY 1995 (*See* 59 FR 47973, September 19, 1994); and its petitions for exemptions granted in full for Carline 5 beginning with MY 1997, Carline 3 beginning with MY 1999, the X5 vehicle line beginning with MY 2000, and the MINI beginning with MY 2002. (*See* 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997, 64 FR 33947, June 24, 1999 and 66 FR 33604, June 22, 2001 respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and allow deactivation of the vehicle by electronic means and not by use of the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii)).

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device. For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2003 vehicle line from the parts-marking requirements of 49 CFR part 541. If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-12367; Notice 1]

Toyota Motor Corporation; Receipt of Application for Determination of Inconsequential Non-Compliance

Toyota Motor Corporation (TMC) of Toyota-cho, Aichi-ken, Japan, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 205 "Glazing Materials," on the basis that the noncompliance is inconsequential to motor vehicle safety. TMC has filed a report of noncompliance pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. *See* 49 U.S.C. 30118(d) and 30120(h).

TMC submitted the following information in accordance with the requirements of 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance."

Summary of the Petition

TMC has determined that certain 2002 model year Lexus SC430 vehicles are equipped with an airdam which fails to meet the marking requirement of FMVSS No. 205 "Glazing Materials." Based on production records, TMC has determined the affected vehicle population includes model year 2002 Lexus SC430 vehicles produced by TMC between January 8, 2001 and May 17, 2001. The total number of vehicles potentially affected is 5,789.

Certain Lexus SC430 vehicles were equipped with an airdam, which was not marked as specified in Section 6 of ANS Z26 (incorporated by reference in FMVSS No. 205), with the "DOT" symbol and a manufacturer's code marking. According to TMC, during its design and testing process, it confirmed that the airdam meets the performance requirements of ANS Z26 for item 4 and item 5 glazing as referenced by FMVSS

No. 205. They supplied two "Notice of Equipment Compliance" reports. The first one provided compliance information for the material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. TMC also provided a second set of compliance information for the same material, which was used after the marking was placed on the airdam. TMC claims there is virtually no difference between the compliance data; therefore, TMC believes that there is no safety risk.

TMC maintains that, although this failure to mark constitutes a noncompliance with the marking requirements of FMVSS No. 205, it is inconsequential to motor vehicle safety and, therefore, TMC should be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act.

Availability of the Petition and other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA-2002-12367. You may call the Docket at (202) 366-9324 or you may visit the Docket Management in Room PL-401, 400 Seventh Street, SW., Washington, DC 20590 (10:00 a.m. to 5:00 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

- (1) Go to the Docket Management System (DMS) web page of the Department of Transportation (<http://dms.dot.gov/>).
- (2) On that page, click on "Simple Search."
- (3) On the next page (<http://dms.dot.gov/searchform.simple.cfm/>), type in the docket number "12367." After typing the docket number, click on "Search."
- (4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of TMC described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the

closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-2002-11270, Notice No. 02-6]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that the Department of Transportation is investigating the unauthorized marking of high- and low-pressure compressed gas cylinders, primarily fire extinguishers and self-contained breathing apparatuses, by Tech Fire and Safety, Inc. (Tech Fire). Tech Fire is located at 514 4th Street, Watervliet, NY 12189. In 2000, Research and Special Programs Administration (RSPA) conducted an investigation and evaluation of Tech Fire's DOT specification and exemption cylinder retesting procedures and determined that Tech Fire was not fit to conduct such retests. Consequently, RSPA terminated Tech Fire's approval to test DOT specification and exemption cylinders on October 2, 2001. RSPA subsequently received information that Tech Fire had continued to retest and mark DOT specification cylinders as properly tested in accordance with the Hazardous Materials Regulations (HMR) after its approval to retest had been revoked.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned.

Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce. Only DOT-approved facilities are authorized to perform cylinder hydrostatic retesting.

FOR FURTHER INFORMATION CONTACT:

Chris Michalski, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989-2256, Fax: (609) 989-2277.

SUPPLEMENTARY INFORMATION: Through its previous investigations of Tech Fire, RSPA determined that Tech Fire demonstrated a history of non-compliance with the HMR and of improper retesting of cylinders. Based on this non-compliance, RSPA terminated Tech Fire's approval to retest DOT specification and exemption cylinders on October 2, 2001. Subsequently, RSPA was notified that Tech Fire had continued to represent cylinders as being properly retested in accordance with the HMR after its approval to conduct such retests was no longer valid.

The purpose of this safety advisory is to notify the public that Tech Fire is not authorized to retest DOT specification or exemption cylinders. Anyone who has a cylinder serviced by Tech Fire after October 2, 2001, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility.

Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Upon discharge, the cylinders should be taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and to ensure their suitability for continuing service. The inspector can provide a list of authorized retest facilities in your area, or you may obtain the list at the following Web site: <http://hazmat.dot.gov>. Under no circumstances should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and