future. Goodyear stated that the noncompliance is one solely of labeling.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000. (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR §§ 571.109 and 119, part 567, part 574, and part 575. With regard to the tire construction labeling requirements of FMVSS 109, S4.3(d), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper repair materials or procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or ''zipper'' rupture in the upper sidewall when it is operated underinflated or overloaded. If information regarding the number of plies and cord material is incorrect or removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. This information is critical when determining if the tire is a candidate for a zipper rupture. In this case, since the tires are not of steel cord construction, but are actually nylon (though marked polyester), this potential safety concern does not exist.

In addition, the agency conducted a series of focus groups, as required by the Tread Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (*e.g.*, cord material in the sidewall) provided on the tire sidewall when deciding to buy a motor vehicle or tire.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. This labeling noncompliance has no effect on the performance of the subject tires.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

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

Issued on: January 28, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2425 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14229]

Kawasaki Motors Corporation, U.S.A., Notice of Application for Decision of Inconsequential Noncompliance

Kawasaki Motors Corporation U.S.A. of Irvine, California (''KMC''), has determined that some 2002 and 2003 model year Kawasaki motorcycles produced for sale in the U.S. fail to comply with a requirement in Federal Motor Vehicle Safety Standards (FMVSS) No. 123, ''Motorcycle Controls and Displays.'' The motorcycles in question have ignition switches which are not labeled with the word ''ignition.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), KMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety so that KMC would be exempted from recall and remedy requirements.

KMC filed an appropriate report with the agency pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' The report indicates that KMC produced 7,630 noncompliant motorcycles, all of which are Vulcan 1500 models. That includes 4,450 model VN1500–P1 (MY2002) and 3,180 model VN1500–P2 (MY2003) motorcycles with this noncompliance as of October 18, 2002.

We are publishing this notice of receipt of the KMC application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 123 standardizes motorcycle controls to minimize the risk of crashes resulting from operator errors in the use of controls. In FMVSS No. 123, paragraph S5.2.3 specifies that certain motorcycle components must be labeled as listed in Table 3 of the Standard. Table 3, Item no. 1, specifies that the ignition shall be labeled with the word ''ignition'' as well as the word ''off'' at the appropriate ignition switch position. Proper labeling of the ignition helps to ensure that a rider who needs to quickly turn off a motorcycle for safety reasons will be able to locate, identify, and operate the ignition control.

KMC described the operation of the motorcycles with the noncompliance as follows:

> The ignition switch is located in a pod positioned immediately in front of the operator, just ahead of the fuel filler opening on the top of the fuel tank. The switch is operated by an ignition key and has three positions, sequentially in a clockwise direction: ''off'' where the ignition is disabled; ''on'' where the ignition is enabled; and ''park'' where the ignition is disabled but minimal lighting functions are enabled. These ignition switch positions are labeled on a metal plate that surrounds the ignition switch and which also contains the turn signal indicator lamps, neutral and high beam indicators. Unlike standard automotive practice, the ignition switch does not operate the starter motor—the starter button is located on the handlebar. Starting the motorcycle involves insertion of the key into the switch and turning the ignition to the ''on'' position, then operating the separate starter button. An operator would not be able to start the engine inadvertently by using only the ignition switch.

KMC stated the following in support of its application for inconsequential noncompliance:

> No safety consequences attach to the omission of the ''ignition'' identification for the switch. Operators are familiar with the function and location of the ignition switch as well as the use of the ignition key to operate the switch. The location of the switch, in combination with frequently referenced displays such as turn signal, neutral, and high beam indicators means that the operator is quite familiar with the switch and its location, and experiences no adverse consequences from the lack of ''ignition'' identification for the switch. In fact, an operator unable to identify the ignition switch, due to the lack of labeling, would be unable to start or operate the motorcycle in the first place.

The other ignition switch labeling, *i.e.*, the word ''off'' at the appropriate switch position, is present as required, and the remainder of the vehicle controls and displays otherwise meet the requirements of FMVSS No. 123.

KMC is not aware of any accidents, injuries, owner complaints or field reports for the subject vehicles related to

this condition and has received no communications of any kind from owners, dealers, or anyone else indicating any awareness of the missing label.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, 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 possible. 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: March 5, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–2426 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–14197; Notice 1]

Shelby American, Inc.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Shelby American, Inc., of Las Vegas, Nevada (''Shelby''), on behalf of its wholly-owned subsidiary Shelby Series One, Inc., has applied for a three-year exemption from the automatic restraint provisions of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* (S4.1.5.3). The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

Shelby is a Texas corporation, privately held and owned by Carroll H. Shelby and Venture Holdings, Inc. Its current business activities are conducted by four wholly-owned subsidiaries. The first of these subsidiaries is Shelby Series One, Inc., the unit that produces the passenger cars which are the subject of this application for a temporary exemption. The current vehicle is designated Series 1 and its successor will be Series 2. The second Shelby subsidiary is Shelby CSX4000, Inc., which produces ''component vehicles'' sold without engine or transmission. The third subsidiary is Shelby Original 427 S/Cs, Inc., whose business is to assemble automobiles ''from certain new old stock parts surviving from the original 1965 Shelby Cobra production run * * * supplemented by newly manufactured parts utilizing original tooling.'' The fourth subsidiary, Shelby Performance, Inc., does not assemble vehicles but offers aftermarket products.

Shelby informed us that, as of the date of its petition, July 29, 2002, it had produced a total of 256 Series 1 vehicles, and ''one or two'' vehicles annually assembled from 1965 stock parts. These vehicles ''are sold for off-road (racing) or museum display purposes only, and under current regulatory restrictions may not be licensed for street use.'' Shelby has also produced something over 270 ''component vehicles,'' without power trains, whose manufacture is completed by an entity other than Shelby. With respect to these vehicles, Shelby invites prospective purchasers to ''call for the name of a Recognized Shelby American Dealer who can build one for you.''

The Series 1 and Series 2 are two-passenger convertible passenger cars. The Series 2 ''is a face lifted version of the Series 1, utilizing the same chassis components as the Series 1, with modified exterior body panels and trim details.'' It will enter production when the planned 500-unit production run of the Series 1 is completed. The company was previously granted NHTSA Temporary Exemption No. 99–1 from the automatic restraint provisions of Standard No. 208 for the Series 1, which expired on January 1, 2001 (64 FR 6736). Shelby had hoped to meet the standard by January 1, 2000, but anticipated sales did not materialize with the funds needed to sustain the air bag development project. In fact, only 256 of the planned 500 Series 1 vehicles had been sold as of the date of the petition. Since submitting its first petition in May 1998, Shelby stated that it has ''spent an estimated total of 800 man-hours and $150,000 related to the installation of a passenger and driver's side airbag system on the Series 1.'' Its efforts are now devoted to development of an advanced air bag system which it hopes to implement at the end of 2005, well before September 1, 2006 when Standard No. 208 requires it to comply. The Series 1 is equipped with a three-point driver and passenger restraint system.

Based on quotations it has received, the ''total projected cost for [a] subcontractor to develop a driver and passenger-side advanced airbag system for the Shelby Series 1 and 2 is $6,005,000.'' The unaudited balance sheet of Shelby American, Inc., shows cumulative net losses exceeding $23,000,000 for its last three fiscal years, almost $6,000,000 of which are those of Shelby Series 1, Inc. for its most recent fiscal year.

Shelby stated that ''without a temporary exemption, which will enable the company to generate funds through the sale of vehicles, Shelby American will not be able to sustain the airbag development program and will have to discontinue the Shelby Series 1 and 2 programs, causing substantial hardship to the company.'' For fiscal/calendar 2003, the company projects a net income exceeding $15,000,000 if an exemption is granted, and a net loss of over $6,000,000 if it is not.

The applicant argues that ''the production of the Shelby Series 1 is in the best interest of the public and the U.S. economy.'' The company opened a new 100,000 square foot facility in June 1998 in Las Vegas to produce the Series 1, and has employed ''up to 103 individuals'' there. The car will be sold through select dealers ''* * * providing employment to many sales and service personnel at the dealership level.'' Most major components are produced in the United States, including the engine (Oldsmobile), tires (Goodyear), and transmission (ZF, from RBT, a U.S. company). The Series 1 is technically advanced, combining ''an aluminum chassis with a carbon-fiber body, a new concept amongst production vehicles, which provides strength and durability while minimizing weight.'' Shelby believes that the reduced weight achieved with this vehicle will translate into a new standard for improved emissions and fuel efficiency. Aside from Standard No. 208, the car will be certified as conforming to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.