20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CPR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CPR's filing of a notice of consummation by November 2, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 27, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–26210 Filed 10–30–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Denial of Motor Vehicle Defect Petition

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

**ACTION:** Denial of a petition for a defect investigation.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition (Defect Petition DP09–001) submitted by Mr. Jeffrey A. Pepski (petitioner) to the Administrator of NHTSA by a letter dated March 13, 2009, under 49 CFR part 552. The petitioner requests additional investigations of: (1) The unwanted and unintended acceleration of model year 2007 Lexus ES350 vehicles and (2) model years 2002–2003 Lexus ES300 for long duration incidents involving uncontrolled acceleration where brake pedal application had no effect.

After conducting a technical review of the material cited and provided by the petitioner, material contained within investigations cited by petitioner, information relevant to material cited by petitioner, and conducting interviews with complainants and manufacturer representatives, and taking into account several considerations, including, among others, a recent safety recall by Toyota (NHTSA Recall 09V–388), allocation of agency resources, agency priorities, and the likelihood that additional investigations would result in a finding that a defect related to motor vehicle safety exists, NHTSA has concluded that further investigation of the issues raised by the petition is not warranted. The agency accordingly has denied the petition.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen McHenry, Vehicle Control Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone 202–366–0139. E-mail *stephen.mchenry@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Interested persons may petition NHTSA requesting that the agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 CFR 552.1. Upon receipt of a properly filed petition the agency conducts a technical review of the petition, material submitted with the petition, and any additional information. § 552.6. After considering the technical review and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities, and the likelihood of success in litigation that might arise from a determination of a noncompliance or a defect related to motor vehicle safety, the agency will grant or deny the petition. § 552.8.

### II. Defect Petition Background Information

The petitioner, Mr. Jeffrey Pepski of Plymouth, Minnesota, owns a model year (MY) 2007 Lexus ES350 (VIN JTHBJ46G072131671). On March 12, 2009, Mr. Pepski filed a complaint with NHTSA (ODI No. 10261660) alleging a ''sudden and uncontrollable surge in acceleration'' while driving home from work on February 3, 2009:

Driving home from work, I experienced a sudden uncontrollable surge in acceleration causing my speed to increase from about 60 mph to 80+ mph. Immediately I began to brake hard as I was rapidly approaching traffic just ahead of me. Fortunately the inside left lane was unoccupied and I was able to make an immediate lane change. Initially I depressed the brake pedal as hard as I could using both feet but only managed to slow the vehicle to 40–45 mph. With my speed reduced, I alternated between pumping the accelerator pedal and pulling up on it from the underside with my right foot as it became clear that the throttle was stuck in an open position. The vehicle continued to speed back up to over 65 mph with less pressure on the brake pedal.

With traffic just ahead of me, I moved over to the left shoulder next to the center barrier and continued to try to release the open throttle. There were clouds of smoke around the vehicle and the smell of burning materials from the overheating brakes. After finally getting the vehicle slowed down to about 25–30 mph, I shifted into ''Neutral'' and depressed the start/stop push button a number of times hoping to stop the engine but nothing happened. Instead the RPMs moved up into the redline range on the tachometer. I quickly shifted back into ''Drive''; the vehicle jolted and rapidly accelerated to 60+ mph.

As the brakes were fading quickly, I was certain that I would need to shift back into ''Neutral'' and let the engine blow up to stop the vehicle. Suddenly the acceleration surge stopped and I was able to bring the vehicle to a stop about 1½ to 2 miles from where it had started. I quickly shifted into ''Park'' and depressed the start/stop push button to turn off the engine. The vehicle seemed to shutter as I did so. Upon restarting the car, I drove cautiously to Lexus of Wayzata a short distance away fully prepared to shift into ''Neutral'' if the acceleration repeated. The car remains there over 5 weeks later.

Following the incident, Mr. Pepski submitted a complaint to Toyota and a claim to the Lexus Customer Satisfaction Department, requesting that Lexus repurchase his vehicle. According to Toyota, the Lexus dealer service technician who inspected Mr. Pepski's vehicle after the incident observed that the driver's side floor mat retaining clips were not properly secured and ''the floor mat was in a position where it could interfere with the operation and travel of the accelerator pedal.'' [1] Toyota denied Mr. Pepski's claim on March 10, 2009, concluding that the event was caused by an out-of-position floor mat: [2] [3]

The inspection of your vehicle revealed no evidence of any vehicle defects or malfunction. The throttle assembly and accelerator pedal were operating as designed, with no binding or sticking of any of the components. The brakes showed signs of excessive wear which is consistent with what you described happened to you.

[1] Chris Tinto, Toyota Motor North America, Inc., letter to Kathleen DeMeter, ODI, May 14, 2009, *Response to the Petition for a Defect Investigation Submitted by Jeffrey Pepski* (see public file for DP09–001).

[2] Troy Higa, Toyota Motor Sales, U.S.A., Inc., letter to Jeff Pepski, March 10, 2009 (see public file for DP09–001).

[3] The issue of accelerator pedal entrapment by an unsecured floor mat in the subject vehicles is addressed by Recall 09V–388.

The inspection also revealed that the floor mat was in a position where it could interfere with the operation and travel of the accelerator pedal. When the vehicle was taken in to the dealership, the floor mat retaining clips were not properly secured which allowed the floor mat to move out of position. While we understand that you feel the floor mat was not the problem, the evidence revealed during our inspection showed otherwise.

On March 12, 2009, Mr. Pepski reported his initial complaint to NHTSA and on March 13, 2009, he sent a defect petition to NHTSA that was received by the Office of Defects Investigation (ODI) on March 19, 2009 (ODI No. 10263408). On May 1, 2009, ODI investigator Stephen McHenry and Vehicle Research Test Center engineer Mr. William Collins met with the petitioner at Lexus of Wayzata in Wayzata, Minnesota. Also in attendance was Mr. Mike Zarnecki, Field Technical Specialist from the Lexus Central Area Office in Naperville, Illinois. The petitioner was interviewed and the petitioner's vehicle was test driven. No functional abnormalities were noted during the test drive. According to Mr. Zarnecki and notes from the dealership's work order, no fault codes were found in the vehicle's powertrain computer system. Toyota concluded that the incident was caused by an improperly installed floor mat.

The petition requests additional investigations of (1) unwanted and unintended acceleration in MY 2007 Lexus ES350 vehicles, previously investigated by ODI in PE07–016 and EA07–010; and (2) longer duration incidents of unintended acceleration where brake pedal application allegedly was ineffective in MY 2002 and 2003 Lexus ES300 vehicles, previously investigated by ODI in PE04–021.

The petitioner cites seven issues in support of the petition to investigate the MY 2007 Lexus ES350:

Issue #1. Proper Party to Preliminary Evaluation PE07–016;
Issue #2. Toyota's Response—Causes of Alleged Defect;
Issue #3. Narrow Scope of Preliminary Evaluation PE07–016;
Issue #4. Vehicle Certification Label—Compliance with Federal Safety Standard No. 124;
Issue #5. Adequacy of Service Brakes;
Issue #6. Ignition/Engine Switch; and
Issue #7. ECM and ECUs—Lack of Inputs and Receipt of Contradictory Inputs.

The petitioner contends that expanding the investigation to include MY 2002 and 2003 Lexus ES300 vehicles is necessary because ''reviewing all pertinent data across model years will better indicate the existence of any pattern.''

## III. ODI Analysis of the Petition Request for Additional Investigation of MY 2007 Lexus ES350 Vehicles

*Background*

On March 29, 2007, ODI opened Preliminary Evaluation PE07–016 to investigate the potential for accessory all-weather floor mats sold by Toyota to interfere with the accelerator pedal in MY 2007 Lexus ES350 vehicles. The investigation was based on a thorough review of complaints involving unintended acceleration that identified five incidents that likely were caused by interference between Toyota's accessory all-weather floor mat and the accelerator pedal. ODI upgraded the investigation to Engineering Analysis EA07–010 on August 8, 2007, and expanded the population to include MY 2007 and 2008 Lexus ES, ES350, and Toyota Camry vehicles. At that time, ODI had identified 17 complaints related to floor mat interference with the accelerator pedal in the subject vehicles.

ODI closed the investigation on October 11, 2007, after Toyota decided to conduct a recall of the accessory all-weather floor mats. Toyota's recall provided for the replacement of the accessory all-weather floor mats with mats that were redesigned to reduce the potential for pedal interference in the event that they were installed incorrectly. When EA07–010 was closed, ODI was aware of 26 Vehicle Owner Questionnaires (''VOQs'' or ''complaints'') concerning incidents of unwanted acceleration involving accessory all-weather floor mat interference in MY 2007 and 2008 Lexus ES, ES350, and Toyota Camry vehicles, including seven crashes. Twenty of the complaints involved MY 2007 Lexus ES350 vehicles.

The following summarizes the issues cited by the petitioner as the bases for opening the requested investigations and ODI's assessment of each issue.

Issue #1: Toyota's response to ODI's April 5, 2007, information request (IR) letter in PE07–016 ''may have been limited in some manner'' by the definition of ''Toyota'' used in the IR

The petitioner contends that since ODI's April 7, 2007, letter to Toyota requesting information in support of PE07–016 defined ''Toyota'' as ''Toyota Motor North America, Inc.'' rather than ''Toyota Motor Corporation,'' Toyota's responses ''may have been limited in some manner by the failure to properly address the appropriate parties to the investigation.''

The petitioner's concern is unfounded. In a May 14, 2009, letter responding to Mr. Pepski's petition, Toyota confirmed that it ''construed the request to apply to all Toyota entities, including the entities identified by Mr. Pepski, and that its earlier responses included all non-privileged responsive information and documents in the possession of all of those Toyota entities.''

Issue #2 and Issue #3: The Agency failed to investigate allegations of unwanted acceleration that were not related to improper installation of the accessory all-weather floor mats

In Issue #2, the petitioner contends that NHTSA should have investigated incidents of unintended acceleration that it determined were unrelated to improper installation of the accessory all-weather floor mat. In Issue #3, the petitioner contends that the scope of PE07–016 should have been ''broadened or increased for additional causes beyond the all-weather floor mats'' based on (1) information submitted by Toyota in its June 11, 2007, letter responding to ODI's information request, (2) additional complaints received by ODI after PE07–016 was opened; and (3) the results of a survey conducted for ODI by NHTSA's Vehicle Research and Test Center (VRTC) which ''identified vehicles without all-weather car mats experiencing unintended acceleration.'' ODI interprets these issues as one in the same—an allegation that the Agency failed to investigate complaints by subject vehicle owners that petitioner claims are unrelated to the recalled accessory all-weather floor mats.

ODI reviewed each complaint submitted by Toyota in its response to the PE07–016 IR and identified a safety defect trend related to interference between the accessory all-weather floor mat and the accelerator pedal that could trap the pedal near the floor during certain accelerator pedal applications (e.g., hard pedal applications while passing slower traffic, accelerating into traffic, and/or accelerating up grades). ODI carefully analyzed that data during the prior investigation and again during the review of this petition, including detailed interviews of drivers and, in some cases, field investigations to inspect vehicles and incident scenes. ODI determined that floor mat interference was the condition warranting investigation based on frequency of occurrence and nature of the events.

The petitioner identified ten complaints as evidence that ''not all these incidents are related to an

accessory all weather floor mat entrapping the throttle pedal.'' These complaints are presented in Table 1. The petitioner contends that the complaints that have a number marked with an asterisk are ''five other VOQs where floor mats were not involved in the unwanted acceleration.''

Contrary to the petitioner's contention, six of the VOQs were related to floor mat interference (four of the five that petitioner singled out as unrelated to floor mats were related to floor mats). Three of the remaining four complaints involved incidents occurring during low-speed close-quarter driving maneuvers—circumstances that are not similar to those complained of by petitioner; the other complaint does not indicate an unintended acceleration event.

TABLE 1—TEN VOQS IDENTIFIED IN THE PETITION AS EVIDENCE OF UNINTENDED ACCELERATION EXPERIENCE NOT RELATED TO FLOOR MATS

| Evidence of Floor Mat Interference | ODI File Number | Description |
|---|---|---|
| Yes | *10199857 | Unsecured floor mat discovered and corrected during dealer inspection. |
| | *10203221 | All-weather accessory floor mat improperly ''stacked'' on top of carpet mat. |
| | 10218118 | Unsecured floor mat slid forward and interfered with accelerator pedal return. |
| | 10223792 | Passenger side floor mats improperly placed on driver side, resulting in accelerator pedal interference. |
| | *10230560 | Floor mats were not returned to proper position after oil change, resulting in accelerator pedal interference. |
| | *10230929 | All-weather accessory floor mat improperly ''stacked'' on top of carpet mat. |
| No | 10192384 | Single incident of alleged engine surge while parking in garage. No trouble found by dealer. |
| | 10218961 | Driver concerned that vehicle accelerated more quickly than expected when the accelerator pedal was depressed. |
| | 10219328 | Single incident of alleged engine surge while parking vehicle. No trouble found by dealer. |
| | *10226564 | Alleged idle flare when idling. Dealer reprogrammed transmission control unit. |

In addition to the analyses of the complaint and survey data, ODI and VRTC also conducted design reviews and testing to evaluate the possibility of other potential causes of unintended acceleration in the subject vehicles. Some of this work is summarized in the following excerpt from the VRTC test report: [4]

The Vehicle Research and Test Center obtained a Lexus ES350 for testing. The vehicle was fully instrumented to monitor and acquire data relating to yaw rate, speed, acceleration, deceleration, brake pedal effort, brake line hydraulic pressure, brake pad temperature, engine vacuum, brake booster vacuum, throttle plate position, and accelerator pedal position. Multiple electrical signals were introduced into the electrical system to test the robustness of the electronics against single point failures due to electrical interference. The system proved to have multiple redundancies and showed no vulnerabilities to electrical signal activities. Magnetic fields were introduced in proximity to the throttle body and accelerator pedal potentiometers and did result in an increase in engine revolutions per minute (RPM) of up to approximately 1,000 RPM, similar to a cold-idle engine RPM level. Mechanical interferences at the throttle body caused the engine to shut down.

Petitioner's assertion that the Agency failed to investigate other causes of unintended acceleration and, as a result, may have failed to identify other causes of unintended acceleration is unsupported. Several complaints identified by the petitioner as unrelated to interference between the floor mat and accelerator pedal, in fact, involved this problem. We note that Toyota has initiated a safety recall program to address the potential for unwanted acceleration due to accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Analysis of the remaining complaints identified by the petitioner failed to identify a defect trend unrelated to this issue.

Issue #4: The subject vehicles do not comply with FMVSS No. 124

The petitioner contends that the subject vehicles do not satisfy requirements of Federal Motor Vehicle Safety Standard (FMVSS) 124, Accelerator control systems. Specifically, the petitioner contends that the subject vehicles do not comply with paragraph S5.3, which requires the throttle to return to the idle position within one second, and paragraph S5.1, which requires at least two independent sources of energy capable of returning the throttle to the idle position within the time requirements of paragraph S5.3. The petitioner's concerns with the subject vehicles' compliance with FMVSS 124 are apparently based upon his belief that the rule requires a vehicle equipped with a throttle position or accelerator pedal position sensor that measures ''any force/pressure to the driver-operated control or any release of the actuating force to the driver-operated control (i.e., accelerator pedal).''

As an initial matter, FMVSS 124 does not require a particular design to meet its requirements; it is a performance standard. It is the responsibility of a manufacturer of vehicles and/or items of motor vehicle equipment to manufacture and sell vehicles that comply with applicable motor vehicle safety standards and to certify that each motor vehicle and/or equipment item is in compliance with applicable FMVSSs. This is a self-certification process. This usually means testing by the manufacturer in accordance with the FMVSS to ensure that its vehicles and equipment comply with the FMVSS.

Petitioner's basis for this issue is unsupported as there is no indication that the subject vehicles are not fully compliant with FMVSS 124.[5] Paragraph S5.3 does not mandate compliance with any specific design feature, including a throttle position or accelerator pedal position sensor. In its May 14, 2009, letter responding to Mr. Pepski's petition, Toyota states, ''the throttle control system in the subject vehicles

[4] VRTC Memorandum Report EA07–010, VRTC–DCD–7113, *2007 Lexus ES–350 Unintended Acceleration,* Section 3.1 Dynamic Vehicle Testing, April 30, 2008.

[5] The petitioner maintains that, because of the alleged non-compliance with FMVSS 124 and Toyota's knowledge thereof, the Vehicle Certification label on all MY 2007 Lexus ES350 vehicles does not comply with sections 30112(a)(1) and 30115(a) of Title 49 of the U.S. Code. As Toyota states in its May 14, 2009, letter, ''[b]ecause the vehicles fully comply with the standard, * * * there is no merit to Mr. Pepski's allegations that Toyota violated 49 U.S.C. 30112(a) when it sold those vehicles, or that it violated 49 U.S.C. 30115(a) when it certified them as complying with all applicable FMVSSs.''

fully complies with the requirements of FMVSS No. 124, as demonstrated by tests conducted in the manner specified in the laboratory test procedure issued by NHTSA's Office of Vehicle Safety Compliance, TP–124–06 (April 20, 2000).'' Regarding paragraph S5.1, the pedal assembly on the subject vehicles is biased to the ''up,'' or idle, position by two independent springs.[6]

Issue #5: The subject vehicles do not comply with FMVSS No. 135

The petitioner questions whether the service brakes of the subject vehicles are capable of meeting the performance requirements of FMVSS 135, Light-vehicle brake systems, with a throttle that has been stuck in an open position. The petitioner interprets complaints received by ODI of instances where a subject vehicle operator was unable to prevent a vehicle with a stuck accelerator pedal from traveling a ''significant distance'' as a functional failure as defined in paragraph S4 of FMVSS 135. Petitioner contends that, due to the significant distances travelled by subject vehicles with stuck accelerator pedals, compliance with the stopping distance requirement under paragraph S7.11.4 of FMVSS 135 is ''unlikely''.

Petitioner's contentions regarding compliance with FMVSS 135 are without merit and there is no indication that the subject vehicles are not fully compliant with FMVSS 135. The stopping distance of a subject vehicle with a throttle stuck in an open position is irrelevant with respect to whether the vehicle is compliant with paragraph S7.11.4 of FMVSS 135. Pursuant to paragraph S7.11.2(b), the stopping distances required under paragraph S7.11.4 must be met by a vehicle with its transmission position in neutral. The complaints referenced by the petitioner stem from incidents occurring on subject vehicles with a transmission position in drive.

Testing conducted by VRTC determined that the brake pedal force required to stop a subject vehicle with a wide open throttle was significantly greater than when the vehicle is operating with a closed throttle.

Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. [7]

Many of the incident drivers interviewed by ODI have stated that application of the brakes reduced acceleration but did not stop the vehicle. In assessing these complaints ODI notes that brake effectiveness in controlling a stuck open throttle event is significantly reduced once the vacuum reserve of the vacuum boosted power assist system is depleted.[8] The friction generated from brake application with the wheels driven by full engine power results in significant heating of the brake components. Continued operation in this mode causes degradation of the brake friction materials, further reducing brake effectiveness and the ability of the driver to control vehicle speed.

ODI notes that the petitioner confuses the Brake Assist system referenced in the Owner's Manual with the brake power assist system. Brake Assist is a computer controlled automobile braking technology that increases braking pressure in an emergency situation (e.g., crash avoidance braking). The Brake Assist technology used by Toyota in the subject vehicles detects an emergency situation by monitoring the rate of change of brake hydraulic pressure from the master cylinder. Based on the information gathered by ODI in interviews of incident drivers, there is no reason to believe that Brake Assist was activated during the unwanted acceleration events.[9] While virtually all of the drivers indicated that they applied a great deal of force to the brake pedal in an effort to slow and stop the vehicle, it is possible that the manner (i.e., rate) in which the force was applied, or the absence of the amplifying vacuum boost, did not produce a brake system pressure pulse that is necessary to activate the Brake Assist system.

Issue #6: Operation of the subject vehicles' Ignition/Engine Switch poses a safety issue

Petitioner contends that, according to the description of operation in the subject vehicle Owner's Manual, the engine cannot be switched off during an unintended acceleration event as the vehicle is not in Park.[10] Petitioner contends further that if the engine can be switched off during an unintended acceleration event, doing so would lock the steering wheel and move it up and away from the driver.[11] The petitioner concludes that ''the inability to turn off the engine in a safe manner is a significant safety issue with this 'push button' ignition issue.''

The petitioner is incorrect in his description of the function of the ignition switch and steering column safety features. The engine can be turned off while in motion by pressing and holding the ignition push-button start/stop switch for at least three seconds. The press and hold function is meant to avoid inadvertent engine shut-off while in motion. Turning off the engine in this manner puts the vehicle electrical system in Accessory (''ACC'') mode, in which the steering wheel does not lock or retract (as opposed to putting the vehicle in ''OFF'' mode, which can only occur when the vehicle is in Park).[12]

Issue #7: Contradictory sensor data logic should resolve on the side of safety

The petitioner posits that ''contradictory sensor data (e.g., open throttle and sustained extreme brake pressure) should error on the side of caution and safety.'' The petitioner correctly notes that the subject vehicle's throttle control logic does not change with brake application. However, while in certain circumstances it may be

[6] ODI notes that the petitioner's description of his attempts to ''dislodge the throttle by alternatively pumping the accelerator pedal and pulling up on it from the underside'' strongly suggest an accelerator pedal that is being physically ''trapped'' by some foreign object, such as the floor mat (in his case the original equipment carpet).

When ODI and VRTC investigators met with the petitioner and inspected his vehicle the accelerator pedal assembly was functioning properly and there were no anomalies noted in the return springs. Wear marks were noted at the leading edge of the front right edge of the carpet mat, which may have been an indication of contact between the mat and the bottom edge of the accelerator pedal. ODI confirmed that the pedal is such that it can be held down by the mat. Once trapped, the pedal can remain trapped after repeated efforts to ''pump'' the pedal.

[7] VRTC Memorandum Report EA07–010, VRTC–DCD–7113, *2007 Lexus ES–350 Unintended Acceleration,* Section 3.3.1 Application of the brake, April 30, 2008.

[8] The petitioner also incorrectly interprets the loss of vacuum during operation at wide-open throttle as a ''Functional Failure'' of the brake power assist unit as defined in S4 of FMVSS 135. VRTC's testing demonstrates that the braking performance described by drivers of incident vehicles is consistent with open throttle braking with depleted vacuum in the vacuum boosted power assist system. Consequently, the petitioner's concerns with the adequacy of the service braking in the subject vehicles do not provide any basis for further investigation.

[9] It is not possible to determine whether Brake Assist was activated for any length of time during any of the unwanted acceleration incidents ODI investigated in the subject vehicle population.

[10] Petitioner cites the following language to support this claim: ''The engine cannot be switched to OFF unless the shift lever is in P.'' Toyota has indicated that this should be changed to the vehicle cannot be switched OFF until the shift lever is in Park.''

[11] Petitioner references the following language: ''When the engine switch is turned OFF, the steering wheel returns to its stowed position by moving up and away to enable easier driver entry and exit. Switching to ACC or IG–ON mode will return the steering wheel to the original position.''

[12] In its May 14, 2009, letter, Toyota admits that its description of the function of these features, even though ''technically correct,'' is confusing. Toyota states that it plans to revise this portion of the manual to address any confusion.

desirable for the vehicle throttle control system to respond to simultaneous applications of brake and accelerator pedals by prioritizing the braking command and limiting throttle opening, the absence of this function in the Toyota designs does not render the vehicles noncompliant with any applicable FMVSS and further investigation at this time is not likely to result in identification of a defect trend.

*Current VOQ Status.* The petitioner states that at the time the petition was sent there were ''at least 45 VOQs on record with respect to vehicle speed control involving unwanted acceleration in MY 2007 Lexus ES350.'' Table 2 provides a breakdown of complaints to ODI relating to unintended acceleration in MY 2007 Lexus ES350 vehicles by category and date of receipt relative to completion of the prior investigation.

Analysis of the VOQs cited by the petitioner do not indicate a defect trend other than that involving the accelerator pedal as held down by a floor mat. The complaints ODI deemed related to floor mat interference outnumbered all other reports of alleged sudden and uncontrollable surge in acceleration reported during and subsequent to the ODI investigation. As previously noted, Toyota has initiated a safety recall to address the potential for unwanted acceleration due to accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles.

TABLE 2—VEHICLE OWNER QUESTIONNAIRES TO ODI RELATED TO UNINTENDED ACCELERATION INCIDENTS IN MY 2007 LEXUS ES350 VEHICLES

| Unintended acceleration category | Prior to EA07–010 closing | Since EA07–010 closing | Total |
|---|---|---|---|
| Floor mat interference: | | | |
| —Recalled accessory all-weather mats | 22 | 11 | 33 |
| —Other floor mats | 3 | 9 | 12 |
| —Consistent with mat interference (mat unknown) | 1 | 4 | 5 |
| Subtotal, floor mat interference | 26 | 24 | 50 |
| Other: | | | |
| —Transmission shift quality | — | 3 | 3 |
| —Parking lot type maneuvers | 2 | 6 | 8 |
| —Throttle response | — | 1 | 1 |
| —Cruise control sensitivity | 1 | — | 1 |
| —Other | — | 1 | 1 |
| Subtotal, other | 3 | 11 | 14 |
| Total | 29 | 35 | 64 |

## IV. ODI Analysis of the Petition Request for an Investigation of MY 2002 Through 2003 Lexus ES300 Vehicles

Petitioner requests that ODI investigate MY 2002 through 2003 Lexus ES300 vehicles for complaints related to the petition for MY 2007 Lexus ES350 vehicles. Petitioner cites an earlier ODI investigation, PE04–021, during which 26 complaints initially considered by the Agency as part of that investigation later were determined to be outside the scope of that investigation. Petitioner states, ''Reviewing all pertinent data across model years will better indicate the existence of any pattern.''

On March 3, 2004, ODI opened Preliminary Evaluation PE04–021 to investigate allegations of vehicle surge during low speed driving maneuvers (such as parking) in MY 2002 through 2003 Toyota Camry, Camry Solara, and Lexus ES300 vehicles (approximately 980,000 vehicles). ODI opened PE04–021 based on owner reports alleging either an engine speed increase occurring without pressing on the accelerator pedal or the engine speed failing to decrease when the accelerator pedal was released. When PE04–021 was opened, ODI counted 37 complaints, including 30 reported crashes and 5 alleged injuries, potentially related to the alleged defect.

Upon further investigation, ODI determined that 26 of the 37 complaints fell outside the scope of PE04–021. ODI determined that these complaints related to longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect and thus were not within the scope of the investigation. The investigation focused on incidents where the subject vehicle throttle control system opened the throttle valve without driver intent. ODI believed that the resultant vehicle surge could result in a momentary loss of vehicle control, often resulting in crashes of varying severity as the drivers were unable to react in time to apply the brakes effectively.

None of the complaints identified by the petitioner and received by ODI would fall within the scope of the investigation requested by the petitioner, nor do they indicate a defect trend unrelated to the accelerator pedal. In consideration of Mr. Pepski's petition, ODI conducted a review of the 26 VOQs it determined outside the scope of PE04–021 as well as any other MY 2002–2003 Lexus ES300 VOQ received by ODI from the time of the opening of PE04–021 to the receipt of Mr. Pepski's petition. Of the 26 VOQs outside the scope of PE04–021, only 2 involved MY 2002–2003 ES300 vehicles (VOQ 10032815 and 8017143).[13] Neither of these VOQs involved longer duration incidents of unintended acceleration where brake pedal application allegedly was ineffective in MY 2002 and 2003 Lexus ES300 vehicles. Likewise, none of the remaining VOQs reviewed by ODI in response to Mr. Pepski's petition fit into that classification.

## V. Conclusion

Toyota has initiated a safety recall (Recall 09V–388) to address concerns with potential accelerator pedal entrapment by floor mats in

[13] VOQ 10032815 states that a MY 2002 ES300 was pulling into a parking space at less than 10 miles per hour when the car suddenly accelerated. VOQ 8017143 states that a MY 2002 ES300 was pulling into a parking space with the driver's foot on the brake when it suddenly accelerated and hit a tree. It also noted that while driving with the cruise control on the driver tapped the brakes to disengage the cruise control and the vehicle suddenly accelerated.

approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect as alleged by the petitioner at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

**Authority:** 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: October 20, 2009.

**Kathleen C. DeMeter,**

*Director, Office of Defects Investigation.*

[FR Doc. E9–26265 Filed 10–28–09; 11:15 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 10–15–C–00–OAK, To Impose a PFC at Metropolitan Oakland International Airport, Oakland, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Metropolitan Oakland International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before December 2, 2009.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Deborah Ale-Flint, Acting Director of Aviation, Oakland International Airport, at the following address: Port of Oakland, 530 Water Street, Oakland, California 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Arlene Draper, Acting Manager, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2778, extension 601. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Metropolitan Oakland International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 21, 2009, the FAA determined that the application to impose PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 2010.

The following is a brief overview of the impose application No. 10–15–C–00–OAK:

*Proposed charge effective date:* June 1, 2021.

*Proposed charge expiration date:* August 1, 2023.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $70,259,000.

*Description of proposed project:*

*Impose only:* San Francisco Bay Area Rapid Transit District (BART) Airport Connector—The project will provide a direct people mover connection between the Coliseum BART station and Metropolitan Oakland International Airport.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Nonscheduled/On-demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Lawndale, California, on October 21, 2009.

**Debbie Roth,**

*Acting Manager, Airports Division, Western-Pacific Region.*

[FR Doc. E9–26405 Filed 10–29–09; 4:15 pm]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8816

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8816, Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

**DATES:** Written comments should be received on or before January 4, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

*OMB Number:* 1545–1130.

*Form Number:* 8816.

*Abstract:* Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847 to reconcile estimated tax payments and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the