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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0079; Notice 1]

#### Nissan North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Receipt of petition.

**SUMMARY:** Nissan North America, Inc., (Nissan) has determined that certain model year (MY) 2019 Nissan Armada motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*.

Nissan filed a noncompliance report dated July 01, 2019. Nissan also petitioned NHTSA on July 24, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Nissan's petition.

**DATES:** The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

- Mail: Send comments by mail addressed to the 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 the 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 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website 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).

#### **SUPPLEMENTARY INFORMATION:**

**I. Overview:** Nissan has determined that certain MY 2019 Nissan Armada motor vehicles do not fully comply with S7.4.13.1 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). Nissan filed a noncompliance report dated July 01, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Nissan also petitioned NHTSA on July 24, 2019, 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*.

This notice of receipt, of Nissan's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

**II. Vehicles Involved:** Approximately 3,009 MY 2019 Nissan Armada motor vehicles, manufactured between September 13, 2018, and October 23, 2018, are potentially involved.

**III. Noncompliance:** Nissan explains that the noncompliance is that the subject vehicles are equipped with headlamp assemblies that do not meet the photometric intensity requirements as required by paragraph S7.4.13.1 of FMVSS No. 108. Specifically, the reflex reflector is not seated properly in the headlamp assembly, thus, creating a gap between the forward edge of the

reflector and the extension portion of the headlamp assembly. When tested, the photometric intensity of the headlamp assemblies fell below the minimum photometric intensity required.

**IV. Rule Requirements:** S7.4.13.1 of FMVSS No. 108 includes the requirements relevant to this petition. Each side marker lamp must be designed to conform to the photometry requirements of Table X, when tested according to the procedure of S14.2.1, for the lamp color as specified by FMVSS No. 108.

**V. Summary of Nissan's Petition:**

The following views and arguments presented in this section, V. Summary of Nissan's petition, are the views and arguments provided by Nissan. They have not been evaluated by the agency and do not reflect the views of the agency.

Nissan described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety. Nissan submitted the following views and arguments in support of the petition:

1. Due to a manufacturing issue affecting only the driver's side marker lamp, the reflex reflector may not be seated properly in the headlamp assembly, creating a gap between the forward edge of the reflector and the extension portion of the headlamp assembly. The reflector is restrained from further movement by the outer lens of the headlamp. The manufacturing issue has been corrected.
2. Even in the worst-case displaced position, the side marker lamp is only minimally below photometric intensity of the side marker lamp at one test point. Nissan has judged that the minimal difference in photometric intensity between the lamp that tested below standard and a lamp meeting the minimum standard is not perceptible to the human observer. (*See*

also, Subaru of America, Grant of Petition, 56 FR 59971 (Nov. 26, 1991); Hella, Inc., Grant of Petition, 55 FR 37601 (Sept. 12, 1990)).

3. Moreover, in the subject vehicles, the parking lamp wraps around the corners of the headlamp assembly and adds additional illumination in the region where testing showed the photometric intensity of the side marker lamp to be slightly below standard. On the affected MY 2019 Armada vehicles, the parking lamps are on the same circuit as the side marker lamps and therefore always illuminate in conjunction with the side marker lamps.
4. When tested as a unit in real-world conditions, the photometric intensity of the combined parking and side marker lamps is above the required 0.62 cd for all test points and approximately 5 times the test point where the side marker lamp alone was below 0.62 cd.
5. In the event the reflector was to move out of position, the complimentary illumination from the parking lamp compensates for the slight reduction in photometric intensity of the side marker lamp over an exceedingly small range. Therefore, in actual usage conditions, the presence of an affected vehicle is conspicuous and in Nissan's judgement, there is no perceivable difference in the visibility of the subject vehicles compared to compliant vehicles to drivers and pedestrians on the road.
6. In similar situations, NHTSA has granted the applications of other petitioners in which a minor deviation from the standard was deemed imperceptible and therefore inconsequential to safety (*See, e.g.*, BMW of N.Am., LLC, Grant of Petition, 82 FR 55484 (Nov. 21, 2017); Osram Sylvania Prods., Inc., Grant of Petition, 78 FR 46000 (July 30, 2013)). While Nissan recognizes that NHTSA has denied petitions claiming complimentary illumination, those petitions are distinguishable due to the greater extent of the reduction in illumination over a wider affected area.

Nissan 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 Nissan 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 Nissan 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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