

manner compliant with S4.5, the center of gravity of the head of an occupant the size of an AM95 is below the top of the head restraint.<sup>5</sup> (See figure 10 of Toyota's petition) Therefore, for virtually 100 percent of the female adult population of the United States<sup>6</sup> and over 95 percent of the U.S. male adult population, the rear outboard head restraints can help "adequately control motion of the head and neck relative to the torso" in a position that can be adjusted in compliance with the standard. It can also protect occupants larger than AM95 occupants when adjusted to the second notch position.

c. Toyota stated that the rear outboard head restraints in the subject vehicles meet and surpass all other performance requirements of the standard not only in the fully stowed position, but also in both the first and second notch positions. These include energy absorption (S4.2.5 and S5.2.5), backset retention (S4.2.7 and S5.2.7), and height retention (S4.2.6 and S5.2.6). Toyota summarized the performance in tables that can be found in its petition. It contended that there is nothing about the performance of the rear outboard head restraints in the subject vehicles that in relation to the additional criteria set forth in these tables that poses a risk of exacerbating whiplash injuries.

3. *The occupancy rates and usage of the Lexus RX model further supports the conclusion that the noncompliance with S4.5 is inconsequential to safety:* The rear seat vehicle environment has unique aspects in terms of occupancy rates and usage. This is why the agency decided to specify different requirements for front and rear seat head restraints. As noted above, the agency found that, in the general vehicle population studied for the purpose of adopting FMVSS 202a requirements, the occupancy rate for the rear outboard seating positions was about 10 percent. Toyota undertook an analysis of the National Automotive Sampling System (NASS) General Estimates System (GES) data to better understand the outboard rear seat occupancy rate in the subject vehicles. The subject vehicles are the fourth generation of the Lexus RX model series, which was introduced for MY2016. Because the exposure of this model year in the fleet is somewhat

limited, and NASS GES does not yet contain MY2016 data, the three previous generations of the RX model going back to MY 1999 were used for the analysis. While there are design differences in each generation, all are mid-size SUV's, and it is expected that the user demographics and rear seat usage would be representative of the subject vehicles.

Based on the analysis, the occupancy rate for rear outboard seat occupants in all types of crashes for the RX models analyzed was 10 percent—meaning that 10 percent of the RX vehicles involved in crashes have a rear outboard passenger. This is the same as what NHTSA found to be the occupancy rate in the general vehicle population when it undertook the FMVSS 202a rulemaking. In a smaller subset of only rear crashes, the occupancy rate in the RX models is slightly higher, but still small—only 13 percent.

The data analyzed were insufficient to provide an understanding of the size of the occupants who ride in the rear outboard positions in the subject vehicles. However, considering that the occupancy rate is consistent with NHTSA's previous analyses, there is no reason to believe that occupant sizes would be significantly different from the general vehicle population. In the Final Regulatory Impact Analysis, the agency found that, of the small percentage of occupants that ride in the rear of vehicles generally, 83 percent of all rear outboard occupants were 5'9" or less and 17 percent were 5'10" and above. The latter is the height of the average U.S. male. As outlined in Section II, above, the rear outboard head restraints in the subject vehicles are designed so that the center of gravity of the head of the small percentage of large occupants who may occasionally ride in the rear seats of the subject vehicles is below the top of the head restraint. Therefore, the number of occupants who may actually seek to adjust the rear outboard head restraints in the subject vehicles is insignificant, further justifying a finding that the paragraph S4.5 noncompliance is inconsequential to vehicle safety.

Toyota stated that it is unaware of any consumer complaints, field reports, accidents, or injuries that have occurred as a result of this noncompliance as of December 15, 2016.

Toyota concluded 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.

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 this petition only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, any decision on 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.

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

**Jeffrey M. Giuseppe,**  
Director, Office of Vehicle Safety Compliance.  
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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0118; Notice 1]

### Notice of Receipt of Petition for Decision That Nonconforming Model Year 2013 BMW R1200GS Adventure Motorcycles Are Eligible for Importation

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

**ACTION:** Receipt of petition.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that model year (MY) 2013 BMW R1200GS Adventure motorcycles (MCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2013 BMW R1200GS Adventure motorcycles) and they are

<sup>5</sup> NHTSA assumed during the rulemaking that the center of gravity of the head of the AM95 was 105mm from the top of the head. See FRIA at page 44. See also 66 FR at page 975. Figure 10, below, uses this value. The center of gravity of the head of the BIORID III ATD is 110.5mm below the top of the head.

<sup>6</sup> "The center of gravity height of a 99th percentile female reclined at 25 degrees is about 19mm below a 750mm (29.5 inches) high head restraint at a 50mm (2 inch) backset."

capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is May 8, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may

also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

**FOR FURTHER INFORMATION CONTACT:** George Stevens, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), of Houston, Texas (Registered Importer R-90-005) has petitioned NHTSA to decide whether nonconforming MY 2013 BMW R1200GS Adventure MCs are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are MY 2013 BMW R1200GS Adventure MCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2013 BMW R1200GS Adventure MCs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that

non-U.S. certified MY 2013 BMW R1200GS Adventure MCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non U.S.-certified MY 2013 BMW R1200GS Adventure MCs, as originally manufactured, conform to:

Standard Nos. 106 *Brake Hoses*, 111 *Rear Visibility*, 116 *Motor Vehicle Brake Fluids*, 119 *New Pneumatic Tires for Motor Vehicles With a GVWR of More than 4,536 Kilograms (10,000 pounds) and Motorcycles*, and 122 *Motorcycle Brake Systems*.

The petitioner also contends that the subject non-U.S. certified motorcycles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: installation of the following U.S.-model components: headlamp, tail lamp, stop lamp, rear side mounted reflex reflectors, and rear center mounted reflex reflector.

Standard No. 120 *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of More than 4,536 Kilograms (10,000 pounds)*: installation of the required tire information placard.

Standard No. 123 *Motorcycle Controls and Displays*: replacement of non-conforming speedometers with U.S.-model components.

Standard No. 205 *Glazing Materials*: inspection of each vehicle and removal of noncompliant glazing or replacement with U.S. certified glazing.

Wallace further states that labels will be affixed to conform to requirements of 49 CFR part 567 Certification.

This notice of receipt of WETL's petition does not represent any agency decision or other exercise of judgment concerning the merits of the petition. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

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