

camper, must mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996.

#### V. Summary of CGM's Petitions

The following views and arguments presented in this section, V. Summary of CGM's Petitions, are the views and arguments provided by CGM. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioner described the subject noncompliances and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, CGM submitted the following reasoning:

1. The laminated glass parts are affixed with the CGM trademark and the correct DOT number and M number.

2. Although the laminated glass parts are affixed with the misprinted AS number, the glass construction from which the laminated glass parts were fabricated is in full compliance with the technical requirements that 49 CFR 571.205 as it currently applies to laminated glass for use in a motor vehicle. In no way is the actual safety aspect of the laminated glass compromised by the misprinted AS number.

3. Despite the misprinted AS number being affixed to the laminated glass parts described herein, the correct parts were sold and shipped to Navistar and Nova Bus for use as windscreens and door windows.

4. CGM asserts that the noncompliance reported herein could not result in the wrong part being used in an OEM application, given that the part would be ordered by its unique part number and not the "M number" (which corresponds to the glass construction from which the part is fabricated). The parts are also easily traceable back to CGM via their unique DOT number.

CGM concluded by expressing the belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety, and that their petitions 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.

CGM's complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and following the online search instructions to locate the docket numbers listed in the title of this notice.

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, any decision on these petitions only applies to the subject equipment that CGM no longer controlled at the time it determined that the noncompliances existed. However, any decision on these petitions does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after CGM 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.

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0097; Notice 2]

#### General Motors, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Denial of petition.

**SUMMARY:** General Motors, LLC (GM), has determined that the seat belt assemblies in certain model year (MY) 2017–2018 Chevrolet Silverado heavy duty and GMC Sierra heavy duty motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. GM filed a noncompliance report dated September 14, 2017, and later amended it on September 22, 2017. GM also petitioned NHTSA on October 6, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of GM's petition.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Hench, Office of Chief Counsel, telephone 202–366–2262, facsimile

202–366–3820, or Mr. Jack Chern, Office of Vehicle Safety Compliance, NHTSA, telephone 202–366–0661, facsimile 202–366–3081.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview:

GM has determined that the seat belt assemblies in certain MY 2017–2018 Chevrolet Silverado heavy duty and GMC Sierra heavy duty motor vehicles do not fully comply with paragraphs S4.4(b)(5) of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). GM filed a noncompliance report dated September 14, 2017, and amended it on September 22, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. GM also petitioned NHTSA on October 6, 2017, 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 GM's petition was published, with a 30-day public comment period, on January 10, 2018, in the **Federal Register** (83 FR 1282). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA–2017–0097."

##### II. Vehicles Involved

This petition concerns approximately 38,048 MY 2017–2018 Chevrolet Silverado heavy duty and GMC Sierra heavy duty (Gross Vehicle Weight Rating (GVWR) of 9,300–13,400 lbs) motor vehicles, manufactured between July 18, 2016, and August 7, 2017. The double cab versions of the subject vehicles are not included in this petition.

##### III. Noncompliance

GM explains the noncompliance as seat belt assemblies that do not conform to the upper-torso seat belt elongation requirements specified in paragraph S4.4(b)(5) of FMVSS No. 209. Specifically, the seat belt assemblies were built with load-limiting torsion bars measuring 9.5 mm in diameter on the driver side and 8.0 mm on the passenger side, instead of 12 mm for both sides as specified by GM.

#### IV. Rule Requirements

Paragraph S4.4(b)(5) of FMVSS No. 209, includes the requirements relevant to this petition. Except as provided in paragraph S4.5 of FMVSS No. 209, when tested by the procedure specified in paragraph S5.3(b), the length of the upper torso restraint between anchorages shall not increase more than 508 mm when subjected to a force of 11,120 N.

#### V. Summary of GM's Petition

GM stated that smaller diameter torsion bars in the noncompliant trucks are regularly used in retractor assemblies in other full-size trucks, including variants of the subject vehicles. Due to their smaller size and weight rating, these similar variants are subject to S5.1 of FMVSS No. 208, and exempt from S4.4(b)(5) of FMVSS No. 209.<sup>1</sup> GM contends that the seat belt retractors with undersized torsion bars inadvertently installed in the subject vehicles provide at least the same level of occupant protection in frontal crashes while optimizing belt force-deflection characteristics. However, the subject vehicles were not certified to S5.1 of FMVSS No. 208 and, accordingly, were not intended to be equipped with these smaller diameter torsion bars because they were required to meet the elongation requirements of S4.4(b)(5) of FMVSS No. 209.

GM described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, GM submitted the following reasoning:

##### *1. GM Indicates the Subject Vehicles Meet the Belted Frontal Crash Performance Testing Requirements of S5.1 of FMVSS No. 208*

GM has conducted dynamic frontal crash testing on 2500 series vehicles that it describes as substantially similar to the subject vehicles and equipped with the same load-limiting seat belt retractors with the lower-diameter torsion bars (the "Tested Vehicles").<sup>2</sup> According to GM, the tested vehicles comply with the belted frontal crash performance testing requirements under

<sup>1</sup> S4.5 of FMVSS No. 209 exempts load-limited seat belts installed at a designated seating position subject to S5.1 of FMVSS No. 208 from the elongation requirements.

<sup>2</sup> The subject vehicles and tested vehicles share the same frame, body structure, powertrains and under-hood crush space; instrument panel, steering column and wheel, seats, seat-belt anchorages, and general interior vehicle layout/spatial relationships; and driver and passenger frontal airbags. In similar configurations, the subject vehicles and test vehicles have similar mass.

S5.1.1(a) of FMVSS No. 208.<sup>3</sup> The petition also states that the tested vehicles performed below the injury assessment reference limits specified in S5.1.1(a) even when tested at 35 mph, which subjects the vehicle to 36 percent more energy than at the 30 mph testing standard provided in the regulation. GM contends that the tested vehicles were also rated by NHTSA with an overall 4-Star NCAP score.

GM expects that the subject vehicles will perform nearly the same as the tested vehicles in dynamic frontal crash testing and would therefore also meet all of the belted barrier test requirements specified by S5.1.1(a) of FMVSS No. 208.

GM cites statements made by NHTSA in prior rulemaking notices<sup>4</sup> to support its position that the dynamic belted frontal barrier crash testing of S5.1.1(a) of FMVSS No. 208 is a more appropriate means to evaluate occupant protection than the static seat belt elongation testing requirements of S4.4(b)(5) of FMVSS No. 209 for vehicles with seat belts equipped with load limiters.

##### *2. GM Believes the Subject Vehicles Will Provide No Less Protection to Occupants in a Frontal Crash Than Vehicles Equipped With Seat Belt Retractors Utilizing the 12 mm Torsion Bars*

GM believes that replacing the retractors installed in the subject vehicles with retractors that have the larger torsion bars would not result in an added safety benefit to the occupants of these vehicles in frontal crashes. The petition contends that the subject vehicles will provide no less occupant protection than vehicles built with the larger 12 mm diameter torsion bars that meet the elongation requirements of

<sup>3</sup> S5.1.1(a) of FMVSS No. 208 specifies the belted barrier test requirements for certain vehicles not certified to S14 of FMVSS No. 208 (*i.e.*, those with a GVW >8,500 lbs. or an unloaded weight >5,500 lbs).

<sup>4</sup> In its 1991 rulemaking modifying FMVSS No. 209 to exclude certain dynamically tested seat belts from some of the static seat-belt testing requirements, NHTSA acknowledged that it "has long believed it more appropriate to evaluate the occupant protection afforded by vehicles by conducting dynamic testing . . ." versus static tests such as the elongation requirements in S4.4(b)(5) of FMVSS No. 209. Final Rule, 56 FR 15295, 15295 (April 16, 1991). Further, "[s]ince the dynamic test measures the actual occupant protection which the belt provides during a crash, there is no apparent need to subject that belt to static testing procedures that are surrogate and less direct measures of the protection which the belt would provide to its occupant during a crash." Notice of Proposed Rulemaking, 55 FR 1681 (January 18, 1990). GM believes NHTSA's rationale for creating these exemptions applies to the subject vehicles even though they may not all technically be "subject to" S5.1 of FMVSS No. 208 and therefore exempt from FMVSS No. 209's elongation requirements.

S4.4(b)(5) of FMVSS No. 209. Further, GM states that seat belt retractors equipped with the lower-diameter torsion bars may reduce upper torso injury potential in frontal crashes as compared to retractors with the larger-diameter torsion bars.

##### *3. GM Believes NHTSA Precedent Supports Granting the Petition*

GM states that NHTSA has previously ruled that failure to comply with certain FMVSS No. 209 static testing requirements can be inconsequential to motor vehicle safety, where the manufacturer demonstrates by dynamic testing that the noncompliant seat belt assembly performs similarly to a compliant assembly. On May 3, 2002, GM submitted an inconsequentiality petition to NHTSA relating to certain trucks and SUVs that were built with damaged and inoperative "vehicle-sensitive" emergency-locking retractors (ELRs), which lock the seat belts under rapid deceleration. Notwithstanding the noncompliance with FMVSS No. 209 caused by this condition, GM asserted that the failure was inconsequential to vehicle safety because the ELRs in these vehicles also had a redundant "webbing-sensitive" mechanism, which locks the belts when the webbing is rapidly extracted. GM contends it presented dynamic testing data (including some data developed using the test procedures set forth in FMVSS No. 208) demonstrating that the webbing-sensitive system "offered a level of protection nearly equivalent to that provided by a compliant ELR."

GM states that NHTSA granted GM's petition, in part, and ruled the noncompliance in certain of the vehicles subject to the petition was inconsequential to motor vehicle safety:

On the basis of the sled test and simulation data provided by GM, the agency has concluded that GM has adequately demonstrated that the potential safety consequences of the failure of the vehicle-sensitive locking mechanisms in the ELRs in the C/K vehicles to function properly are inconsequential. While the webbing-sensitive systems in these vehicles do allow slightly increased belt payout compared to a functional vehicle-sensitive system, and lock slightly later in crash event, these differences do not appear to expose a vehicle occupant to a significantly greater risk of injury.

General Motors Corporation, Ruling on Petition for Determination of Inconsequential Noncompliance, 69 FR 19897, 19900 (April 14, 2004). In its decision, NHTSA also noted that "the dummy injury measurements did not increase significantly and were well below the maximum values permitted under FMVSS No. 208."

Here, GM argues that the subject vehicles will provide no less protection to occupants in the designated seating positions in frontal crashes than vehicles equipped with seat belt retractors conforming to S4.4(b)(5) of FMVSS No. 209.

#### 4. GM Is Not Aware of any Injuries or Customer Complaints Associated With the Condition

As of September 22, 2017, after searching VOQ, TREAD and internal GM databases, GM stated it was not aware of any crashes, injuries, or customer complaints associated with this condition.

#### 5. GM Has Corrected the Noncompliance in Production Vehicles and Service Part Inventory

GM states that it has corrected the noncompliance in production. According to GM, vehicles produced after August 7, 2017, have seat belt assemblies containing retractor torsion bars that meet GM's original specifications and comply with S4.4(b)(5) of FMVSS No. 209. The petition also states that retractor assemblies with this condition that were manufactured as service parts are no longer available for sale and all affected inventory has been purged. Further, GM contends that any such seat belt assembly previously sold as a service part could only have been installed on a subject vehicle because these seat belt assemblies are not compatible with prior model year (*i.e.*, 2015 or 2016) versions of the Silverado or Sierra HD, due to a different type of wiring connector used.

GM concludes by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that 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

### 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 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 (Dec. 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.<sup>5</sup> 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 based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.<sup>6</sup> 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."<sup>7</sup> "[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."<sup>8</sup>

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.<sup>9</sup> Similarly, NHTSA has

<sup>5</sup> *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).

<sup>6</sup> *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); *Osrham 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).

<sup>7</sup> *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

<sup>8</sup> *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").

<sup>9</sup> *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001)

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 who is exposed to the consequence of that noncompliance.<sup>10</sup> These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

#### Response to GM's Arguments

NHTSA has considered GM's arguments and determined that the load-limiting retractor installed with torsion bars measuring 9.5 mm in diameter on the driver side and 8.0 mm on the passenger side, instead of 12 mm as specified by GM, is not inconsequential to motor vehicle safety. NHTSA, therefore, denies GM's request for an inconsequentiality determination, for the following reasons:

##### a. NHTSA Does Not Find the Dynamic Testing of Similar Vehicles Compelling in This Case

GM believes that the noncompliance of load limiters, mistakenly installed with torsion bars measuring 9.5 and 8.0 mm in diameter on the driver and passenger side instead of 12 mm as specified by GM, is inconsequential to motor vehicle safety. A load limiter is a seat belt assembly component that controls tension on the seat belt and modulates the forces imparted to a vehicle occupant during a crash. Load limiters are intended primarily to reduce upper torso injuries caused by the compressive force applied by the relatively narrow seat belt. They may work in concert with an air bag system to optimize occupant protection in a crash and provide overall crash energy management. Section S4.5 of FMVSS No. 209 exempts a belt with a load limiter from the standard's elongation

(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).

<sup>10</sup> 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).

requirements if it is installed at a seating position subject to the requirements of S5.1 of Standard No. 208—that is, “subject to” a belted crash test specified in FMVSS No. 208.

GM argues that the crash testing it performed on the 2500 series vehicles that were substantially similar to the subject vehicles and were equipped with the same load-limiting seat belt retractors with the lower-diameter torsion bars shows that the noncompliant seat belts in the subject vehicles will provide no less protection to occupants in the designated seating positions in frontal crashes than vehicles equipped with seat belt retractors conforming to S4.5 of FMVSS No. 209. GM also cites a prior grant of an inconsequentiality petition for certain of the FMVSS No. 209 static requirements based, in part, on dynamic test data.

The agency disagrees with GM's assessment. NHTSA has more recently considered this issue, its putative inconsequentiality, and whether testing supporting compliance with FMVSS No. 208 may support finding a noncompliance with FMVSS No. 209 inconsequential. See *BMW of North America, LLC*; *Jaguar Land Rover North America, LLC*; and *Autoliv, Inc.*; *Decisions of Petitions for Inconsequential Noncompliance*, 84 FR 19994 (May 7, 2019). In any case, the petition cited by GM as precedent, *General Motors Corporation, Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (April 14, 2004), concerns a different requirement in FMVSS No. 209: Lock up within 25 mm versus elongation. The petition states that “GM expects that the Subject Vehicles will perform nearly the same as the Tested Vehicles in dynamic frontal crash testing, and would therefore also meet all of the belted barrier test requirements specified by S5.1.1 (a) of FMVSS No. 208.” However, whether the subject vehicles would be capable of meeting the test requirements of FMVSS No. 208 S5.1.1(a) is not at issue. This is not a compliance requirement or option for the front outboard seats in the subject vehicles. Rather, the issue is whether the subject vehicles' noncompliance with FMVSS No. 209 S4.4(b)(5) is inconsequential to safety. We do not agree that the test results for the tested vehicles are sufficient for this showing. We explain our reasoning below.

The subject vehicles were neither subject to, nor tested to, S5.1.1(a) of FMVSS No. 208. GM contends, however, that the belted frontal barrier impact data used to certify compliance

of certain variants of the 2500 vehicles is a valid surrogate for the subject vehicles with the smaller diameter torsion bars. GM indicated that the tested vehicles were “substantially similar” to the subject vehicles. However, a simple examination of the GVWR comparison between the two sets of vehicles indicates that this is a questionable conclusion. The tested vehicles were 2500 series and the subject vehicles were 2500, 3500, and 3600 series. As reported by GM, the 2500 series have a GVWR range of 9,300–10,000 lbs. The 3500 and 3600 are encompassed in a GVWR range of 10,000–13,400 lbs.

GM's argument seems to be predicated on the assumption that if the subject vehicles were tested using the FMVSS No. 208 procedure, the tested weight of the subject vehicles would be similar to the tested weight of the tested vehicles. We have no reason to believe that GM has not optimized the sharing of the occupant restraint contribution from the seat belt for the tested vehicles to the parameters required by the FMVSS No. 208 barrier impacts. However, just as important as the agency's consideration of this issue is the difference in the GVWR range for the subject and tested vehicles. GM contends that “[t]he primary difference between the Subject Vehicles and Tested Vehicles is that the Subject Vehicles have increased capacity suspension components, which do not affect the vehicles' crash performance.” This statement seems to ignore that with these differences in the subject vehicles comes the much greater GVWR range of subject vehicles compared to the tested vehicles. With this much greater fully loaded mass would potentially come much different frontal crash dynamics.

Although GM states the subject and tested vehicles share many of the same structural components related to crash energy management, the fact remains that the subject vehicles may require much more energy to be managed because of the GVWR differences. For example, it could be theorized that this additional mass may extend the crash pulse duration. Similarly, managing this additional energy could mean additional vehicle crush, essentially changing the shape of the crash pulse. Differences in pulse shape and duration may change the optimal sharing of restraint between the seat belt and air bag. This change in crash pulse may also affect the air bag deployment timing.

In summary, we are not convinced that the crash test data provided in the GM submission is sufficient to show that the smaller torsion bar placed in the

subject vehicles would be inconsequential to safety. In real-world frontal crashes, with subject vehicles loaded near the GVWR, we believe the crash pulse duration and shape may differ from what would be seen in an FMVSS No. 208 frontal barrier test, affecting the optimization of the occupant restraint system that includes the lower diameter torsion bars in the seat belt load limiters.

More generally, GM's assessment also ignores the crucial role that the static testing requirements of FMVSS No. 209 play in acting as a safety backstop for crash scenarios that are not accounted for in dynamic tests such as those conducted by GM. Dynamic tests are meant to assess whether a vehicle's occupant protection systems work cohesively in certain representative crashes. However, there are countless crash and pre-crash scenarios that these sorts of tests do not cover, which is why static requirements of FMVSS No. 209 are intended to "fill in the gaps" to ensure that the vehicle's seat belt equipment maintains a minimum level of performance in untested scenarios.

For example, dynamic tests do not account for the fact that a seat belt assembly is intended to protect occupants even when they are out-of-position. The agency believes it is essential to ensure seat belt assemblies perform their important safety function of not exceeding the permitted maximum webbing pay-out/elongation, to protect occupants who may be out-of-position during a crash, and the resulting increased risk of that occupant striking the vehicle's interior structure.

**b. The Absence of Complaints Does Not Support GM's Petition**

GM stated that they received no complaints and knew of no reported injuries related to the noncompliance when they filed this petition in September of 2017. NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety; the absence of a complaint does not mean there have been no safety issues, nor that there will not be any in the future. In any event, three injuries involving 2500 series vehicles' seat belt assemblies were reported in the Early Warning Reporting database in the second quarter of 2018.

**c. That GM Has Corrected the Noncompliance for Vehicles Produced After August 7, 2017, Does Not Support the Merits of Its Petition**

Manufacturers are legally obligated to correct new vehicle production. See 49 U.S.C. 30112(a); 30115(a). A manufacturer cannot certify or

manufacture for sale a vehicle it knows to be noncompliant. *Id.* The fact that new vehicle production has been corrected simply informs the agency that the noncompliance is limited to the affected vehicles described in the petition. Therefore, the fact that new vehicle production has been corrected does not factor into our analysis of whether the noncompliance is inconsequential and will not justify our granting an inconsequentiality petition.

**VII. NHTSA's Decision**

In consideration of the foregoing, NHTSA finds that GM has not met its burden of persuasion that the subject FMVSS No. 209 noncompliance in the subject vehicles is inconsequential to motor vehicle safety. Accordingly, NHTSA hereby denies GM's petition. GM is therefore obligated to provide notification of, and a free remedy for, that noncompliance in accordance with 49 U.S.C. 30118 through 30120.

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

**Jeffrey Mark Giuseppe,**

*Associate Administrator for Enforcement.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2020-0024]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Survey of Drowsy Driving Knowledge, Attitudes and Behaviors**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice and request for comments on a new information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. The ICR is for a new information collection for a one-time voluntary survey regarding knowledge, attitudes, and behaviors associated with drowsy driving. A **Federal Register** notice with a 60-day

comment period soliciting public comments on the following information collection was published on July 14, 2020. NHTSA received two comments, which we address below.

**DATES:** Comments must be submitted on or before December 10, 2020.

**ADDRESSES:** Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). To find this particular information collection, select "Currently under Review—Open for Public Comment" or use the search function. Comments may also be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or fax: 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Jordan A. Blenner, JD, Ph.D., Contracting Officer's Representative, Office of Behavioral Safety Research (NPD-320), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W46-470, Washington, DC 20590. Dr. Blenner's telephone number is 202-366-9982, and her email address is [jordan.blenner@dot.gov](mailto:jordan.blenner@dot.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on July 14, 2020 (**Federal Register**/Vol. 85, No. 135/pp. 42486-42488). NHTSA received two comments. General Motors (GM) provided comments supportive of the proposed information collection. The American Alliance for Healthy Sleep (AAHS) also provided comments supportive of the proposed collection but expressed concerns about the collection methods.

We appreciate the comments from GM and the AAHS and thank them for thoughtfully considering the described program. The AAHS raised two areas of concern. The first is that the AAHS