

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Petition for Exemption From the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.**

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru Outback vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). FUSA requested confidential treatment for the information and attachments it submitted in support of its petition. The agency will address FUSA's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION: In a petition dated July 31, 2008, FUSA requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru Outback vehicle line, beginning with the 2010 model year. The petition has been filed pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per model year. In its petition, FUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Outback vehicle line. FUSA stated that all Subaru Outback vehicles will be equipped with a passive, transponder-based electronic immobilizer device as standard equipment. FUSA stated that

the antitheft system and the immobilization features are designed and constructed within the vehicle's Controller Area Network electrical architecture. Major components of the antitheft device will include an electronic key, a passive immobilizer system, a key ring antenna and an engine control unit. System immobilization is automatically activated when the key is removed from the vehicle's ignition switch, or after 30 seconds if the ignition is simply moved to the off position and the key is not removed. The device will also have a visible and audible alarm, and panic mode feature. The alarm system will monitor door status and key identification. Unauthorized opening of a door will activate the alarm system causing sounding of the horn and flashing of the hazard lamps. FUSA's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

FUSA also provided information on the reliability and durability of its proposed device, conducting tests based on its own specified standards. FUSA provided a list of the tests it conducted. FUSA believes that its device is reliable and durable because the device complied with its own specific requirements for each test. Additionally, FUSA stated that the immobilization features are designed and constructed within the vehicle's overall Controller Area Network Electrical Architecture. Therefore, the antitheft system cannot be separated and controlled.

FUSA stated that it believes that historically, NHTSA has seen a decreasing theft rate trend when electronic immobilization has been added to alarm systems. FUSA stated that it presently has immobilizer systems on all of its product lines (Forester, Tribeca, Impreza, Legacy, and Outback models) and it believes the data shows immobilization has had a demonstrable effect in lowering its theft rates. FUSA also noted that recent state-by-state theft results from the National Insurance Crime Bureau reported that in only 3 of the 48 states listed in its results, did any Subaru vehicle appear in the top 10 list of stolen cars. Review of the theft rates published by the agency through MY/CY also revealed that, while there is some variation, the theft rates for Subaru vehicles have on average, remained below the median theft rate of 3.5826.

FUSA also provided a comparative table showing how its device is similar to other manufacturer's devices that have already been granted an exemption

by NHTSA. In its comparison, FUSA makes note of Federal Notices published by NHTSA in which manufacturers have stated that they have seen reductions in theft due to the immobilization systems being used. Specifically, FUSA notes claims by Ford Motor Company that its 1997 Mustangs with immobilizers saw a 70% reduction in theft compared to its 1995 Mustangs without immobilizers. FUSA also noted its reliance on theft rates published by the agency which showed that theft rates were lower for Jeep Grand Cherokee immobilizer-equipped vehicles (model year 1995 through 1998) compared to older parts-marked Jeep Grand Cherokee vehicles (model year 1990 and 1991). FUSA stated that it believes that these comparisons show that its device is no less effective than those installed on lines for which the agency has already granted full exemption from the parts-marking requirements. The agency agrees that the device is substantially similar to devices in other vehicles lines for which the agency has already granted exemptions.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that FUSA has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information FUSA provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full FUSA's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part

543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If FUSA decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if FUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 20, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-12479]

Dorel Juvenile Group [Cosco] (DJG); Notice of Appeal of Denials of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments on DJG appeal of denials of inconsequential noncompliance.

SUMMARY: This notice asks for public comments on DJG's appeal of NHTSA's denial of its petitions for two inconsequential noncompliances with the Federal safety standard for child restraint systems. This notice simply summarizes DJG's appeal—it does not represent NHTSA's judgment or findings on the appeal. All public comments will be considered along with the information in DJG's appeal and other relevant information as the agency makes its final decision on these petitions for inconsequential noncompliance.

DATES: Comments must be received by NHTSA on or before December 26, 2008.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>.

- Follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery or Courier:** U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

- **Fax:** 1-202-493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

SUPPLEMENTARY INFORMATION: Dorel Juvenile Group (DJG), of Columbus, Indiana, the parent company manufacturing Cosco brand child restraints, has appealed a decision by the National Highway Traffic Safety Administration that denied its two applications for a determination that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems" is

inconsequential to motor vehicle safety. This notice of receipt of DJG's appeal is published in accordance with NHTSA's regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Notice of receipt of the petitions for inconsequential noncompliance was published on July 30, 2002 and December 3, 2002 in the **Federal Register** (67 FR 49387 and 67 FR 72025). On July 18, 2008, NHTSA published a notice in the **Federal Register** denying DJG's petitions (73 FR 41397), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

Affected are a total of 3,957,826 child restraints representing 39 models produced from January 2000 through September 30, 2001 due to noncompliance with the post-abrasion tether webbing strength requirement and 54,400 child restraints representing 14 models produced from March 15, 2002 through August 1, 2002 due to noncompliance with the post-light exposure harness webbing strength requirement. The noncompliant tether webbing retained only 55 percent of its new webbing strength when subjected to the abrasion test and so failed to meet the 75 percent strength retention requirement of FMVSS No. 213. The noncompliant harness webbing retained only 37 percent of its new webbing strength when exposed to carbon arc light and so failed the 60 percent strength retention requirement in FMVSS No. 213.

Post-Abrasion Webbing Strength Petition, Denial, and Appeal Summary

In its original post-abrasion test strength retention petition, DJG asserted that the noncompliance is inconsequential to motor vehicle safety because its unabraded webbing strength as well as its post-abrasion webbing strength was sufficiently high and that its abraded strength was far higher than the anchorage strength requirement specified in FMVSS No. 225. In addition, DJG asserted that the abraded webbing strength test procedure was flawed because a minimum abraded breaking strength was not specified.

In its denial, NHTSA made the point that both the unabraded webbing strength and the degradation rate requirements are important from a safety perspective. NHTSA determined that the lack of sufficient breaking strength retention after abrasion signals the distinct probability that the webbing strength would be insufficient throughout a lifetime of use. The high