



This document is scheduled to be published in the Federal Register on 09/25/2013 and available online at <http://federalregister.gov/a/2013-23361>, and on [FDsys.gov](http://FDsys.gov)

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0017; Notice 2]

Fuji Heavy Industries U.S.A., Inc., Grant of Petition for  
Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA)

**ACTION:** Grant of Petition

**SUMMARY:** Fuji Heavy Industries U.S.A., Inc., on behalf of Subaru of America (Fuji), has determined that certain 2013 Subaru XV Crosstrek passenger cars manufactured between May 17, 2012, and February 7, 2013, do not fully comply with paragraphs S6.1 and S6.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. Fuji has filed an appropriate report dated January 29, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5298, facsimile (202) 366-7002.

**SUPPLEMENTARY INFORMATION:**

**I. Fuji's Petition:** Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Fuji has petitioned for an exemption from the notification and

remedy requirements of 39 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30 day public comment period, on February 25, 2013 in the Federal Register (78 FR 12827). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. The follow the online search instructions to locate docket number "NHTSA-2013-0017."

**II. Vehicles Involved:** Affected are approximately 23,600 model year 2013 Subaru XV Crosstrek passenger cars manufactured between May 17, 2012, and February 7, 2013.

**III. Rule Text:** Paragraphs S6.1 and S6.2 of FMVSS No. 205 specifically states:

S6.1 A prime glazing material manufacturer must certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which this standard applies that is designed -

- (a) As a component of any specific motor vehicle or camper; or
- (b) To be cut into components for use in motor vehicles or items of motor vehicle equipment.

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI Z26.1-1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer.

**IV. Summary of FUJI'S Analyses:** Fuji explains that the noncompliance is that, due to a labeling error, the glazing

markings on the rear window of the subject vehicles lack the symbol "DOT", the manufacturer's code mark (i.e. 44), and the AS3 code mark and thus do not conform to the requirements of 49 CFR 571.205 paragraphs S6.1 and S6.2.

Fuji contends that the rear glazing of the affected vehicles otherwise meets all marking and performance requirements of FMVSS No. 205 and ANSI Z26.1 and NHTSA has previously noted that "The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions" (64 FR 70116). Because the affected glazing fully meet all of the applicable performance requirements, Fuji believes the absence of the "DOT" symbol, the manufacturer's number (i.e. "44"), and the AS3 code mark have no effect upon the ability of the glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS No. 205.

Fuji stated that it is not aware of any crashes, injuries, customer complaints or field reports associated with this noncompliance.

Fuji also expressed its belief that NHTSA has previously granted similar petitions involving the omission of FMVSS No. 205 markings.

Fuji has additionally informed NHTSA that it has corrected the noncompliances so that all future production of the vehicles will comply with FMVSS no 205.

In summation, Fuji believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**V. NHTSA'S Decision:** FMVSS No. 205 specifies labeling and performance requirements for automotive glazing. Paragraph S6 of FMVSS No. 205 requires glazing material manufacturers to certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which the standard applies. A prime glazing material manufacturer is required to mark its glazing by adding the marks required in Section 7 of ANSI Z26.1 (1996) including the FMVSS certification symbol "DOT," the item of glazing code mark (in this case "AS3") and a manufacturer's code mark as assigned by the NHTSA's Office of Vehicle Safety Compliance (in this case "44").

NHTSA has reviewed and accepts Fuji analyses that this noncompliance is inconsequential to motor vehicle safety. Fuji has provided documentation that the windows do comply with all safety performance requirements of the standard. This

documentation is a surrogate for the FMVSS certification "DOT" labeling. NHTSA also believes that the lack of the manufacturer's code and the item of glazing code labeling would not result in inadvertent replacement of the windows with the wrong glazing. Broken tempered glass can readily be identified as tempered glass, rather than plastic or laminated glass. Anyone who intended to replace the window with an identical tempered glass window would have to obtain the glazing from Fuji or a major automotive parts manufacturer since tempered glass automotive windows cannot be easily manufactured by small field facilities. Fuji, or an automotive parts supplier would be able to identify the correct replacement window by use of their replacement parts identification systems.

In consideration of the foregoing, NHTSA has decided that Fuji has met its burden of persuasion that the FMVSS No. 205 noncompliance in the glazing material identified in Fuji's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Fuji's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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, this decision only applies to approximately 23,600 vehicles that Fuji no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of 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 Fuji notified them that the subject noncompliance existed.

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

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Claude H. Harris, Director  
Office of Vehicle Safety Compliance

**Billing Code:** 4910-59-P