

Rockland and Westchester Counties, New York. Those actions grant permits and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 7, 2013. If this date falls on a Saturday, Sunday, or legal holiday, parties are advised to file their claim no later than the business day preceding this date. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Jonathan D. McDade, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207, Telephone (518) 431-4127; or Peter Sanderson, Project Director, New York State Thruway Authority, 555 White Plains Road, Tarrytown New York, 10591, Telephone (914) 524-5440.

**SUPPLEMENTARY INFORMATION:** On October 31, 2012, the FHWA published a "Notice of Final Federal Agency Actions" on the Tappan Zee Hudson River Crossing (New NY Bridge) Project in New York, in the **Federal Register** at FR Doc. 2012-26799. Tappan Zee Hudson River Crossing (New NY Bridge) Project is located on the Hudson River between the Village of South Nyack in Rockland County on the west and the Village of Tarrytown in Westchester County on the east. The bridge carries Interstate 87 (New York State Thruway) and Interstate 287. The Tappan Zee Hudson River (New NY Bridge) Project involves the replacement of the existing bridge with two new structures (one each for eastbound and westbound traffic), to the north of its existing location. Notice is hereby given that subsequent to the earlier FHWA notice, the USACE and USCG have taken final agency actions by issuing permits and approvals for the Tappan Zee Hudson River Crossing (New NY Bridge) Project in the State of New York. The actions by the USACE and the USCG, and the laws under which such actions were taken, are described in the permits and approvals received by each respective agency. The USACE issued their permit on April 25, 2013 (NAN-2012-00090), and the USCG issued their permit on April 13, 2013 (3-13-1). The documents are available by contacting the FHWA, the NYSDOT, or the NYSTA at the addresses provided above. The permits can be viewed and downloaded from

the project Web site at [www.newnybridge.com](http://www.newnybridge.com).

This notice applies to USACE and USCG agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351];
2. *Bridges:* General Bridge Act of 1946, 33 U.S.C. 525-533.
3. *Air:* Clean Air Act Section 176 (c), 42 U.S.C. 7506(c).
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 et seq.].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251-1377 (Section 319, 401, 404); Rivers and Harbors Act of 1899, 33 U.S.C. 401-406; Coastal Zone Management Act, 16 U.S.C. 1451-1465; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)-300(j)(6); 33 U.S.C. 401-406; Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.
7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: May 2, 2013.

**Jonathan D. McDade,**  
Division Administrator, Albany, NY.  
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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0041; Notice 2]

#### Fuji Heavy Industries USA, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of petition.

**SUMMARY:** Fuji Heavy Industries USA, Inc. (Fuji) has determined that certain model year 2010 Subaru Legacy passenger car and Outback multipurpose Passenger Cars, manufactured from the start of their 2010 model year production through June 30, 2009, did not comply with paragraph S19.2.2 of Federal Motor Vehicle Safety Standard FMVSS No. 208, *Occupant Crash Protection*. Fuji has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, dated July 16, 2009.

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 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Fuji's petition was published, with a 30-day public comment period, on April 19, 2010, in the **Federal Register** (75 FR 20423). Comments were received from Advocates for Highway & Auto Safety. To view the petition, the comments, 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 locate docket number "NHTSA-2010-0041."

For further information on this decision, contact Mr. Lawrence Valvo, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5359.

*Vehicles Involved:* Affected are approximately 3,405 model year 2010 Subaru Legacy passenger car and Outback multipurpose Passenger Cars, manufactured from the start of their 2010 model year production through June 30, 2009. Fuji also estimated that 0.8% of those 3,405 have the subject noncompliance.

*Summary of Fuji's Analysis and Arguments:* Fuji explained that the noncompliance is that front passenger air bag suppression status telltale lamp did not illuminate as required by paragraph S19.2.2 of FMVSS No. 208.

Fuji expressed the belief that the cause of the noncompliance is an open circuit in the power supply to the lamp. The Company said that “installation of the wiring harness to the multifunction display and passenger air bag suppression status telltale was routed at the instrument panel sub-supplier such that tension was put on the wiring harness connector” which can cause it to come loose. To correct this problem, the Company has re-routed the wiring harness to “push” rather than “pull” on the wiring harness connector in vehicles manufactured after July 10, 2009.

The noncompliance was discovered on July 1, 2009, at the Company’s Subaru Indiana plant during a quality inspection process that revealed a number of multi-function displays that did not illuminate and further inspection revealed that this also affected the front passenger air bag suppression status telltale.<sup>1</sup>

On July 10, 2009, Fuji completed the inspection of 5,400 of its vehicles awaiting shipment and corrected the noncompliance of 45 vehicles by “pushing tight” the harness connector. In addition, Subaru of America, Inc. notified its U.S. dealers and distributors on July 16, 2009, and included complete repair instructions for vehicles in their inventory which had not been inspected or repaired prior to shipment from the Company.

Fuji believes that the noncompliance is inconsequential to motor vehicle safety. Fuji argues that:

Based on the inspection of approximately 5,400 vehicles still at Subaru Automotive Indiana and a finding that the wiring harness connector to the front passenger air bag suppression status telltale or other multi-function display had been loose on 45 vehicles, Subaru has determined that the expected occurrence rate is about 0.8% [less than one percent].

[Subaru] . . . has determined that 3,405 vehicles were shipped to dealers prior to the discovery of this problem. Using the above frequency rate, . . . [the Company] expect that only about 27 vehicles will have a noncompliance with FMVSS 208.

All other aspects of the front passenger advanced air bag suppression system will continue to function properly.

Since Subaru has both an OFF and ON indication in the suppression telltale, a complete absence of illumination is a warning that the lamp is not functioning. Since power to the telltale is also power to the multi-function display, the owner will have a clear indication to quickly report a problem to a Subaru dealer.

Vibration bench testing in Japan by the [Company’s] supplier revealed that no disengagement of a wiring harness connector that originally worked properly will occur during the use of vehicle.

Dealers will receive a TSB with repair instructions on July 16, 2009 for any vehicles in their inventory, which had not been inspected or repaired prior to shipment to dealers or for vehicles where the owner reports a telltale/multi-function display problem. Dealers will also be instructed to check both the telltale and display at the first scheduled service (at 3,750 or 7,000 miles depending on variant).

In summary, Fuji/Subaru states that it believes the noncompliance is inconsequential to motor vehicle safety because the expected occurrence rate for the noncompliance is less than one percent (about 0.8%); a complete absence of illumination on the telltale gives a clear indication to the vehicle owner to quickly report a problem to the Subaru dealer; the Company’s vibration testing supports the conclusion that this noncompliance is not likely to later occur in vehicles that were produced without the noncompliance; and Dealers will also be instructed to check both the telltale and display at the first scheduled service (at 3,750 or 7,000 miles depending on variant) and will receive a technical service bulletin (TSB) with repair instructions for any vehicles in their inventory, which had not been inspected or repaired prior to shipment to dealers or for vehicles where the owner reports a telltale/multi-function display problem.

*Discussion:* NHTSA has reviewed and accepts Fuji’s analyses that the noncompliance is inconsequential to motor vehicle safety. Fuji has provided documentation that the front passenger air bag suppression status telltale lamp does comply with all other safety performance requirements of the standard, except the illumination. NHTSA has reviewed all incoming complaints on the subject vehicles and found no complaints matching the subject noncompliance.

*NHTSA’s Response to Comments:* NHTSA received a comment from Advocates for Highway & Auto Safety (Advocates) that recommended conditions under which to grant or deny concerning Fuji’s petition.

Advocates expressed concern that the inability of the air bag telltale to accurately communicate the status of the front passenger air bag in the subject vehicles may mislead passengers to behave in a manner that is in conflict with the actual air bag status, thereby posing a significant danger to the passenger in the event of a crash. It provided the following examples as

scenarios which, they claim, may place a passenger at risk.

1. “The lack of a lighted indicator may be mistakenly interpreted to mean that the air bag itself has malfunctioned, or that only the air bag suppression feature is not working and that it is safe for an adult to use the front passenger seating position.”

2. “[T]he lack of a lighted “ON” symbol on the telltale may be taken to mean that the air bag suppression is not activated and that it would be safe to place a rear facing infant restraint or a young child in the front passenger seat falsely assuming that the air bag would not deploy in the event of a crash.

Advocates believes that Subaru should be able to document the number of front passenger air bag telltales that were serviced, found to be malfunctioning, and were repaired out of the 3,405 affected Subaru Legacys and Outbacks that were shipped to dealers during the 10 month period before Subaru identified the problem since owners would have had ample time to notice a malfunction of the telltale and return their vehicle to the dealer for repair. Advocates recommended that if the repair data indicate that many or most of the noncompliant vehicles (27 of 3,405 potentially affected, as estimated by Subaru) have been repaired, that NHTSA should grant the petition, assuming that the agency agrees with Subaru’s 0.8 percent noncompliance rate. Furthermore, it recommended that if the agency believes Subaru’s 0.8 percent noncompliance rate is not reliable, or if many or most of the estimated 27 noncompliant vehicles have not been repaired, then the agency should deny the petition.

Advocates stated that “NHTSA has on a number of occasions stated that noncompliance in even a single vehicle is significant, and therefore not inconsequential, if the failure to comply poses a threat to occupant safety” and “NHTSA has pointed out that small numbers or low percentages of noncompliant vehicles do not provide the basis for granting of a petition for inconsequential noncompliance.” Though these assertions are correct, the agency has decided to grant Fuji’s request for inconsequentiality for reasons other than the low number of vehicle that Subaru had calculated to be noncompliant. These reasons are as follows:

- Fuji issued a technical service bulletin (TSB) to its dealerships on July 16, 2009, that described the repair procedure for vehicles with inoperative passenger air bag status telltale lamps. This led to the repair of 28 vehicles

<sup>1</sup> The 2010 Subaru Legacy and Outback models’ telltale has both an air bag suppression status indicator for ON and OFF. Thus, either ON or OFF on the telltale should be illuminated whenever the ignition is on.

which agrees with Fuji's initial estimate of 27 vehicles.

- As of April 10, 2013, a total of 144 consumer complaints have been received by NHTSA for the 2010 Subaru Legacy and Outback models. None of these complaints are related to the problem described by Subaru in their petition for inconsequentiality.

- As described in Fuji's petition, power is supplied to the passenger air bag status telltale lamp and the multifunction display with the same wiring harness connector. If the telltale does not receive power due to an open circuit from a loose connector, the entire multi-function display will also not illuminate and will be inoperable. Fuji believes this condition will be apparent to the consumer and would lead them to have the vehicle serviced. There were no consumer complaints reported to NHTSA related to this problem.

- Fuji explained that, based upon their supplier's vibration testing, the fault would not occur on a vehicle that originally had a functioning passenger air bag status telltale lamp and multifunction display. There were no consumer complaints reported to NHTSA related to loss of illumination of the telltale lamp and/or multifunction display.

Given the absence any related consumer complaints to date, the conspicuous nature of the problem on any vehicles with the fault, and Fuji's action to put in place a procedure to repair the few that did, the agency does not believe there is a significant risk to the motoring public in this specific case.

*NHTSA Decision:* In consideration of the foregoing, NHTSA has decided that Fuji met its burden of persuasion that the FMVSS No. 208 noncompliance with respect to the front passenger air bag suppression status telltale lamp described in Fuji's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Fuji's petition is hereby granted and the Fuji 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 the 3,405 noncompliant vehicles that Fuji no longer controlled at the time that it

determined that a noncompliance existed in the subject vehicles.

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

Issued On: May 6, 2013.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0142; Notice 2]

#### Pirelli Tire LLC, Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Notice of Petition Grant.

**SUMMARY:** Pirelli Tire LLC (Pirelli), has determined that approximately 30,881 Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 2, 2007, and December 12, 2009, do not fully comply with the tire labeling requirements of paragraphs S5.5 and S7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. On March 12, 2010, Pirelli filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Pirelli 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. Specifically, Pirelli submitted the original petition dated March 12, 2010, and a supplement to the original petition dated April 12, 2010.

Notice of receipt of Pirelli's petition was published, with a 30-day public comment period, on November 9, 2010, in the **Federal Register** (75 FR 68855). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2010-0142."

*Contact Information:* For further information on this decision, contact

Mr. Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-0661, facsimile (202) 366-7002.

*Tires Involved:* Affected are approximately 30,881 Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 2, 2007, and December 12, 2009,—in the tire sizes indicated in the following list—have the subject noncompliance:

P245/45ZR17 95W, Pzero Nero M+S  
 P235/45ZR17 94W, Pzero Nero M+S  
 P235/40ZR18 91W, Pzero Nero M+S  
 P215/35ZR18 84W, Pzero Nero M+S  
 P215/35ZR19 85W, Pzero Nero M+S  
 265/35ZR22 102W Extra Load, Scorpion Zero Asimmetrico  
 295/30ZR22 103W Extra Load, Scorpion Zero Asimmetrico  
 305/35ZR23 111W Extra Load, Scorpion Zero Asimmetrico  
 265/45ZR20 108W Extra Load, Scorpion Zero Asimmetrico

*Summary of Pirelli's Analysis and Arguments:* Pirelli described the noncompliance as the absence of either the complete or partial tire identification number (TIN) on the inner tire sidewall as required by paragraphs S5.5 and S7.3 of FMVSS No. 139.

Pirelli argues that because all of the affected tires have an asymmetric tread pattern that can only be correctly installed with the intended outer sidewall facing the outside of the vehicle. Pirelli also points out that asymmetric tires represent a very small percentage of the overall tire market.

Pirelli explained that all of the affected tires are stenciled on the intended outboard sidewall with the lettering OUTER in four different languages (English, French, German and Italian).

Pirelli further explained that the non-compliance was identified on February 26, 2010, during an inspection of mold branding at the plant that produced the subject tires. Pirelli then examined related production records in order to accurately identify the specific noncompliant tires. All molds are being modified or have been modified to ensure that the appropriate TIN information is contained on both sidewalls for future production.

Pirelli provided the following basis of why they believe the subject noncompliance is inconsequential to motor vehicle safety:

While the subject tires are noncompliant with paragraph S5.5 of FMVSS No. 139 for labeling, the noncompliance has an inconsequential effect on tire performance and motor vehicle safety because all of the affected tires meet or exceed all of the