



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE.
Washington, DC 20590

April 5, 2010

Via Facsimile and Mail

Ms. Erika Z. Jones
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Dear Ms. Jones:

This letter serves as notice to Toyota Motor Corporation including its United States based subsidiaries (Toyota or the company) that the National Highway Traffic Safety Administration (NHTSA or the agency) has tentatively concluded that Toyota is liable for civil penalties for violations of the National Traffic and Motor Vehicle Safety Act, as amended, 49 U.S.C. Chapter 301 (Safety Act) and regulations issued thereunder.

Toyota is the manufacturer of approximately 2.3 million motor vehicles that Toyota determined contained a defect related to motor vehicle safety. These vehicles are equipped with an accelerator pedal manufactured by CTS that, under certain circumstances, may become harder to depress, slower to return, or stuck in a partially depressed position.

NHTSA has tentatively concluded that Toyota violated 49 U.S.C. § 30118(c)(1) when it failed to notify NHTSA and the owners, purchasers, and dealers in a timely manner that the vehicles subject to recall 10V-017 contained a defect related to motor vehicle safety. Toyota was required to make these notifications within five working days of determining a defect related to motor vehicle safety existed on the vehicles. 49 CFR § 573.6(a). Based on documents produced by Toyota related to this recall, it appears that Toyota determined or should have determined that vehicles equipped with the CTS accelerator pedal contained a safety-related defect no later than September 29, 2009. On that day, the company issued a Technical Instruction and identified a production improvement and repair procedure to Toyota distributors in 31 countries across Europe to address complaints of sticky accelerator pedals, sudden increases in engine RPM, and sudden vehicle acceleration.

Toyota did not submit its 49 CFR Part 573 Defect Information Report (Part 573 Report) to notify NHTSA of the presence of this safety-related defect in the United States until January 21, 2010—almost four months after initiating its action in Europe. Toyota failed to submit its Part 573 Report despite knowing that the same issues that prompted its European (and Canadian) actions in September 2009 existed on a significant number of vehicles sold, leased and driven in



the United States. Toyota's violations of 49 U.S.C. § 30118 subject the company to civil penalties under 49 U.S.C. § 30165(a).

I. Background

A. Vehicles at Issue

As set forth in Toyota's Part 573 Report submitted to NHTSA on January 21, 2010 (and as amended on February 17, 2010), Toyota initiated a safety-related recall potentially affecting approximately 2.3 million vehicles, including model year (MY) 2007-2010 Toyota Tundra, MY 2008-2010 Toyota Sequoia, 2005-2010 Toyota Avalon, 2007-2010 Toyota Camry, 2009-2010 Toyota Corolla, 2009-2010 Toyota Corolla Matrix, 2009-2010 Toyota RAV4, 2010 Toyota Highlander, and 2009-2010 Pontiac Vibe vehicles.

B. Relevant Timeline

In January 2010, Toyota initiated a safety-related recall of the accelerator pedals installed on the approximately 2.3 million vehicles identified above. NHTSA designated this recall number 10V-017. In its Part 573 Report, as amended, Toyota described the safety-related defect as follows:

Due to the manner in which the friction lever interacts with the sliding surface of the accelerator pedal inside the pedal sensor assembly, the sliding surface of the lever may become smooth during vehicle operation. In this condition, if condensation occurs on the surface, as may occur from heater operation (without A/C) when the pedal assembly is cold, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal becoming harder to depress, slower to return, or, in the worst case, stuck in a partially depressed position. In addition, some of the affected vehicles' pedals were manufactured with friction levers made of a different material (PA46), which may be susceptible to humidity when parked for a long period in hot temperatures. In this condition, the friction when the accelerator pedal is operated may increase, which may result in the accelerator pedal movement becoming rough or slow to return. In light of the similarity with the aforementioned issue, Toyota has decided to include these vehicles in the defect determination.

Subsequently, NHTSA opened Timeliness Query (TQ) 10-002 to investigate whether Toyota initiated this recall in a timely manner under the Safety Act. As part of this investigation, NHTSA issued an Information Request (IR) to Toyota on February 16, 2010, the response to which was due to NHTSA by March 18, 2010. To date, NHTSA has not received a complete response to the IR from Toyota. Toyota responded in part to the IR on March 18, 2010, and supplemented its response on March 24, 2010, and April 2, 2010. In its response, Toyota provided a partial chronology of events related to recall 10V-017.

In its chronology, Toyota stated that it received a Field Technical Report (FTR) in July 2006 from a US-based owner of a Toyota Avalon regarding a sticking accelerator pedal. Toyota began receiving FTRs in 2007 concerning US-based claims of accelerator pedals in Tundra vehicles and other Toyota models that were slow to return to the idle position when released by

the driver of the vehicle. The FTRs submitted to Toyota in 2007 included claims of pedals that got stuck in a depressed position and were slow to return to idle.

In January 2008, Toyota determined that the friction lever component of accelerator pedals manufactured using a plastic material identified as “PA46” could cause the accelerator pedal to be slow to return to idle in high humidity and temperature environments. On January 18, 2008, the manufacturer of the accelerator pedal, CTS, confirmed Toyota’s finding. Also in January 2008, Toyota issued an Engineering Change Instruction to CTS to change the composition of the type of plastic used for the Tundra friction lever from PA46 to PPS.

Toyota also received four FTRs from the European market in 2008. After more complaints and further study, by June 2009, Toyota had determined that the issue of sticking accelerator pedals was not alleviated by changing the friction lever material to PPS in January 2008. Toyota and CTS reviewed possible countermeasures and “settled” on a second change to the composition of the friction lever (from PPS to POM) and lengthening the friction lever. In May 2009, Toyota developed Engineering Change Instructions regarding sticking accelerator pedals on right-hand-drive Argo and Yaris vehicles in the United Kingdom (U.K.).

On June 15, 2009, Toyota initiated a Technical Instruction to Toyota distributors in the U.K. and Ireland identifying a temporary field fix involving replacement of the CTS pedal with a field-modified Denso pedal as advised in the Technical Instruction. In July 2009, Toyota decided to implement a rolling design change for CTS pedals starting with right-hand-side drive vehicles in Europe, and stated that it planned to “commonize the friction lever in pedals used in other markets, including the United States.”

On September 29, 2009, Toyota issued a Technical Instruction to Toyota distributors in 31 European countries, including Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Holland, Hungary, Iceland, Ireland, Israel, Italy, Malta, Norway, Poland, Turkey, Portugal, Russia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the U.K., Georgia, Kazakhstan, and Romania. The Technical Instruction identified a production improvement and repair procedure to address complaints by customers in those countries of sticky accelerator pedals, sudden engine RPM increases and/or sudden vehicle acceleration.

Also in September 2009, Toyota confirmed that a sticky accelerator complaint originating from a Toyota Matrix owner in Arizona was caused by the same phenomenon as the sticky accelerator pedals on the Yaris and Argo vehicles in the U.K. Toyota continued to receive FTRs regarding sticking accelerator pedals from its customers in the United States throughout the remainder of 2009. On October 7, 2009, a staff member of the Toyota Motor Corporation (TMC) Product Planning and Management Division (PPM) sent a staff member at Toyota Motor Engineering and Manufacturing North America, Inc. (TEMA) PPM a copy of an Engineering Change Instruction that described the design change (longer friction lever, POM material) for the accelerator pedal of a RAV4 manufactured in Ontario, Canada. This change was the same as that implemented in Europe. **However, on October 21, 2009, a member of the TMC PPM inexplicably instructed a member of the TEMA PPM not to implement this Engineering Change Instruction. Furthermore, in November 2009, Toyota provided NHTSA with FTRs regarding sticking accelerator pedals on vehicles in the United States but not with**

information regarding Toyota's extensive testing and determinations regarding the cause of the sticking accelerator pedals or an explanation of the significance of the FTRs.

Not until January 19, 2010, two days before initiating its safety-related recall on the sticky pedal issue, did Toyota meet with NHTSA (at NHTSA's request) to describe and discuss the sticky pedal phenomenon in Europe and the United States. Toyota continued to sell vehicles containing a safety related defect between initiation of its European action on September 29, 2009, and its stop sale order issued in the United States on January 26, 2010.

C. Toyota's Apparent Violation of the Safety Act

When a motor vehicle manufacturer learns that its vehicles contain a defect and decides in good faith that the defect relates to motor vehicle safety, it is required to notify NHTSA and the owners, purchasers, and dealers of the vehicle of the safety-related defect. 49 U.S.C. § 30118(c). A manufacturer incurs its duties to notify and remedy whether it actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related. Notification required under § 30118 must be given within a reasonable time after the manufacturer first decides that a safety-related defect or noncompliance exists under section § 30118(c). 49 U.S.C. § 30119(c)(2). Under applicable regulations, the manufacturer must notify NHTSA within five business days of making a safety-related defect determination. 49 CFR § 573.6(a), (b). Violations of 49 U.S.C. § 30119 subject the manufacturer to civil penalties. 49 U.S.C. § 30165(a).

While NHTSA's review of Toyota's response to the TQ10-002 IR is ongoing, based upon the chronology submitted on March 25, 2010, there can be no reasonable dispute that Toyota's initiation of this recall was untimely under the Safety Act. Among other things, on September 29, 2009, Toyota initiated an action on European vehicles equipped with CTS accelerator pedals manufactured from PA46 and/or PPS plastic. Toyota knew or should have known at all relevant times that a significant number of its vehicles sold in the United States (approximately 2.3 million vehicles) were equipped with the same or materially similar CTS accelerator pedals. Nonetheless, Toyota failed to take any action to remedy the issue in the United States until January 21, 2010—a delay of almost four months.

II. Civil Penalties

Prior to June 15, 2006, the maximum penalty for most violations of the Safety Act was \$5,000 per violation; beginning on and after that date, the amount increased to \$6,000 per violation. 49 U.S.C. § 30165(a)(1); 49 CFR 578.6(a). Since 2006, the maximum total penalty is \$16,375,000 as set by statute and subsequently adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Notes, Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134). *See also* 71 Fed. Reg. 28279 (May 16, 2006) (effective date of June 15, 2006), codified at 49 C.F.R. § 578.6(a).

Based upon the Agency's tentative conclusions, Toyota is liable to the United States for penalties of up to \$6,000 per violation. A separate violation occurs for each motor vehicle. 49 U.S.C.

§ 30165(a)(1). Thus, Toyota would be subject to civil penalties in the amount of \$13.8 billion (2.3 million vehicles at \$6,000 per vehicle). This amount is limited by statute to \$16,375,000.

49 U.S.C. § 30165(c) also specifies that “[i]n determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.” Here, the gravity of Toyota’s apparent violations is severe and potentially life-threatening. Toyota determined that the accelerator pedals installed on a significant number of vehicles sold and leased in the United States contained a safety-related defect as evidenced by, among other things, its issuance of a Technical Instruction and production improvement information on September 29, 2009, in 31 countries across Europe. Toyota knew or should have known that the same or substantially similar accelerator pedals were installed on approximately 2.3 million vehicles sold or leased in the United States, and continued to sell and lease vehicles equipped with a defective accelerator pedal for months after this determination. Nonetheless, Toyota Motor Corporation affirmatively—and inexplicably—instructed Toyota Motor Engineering and Manufacturing North America, Inc. *not* to implement an Engineering Change Instruction in the U.S. market. Toyota gave this instruction despite the fact that it had issued similar or identical instructions in Canada and Europe and knew that the very same issues that prompted the European and Canadian actions existed on a significant number of vehicles in the United States. The result of these decisions by Toyota was to expose millions of American drivers, passengers and pedestrians to the dangers of driving with a defective accelerator pedal that could result, in Toyota’s words, in “sticky accelerator pedals, sudden rpm increase and/or sudden vehicle acceleration.”

In view of all the foregoing considerations, NHTSA hereby demands the statutory maximum civil penalty amount from Toyota of \$16,375,000.

Based on documents submitted to NHTSA by Toyota, the Agency is considering pursuing a second civil penalty action against Toyota. The documents submitted by Toyota in response to the IR indicate that CTS accelerator pedals at issue and described above exhibit two separate defects that may require two separate remedies. One defect was slow to return accelerator pedals on Tundra and other models identified in early 2008. Toyota remedied this defect by instituting an Engineering Change Instruction to change the friction lever material from PA46 to PPS. The second defect was sticking accelerator pedals on 2.3 million vehicles identified in Toyota’s Defect Information Report related to 10V-017. Toyota remedied this defect by instituting an Engineering Change Instruction to lengthen the friction lever and change the material from PPS to POM.

Please respond to this letter, in writing, no later than **April 19, 2010**.

NHTSA intends to resolve this matter expeditiously. If Toyota will not agree to pay the demanded penalty, NHTSA will refer this matter to the United States Department of Justice, with the recommendation that the Attorney General commence a civil action in Federal court against Toyota for maximum civil penalties and other appropriate relief.

We look forward to your immediate response.

Sincerely,

A handwritten signature in black ink that reads "O. Kevin Vincent". The signature is written in a cursive style with a large, sweeping initial "O" and a distinct "V".

O. Kevin Vincent
Chief Counsel