

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 19, 2011.

**Claude H. Harris,**

*Acting Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0141; Notice 2]

#### Mazda North American Operations, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of Petition for Decision of Inconsequential Noncompliance.

**SUMMARY:** Mazda North American Operations (MNAO),<sup>1</sup> on behalf of Mazda Motor Corporation of Hiroshima, Japan (Mazda), has determined the lens of the headlamps equipped on certain 2004 through 2009 Mazda RX-8 model passenger cars, manufactured from April 1, 2003, to May 29, 2009, and certain 2006 through 2008 MX-5 model passenger cars, built from May 17, 2005, to November 27, 2008, failed to meet the requirements of paragraph S7.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 *Lamps, Reflective Devices, and Associated Equipment*. Mazda has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated December 16, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Mazda has petitioned for an exemption from the notification and remedy requirements of 49 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 October 21, 2010 in the **Federal Register** (75 FR 65053). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to

<sup>1</sup> Mazda Motor Corporation of Hiroshima, Japan (Mazda) is the manufacturer of the subject vehicles and Mazda North American Operations (MNAO) is the importer of the vehicles as well as the registered agent for Mazda.

locate docket number "NHTSA-2010-0141."

For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-7002.

Mazda estimates approximately 123,000 2004 through 2009 Mazda RX-8 model passenger cars, manufactured from April 1, 2003 to May 29, 2009, and 2006 through 2008 MX-5 model passenger cars, built from May 17, 2005 to November 27, 2008, are affected. All of the affected vehicles were built at Mazda's plant in Hiroshima Japan.

Mazda states that the noncompliance is that the lenses of the headlamps on the affected vehicles are not marked with the name or trademark of the manufacturer of the headlamp, the manufacturer of the vehicle, or the importer of the vehicle.

Mazda was notified by its headlamp manufacturer, Koito Manufacturing Company, Ltd. (Koito) of the apparent noncompliance. Mazda then concluded that the vehicles equipped with the affected headlamps failed to comply with paragraph S7.2(b) of FMVSS No. 108.

Mazda stated the following reasons why they believe the noncompliance is inconsequential to vehicle safety and does not present a risk to motor vehicle safety:

The affected headlamps fulfill all the relevant performance requirements of FMVSS No. 108, except that trade name and/or trademark of the manufacturer or importer is missing on the lens. However, the affected headlamps have the trademark of the headlamp manufacturer on the rim of the headlamp housing. Thus, Mazda contends that this marking on the rim is visible with the vehicle's front hood open and states that it believes that the rim marking could assist the easy identification of the headlamp manufacturer by the users of the vehicles.

Mazda has not received any complaints or claims related to the noncompliance nor is it aware of any known reports of accidents or injuries attributed to the noncompliance.

In summary, Mazda states that it believes the noncompliance is inconsequential to motor vehicle safety because the affected headlamps fulfill all other relevant requirements of FMVSS No. 108.

The company also states that it has taken steps to correct the noncompliance in future production.

Supported by the above stated reasons, Mazda believes that the subject noncompliance 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.

**NHTSA Decision:** NHTSA agrees with Mazda that the performance of the headlamps is not affected by the subject noncompliance. NHTSA also agrees that in this unique case that the marking of the trademark on the rim of the headlamp housing, rather than on the headlamp lens itself as required by the rule, fulfills the same function as the requirement because a vehicle user can readily determine the manufacturer of the headlamp.

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 the vehicles<sup>2</sup> that Mazda no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Mazda has met its burden of persuasion that the subject FMVSS No. 108 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Mazda's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.)

Issued on: October 19, 2011.

**Claude H. Harris,**

*Director, Acting Associate Administrator for Enforcement.*

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<sup>2</sup> Mazda's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Mazda as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected vehicles. However, a decision on this petition cannot relieve 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 Mazda notified them that the subject noncompliance existed.