Nonconforming Vehicles: 1990–1991 and 1993–1994 BMW 7 Series
Substantially similar U.S.—certified vehicles: 1990–1991 and 1993–1994 BMW 7 Series
Notice of Petition published at: 64 FR 19580 (April 21, 1999)
Vehicle Eligibility Number: VSP–299

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA 99–5862; Notice 1]**

## General Motors Corp.; Receipt of Application for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has applied to be exempted for the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' because of a noncompliance with, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' The basis of the application is that the noncompliance is inconsequential to motor vehicle safety. GM has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Information Reports.''

This notice of receipt of an 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.

### Description of Noncompliance

On February 2, 1999, NHTSA tested a 1999 Chevrolet Tahoe to the performance requirements of S13 of FMVSS No. 208 *Alternative unbelted test for vehicles manufactured before September 1, 2001.* The test was conducted at the Transportation Research Center of Ohio and the right front passenger Anthropomorphic Test Dummy (ATD) registered a neck extension moment of 67 Nm. This value exceeds the maximum limit of 57 Nm specified by S13.2(b) of the standard.

In response to the test failure, GM conducted an investigation to understand the subject test results and to determine the cause of the resultant neck extension moment of 67 Nm. After examining all the relevant information and conducting additional tests, GM estimates that 50 percent of the 1999 model year (MY) Chevrolet and GMC C/K vehicles manufactured between September 1, 1998 and May 5, 1999, may produce similar results if all the subject vehicles were subjected to the 30 mph Sled Test in accordance with S13.1 of FMVSS No. 208.

### Supporting Information as Submitted by GM

There were 279,132 subject vehicles manufactured between September 1, 1998 and May 5, 1999, with right front passenger restraint systems that may not consistently meet the neck extension moment prescribed in S13.2(b) of the standard. A neck extension moment is produced during the test as a result of the reaction to forces acting on the head in such a way as to rotate the head rearward at the top of the neck. GM's analysis indicates that, due to test and/or product variations, approximately 50 percent of the right front passenger air bags could contribute to ATD kinematics that could allow the passenger ATD to exceed the 57 Nm neck extension value limit.

The prescribed Sled Test pulse is of a longer duration than a typical 30 mph rigid barrier pulse for the subject vehicles (125 msec versus approximately 80 msec). Because of this, the air bag must stay inflated longer during a test using the sled pulse to allow the unbelted ATD's torso energy to dissipate over a longer time period. Two design interventions involving the air bag system could be used to address this. It would be possible to increase the gas output into the deploying bag by adding more propellant to the inflator. However, this would be counter to the reasons the agency permitted less forceful air bags, and for the FMVSS 208 Sled Test being allowed as an alternative test method with an unbelted, 50th percentile ATD. The intent of the Sled Test provision, and the ongoing rulemaking to address air bag aggressivity, is to allow and encourage less aggressive air bag inflators in motor vehicles to reduce the inflation induced injury risks to out-of-position small adults and children.

A second possible approach is to reduce the venting capacity of the air bag. By reducing the venting capacity, the inflation gas is retained in the bag for a longer period of time resulting in bag pressure being retained over a longer period. GM test results (provided to NHTSA–OVSC in USG 3433; Part 5, dated May 7, 1999) consistently provided neck extension moments well below the 57 Nm limit when conducted with air bags having each of the two vent holes reduced from a 60 mm diameter to a 30 mm diameter. Considering all these resultant test values and the consistency of the neck extension measurements from these tests, GM implemented this vent size change in the subject vehicle production to further assure compliance. The implementation of this change was completed in GM's vehicle production facilities on May 5, 1999.

GM has examined the effect on motor vehicle safety involved in this noncompliance and the appropriateness of field action. This evaluation utilizes the total of 279,132 1999 MY Chevrolet and GMC C/K vehicles that were manufactured between September 1, 1998 and May 5, 1999 with the right front passenger air bag systems in question and very conservative estimates for the remainder of the analysis's multipliers. Approximately 50 percent of the subject vehicles, or 139,566 vehicles, may have a passenger air bag that could contribute to ATD kinematics that could allow the passenger ATD to exceed the 57 Nm neck extension requirement if tested to the S13 requirements of the standard. Projecting 5,700 deployments per 1 million car years for a 10 year vehicle life cycle, a total of 7,960 deployments can be expected. It is anticipated that one third of these deployments (2,653) would have a right front passenger present. Using the recognized current national seat belt use rate of 70 percent, 30 percent (or 796 occupants) of these deployments may involve an unbelted occupant. Approximately 20 percent of the deployments would be at a crash pulse similar to or more severe than used for the FMVSS 208 Sled Test, resulting in the potential that 159 of the passengers may be involved in such a deployment. Assuming 60 percent of these passengers are the same size or larger than the 50th percentile male ATD, 95 right front occupants could be large enough that sufficient torso energy may not be dissipated to meet the specific neck extension requirement of the standard.

The risk of neck injury to these 95 occupants can be estimated using the neck extension moment injury risk curve submitted to the agency during the referenced rulemaking and provided as Attachment A. It was also provided as Figure 4 of Attachment C—Proposal for Dummy Response Limits for FMVSS 208 Compliance Testing—in the AAMA response S98–13 to Docket No. NHTSA 98–4405; Notice 1 dated December 17, 1998. The risks of an AIS≥3 neck injury for the 50th percentile adult male experiencing a neck extension moment of 57 Nm (current FMVSS 208 requirement) and 67 Nm (measured during the subject agency enforcement test) for both a relaxed and tensed occupant are given in Table 1. Also shown are the estimated number of the 95 occupants who may experience an AIS≥3 neck injury.

TABLE 1.—INJURY RISK VALUE FOR AN AIS≥3 NECK INJURY OF NECK EXTENSION MOMENTS FOR NO MUSCLE TONE AND FOR 80 PERCENT MUSCLE TONE MEASURED WITH THE 50TH PERCENTILE ADULT MALE ATD

| | Neck extension moment (Nm) | % Risk of AIS≥3 Neck Injury | | Potential number of occupants with AIS≥3 neck injury | |
|---|---|---|---|---|---|
| | | No muscle tone | 80% muscle tone | No muscle tone | 80% muscle tone |
| MVSS Req'mt | 57 | 0.8 | 0.09 | <1 (0.76) | 0 (0.09) |
| TRC Test | 67 | 2.2 | 0.3 | 2 (2.09) | 0 (0.29) |

Therefore, if corrective action is not implemented for the 279,132 subject vehicles, the increase in the estimated number of occupants that may be exposed to an AIS≥3 neck injury would be no more than one occupant, but more likely would be close to zero depending on the degree of muscle tone involved. The reason this increase is so small is that the current FMVSS 208 neck extension moment limit of 57 Nm is an extremely conservative limit. This value corresponds to only a 0.8 percent risk of an AIS≥3 neck injury with no muscle tone assumed and only a 0.09 percent risk if 80 percent muscle tone is assumed.

As part of the aforementioned ongoing rulemaking, the agency is currently considering the AAMA recommendation that an injury risk level of 5 percent be used for setting regulated injury criteria limits. This includes the recommendation that the neck extension limit be set at a 5 percent risk of an AIS≥3 neck injury. For out-of-position occupant measurements with the 50th percentile male ATD, this would be a 77 Nm limit without consideration for muscle tone, and the neck extension limit for in-position occupants would be 96 Nm considering 80 percent muscle tone. For either case, the resultant 67 Nm measurement from the agency's test is substantially below these recommended limits.

These recommended neck extension limits of 77 and 96 Nm are also exceptionally conservative compared to the risk level associated with brain injury that is currently comprehended in FMVSS 208. The current head injury criteria (HIC) limit of 1000 allows for a 16 percent risk of an AIS≥4 brain injury. Furthermore, the current FMVSS 208 injury criteria for chest displacement and femur loads are regulated at even higher risk levels than HIC. In fact, the rigid *barrier* test methods prescribed in FMVSS 208 for *both* belted and unbelted ATDs currently include these HIC, chest displacement and femur injury criteria, but do *not* currently specify any of the neck criteria associated with the Sled Test.

The current neck extension limit of 57 Nm is a very conservative limit, especially when compared to the current HIC, chest displacement and femur load limits required by FMVSS 208. Because of this and because of no more that one occupant and possible zero occupants may be at risk of an AIS ≥ 3 neck injury if corrective action is not implemented for 279,132 subject vehicles, GM believes this noncompliance is inconsequential as it relates to motor vehicle safety. Therefore, GM requests the affected vehicles be exempted from the recall and remedy provisions of Section 30120 of the Safety Act.

The agency is aware that significant controversy continues with regard to the injury criteria currently specified for the neck. This is a continuing topic of discussion between the agency and others in the ongoing rulemaking regarding air bag related injuries and fatalities to unbelted and out-of-position occupants. These ongoing rulemaking discussions support GM's belief that the current limit of 57 Nm for the specified neck extension criteria is well below the level necessary to meet the need for motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of GM, 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: July 26, 1999.

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

Issued on: June 21, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Finance Docket No. 33757]**

## Delaware Transportation Group, Inc.—Corporate Family Exemption—Diamond State Port Railway Company, Inc., and Gettysburg Railway Company, Inc.

Delaware Transportation Group, Inc. (DTGI), a Class III rail common carrier, has filed a notice of exemption. The exempt transaction involves restructuring of the corporate family. John H. Marino owns a controlling interest in DTGI and Gettysburg Railway Company, Inc. (GRCI).[1] Through the transaction covered by this filing, the relationship between DTGI and GRCI would change from one between corporate siblings to one where DTGI would become the parent company of GRCI. DTGI would also control Diamond State Port Railway Company. Inc. (DSPR).

The transaction was scheduled to be consummated on or shortly after June 4, 1999.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33755, *Diamond State Port Railway, Inc.—Lease and Operation Exemption—Diamond State Corporation and F.A. Potts & Company International, Inc.*, wherein DSPR seeks to lease and operate certain rail lines of the Diamond State Port Corporation and F.A. Potts & Company International, Inc., and STB Finance Docket No. 33756, *Delaware Transportation Group, Inc.*—Continuance in Control Exemption—Diamond State Port Railway Company, Inc., wherein DTGI seeks to continue in control of DSPR, upon its becoming a

[1] *See John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.*, STB Finance Docket No. 33505 (STB served Nov. 21, 1997). As indicated in DTGI's notice, Mr. Marino never acquired any controlling interest in the Evansville Terminal Company, Inc.