

Regarding the malfunction telltale that does not initially flash for 60–90 seconds, MBUSA has provided the required visual telltale, a combined telltale which is the plan view of the vehicle, although one that does not flash before it remains continuously illuminated, but instead adds several *additional* text messages that clearly communicate a system malfunction and continue to be displayed until the malfunction has been corrected. NHTSA believes that because the subject vehicles contain this additional information, the failure of the vehicle's malfunction telltale to initially flash has an inconsequential impact on safety.

MBUSA's second noncompliance involves the scenario where all four wheel sensors are simultaneously malfunctioning or missing. Under this scenario the subject vehicle's TPMS will initially display a separate dedicated malfunction warning, but will not automatically display the warning on subsequent ignition cycles as required by FMVSS No. 138 S4.4(b)(3). MBUSA judges the noncompliance inconsequential to motor vehicle safety on the basis that, although the situation presents a technical noncompliance with FMVSS 138 No. S4.4, there is no negative impact on safety, because the circumstances causing the non-compliance can only exist if owners deliberately decide to install replacement wheels without TPMS sensors. MBUSA asserts there is no reason to assume that replacement wheels will not have TPMS sensors given the normal experiences of S-Class owners and existing precautions. MBUSA also points out that the absence of a "significant safety risk" substantiates exemption from notification and remedy requirements as NHTSA explained in the Volkswagen's petition for inconsequential treatment of a noncompliance with the TPMS malfunction warning requirements of FMVSS No. 138 S4.4(c)(2) (76 FR 30240, May 24, 2010).

The intent of FMVSS No. 138 is stated in paragraph S1 Purpose and scope: This standard specifies performance requirements for TPMSs to warn drivers of significant under-inflation of tires and the resulting safety problems. A malfunction will reduce the effectiveness of the TPMS or, in some scenarios, can render it inoperative. As such, the lack of a malfunction indicator to warn the driver of a malfunction until the malfunction has been resolved is one of the critical requirements of the standard to address the safety concerns of an inoperative TPMS. MBUSA contends that there is no safety risk but fails to acknowledge that a vehicle

owner in some cases may not be aware that the wheel sensors have been removed. For example, if the ignition were cycled by a second party after the sensors were removed and prior to the vehicle being returned to the owner, the owner may never see the first and only malfunction indication. The potential risk is that the vehicle can then be operated with a TPMS that appears to be functioning properly. It also is possible after long periods of time for owners to forget that the wheel sensors are missing or even for a subsequent owner to purchase one of the 252 vehicles without knowing the sensors are missing. When a low inflation pressure condition occurs, these owners would not be warned, and this condition could lead to a vehicle crash.

MBUSA also explained that replacement wheels will always have TPMS sensors included (either the original ones transferred or new ones) and that statements in the MB S-Class Operator's Manual or optional OEM tire and wheel packages can address a variety of use conditions which will discourage the use of unapproved tires and rims and encourage the use of wheel sensors. Despite these factors, NHTSA believes the possibility still remains for owners to install wheel packages not having TPMS sensors. For example, an authorized dealership may not be in close proximity to an owner or an owner may want custom wheels or upsized wheel options that are not available through MBUSA. In these instances, there would be a safety risk for these owners.

Finally, MBUSA believes that owner's manual warnings or its marketing of optional equipment are sufficient enough to prevent owners from entering into misuse situations. However, owner's manuals may be ignored or not read by vehicle owners and there is no guarantee that a manual will remain with the vehicle throughout its entire useful life. Furthermore, owners may also choose not to buy MBUSA optional tire and wheel packages for economic reasons (i.e., these packages may cost considerably more). Therefore, given these factors, NHTSA concludes MBUSA's claim that the noncompliance has no significant safety risk is unsubstantiated.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that MBUSA has not met its burden of persuasion that the FMVSS No. 138 noncompliance identified in its Part 573 Report and Petition is inconsequential to motor vehicle safety. Accordingly, MBUSA's petition is hereby denied. For the remaining vehicles not remedied, MBUSA must

notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide remedy in accordance with 49 U.S.C. 30120.

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

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0145; Notice 2]

KBC America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of Petition.

SUMMARY: KBC America, Inc. "KBCA" has determined that certain motorcycle helmets manufactured by KBC Corporation for Harley-Davidson as Harley-Davidson brand helmets do not fully comply with paragraph S5.6 of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. KBCA has filed an appropriate report dated December 12, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Claudia Covell, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5293, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. KBCA's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), KBCA submitted a petition 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 KBCA's petition was published, with a 30-day public comment period, on June 6, 2014 in the **Federal Register** (79 FR 32817). One comment was received. In that comment, Harley-Davidson Motor Company reiterated KBCA's points supporting their belief that the noncompliance is inconsequential to

motor vehicle safety. 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 locate docket number "NHTSA-2013-0145."

II. Helmets Involved: Affected are approximately 566 Jet model helmets that KBC Corporation manufactured in December 2012 for Harley Davidson, who in turn marketed these helmets under its own brand by the model name "Black Label Retro 3/4."

III. Noncompliance: KBCA explains that the subject helmets fail to fully comply with the requirements of S5.6.1(e) of FMVSS No. 218 that was in effect on the date of manufacture of these helmets because the goggle strap holders on the rear of the helmets can obscure the DOT certification label from view.

IV. Rule Text: Paragraph S5.6.1(e) of FMVSS No. 218 requires in pertinent part:

S5.6.1 Each helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or any other permanent part, with the following: . . .

(e) The symbol DOT, constituting the manufacturer's certification that the helmet conforms to the applicable Federal motor vehicle safety standards. This symbol shall appear on the outer surface, in a color that contrasts with the background, in letters at least 3/8 inch (1 cm) high, centered laterally with the horizontal centerline of the symbol located a minimum of 1 1/8 inches (2.9 cm) and a maximum of 1 3/8 inches (3.5 cm) from the bottom edge of the posterior portion of the helmet.

V. Summary of KBCA's Analyses: KBCA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. KBCA believes that the subject helmets comply with the performance requirements of FMVSS No. 218 and that neither the presence of the strap holder nor the fact that it can obscure the DOT label affects the helmet's ability to protect the wearer in the event of a crash.

2. KBCA states that other than the subject noncompliance the DOT label on the subject helmets comply with the requirements of FMVSS No. 218.

3. KBCA also believes that while the DOT label is not visible when the strap holder is fastened, a user can easily view the label by unfastening the strap holder to confirm that the helmet has been certified and thus complies with the requirements set forth in FMVSS No. 218.

4. KBCA further believes that if their company were required to do a recall of the subject helmets, it would be likely that a very low percentage of helmets would be

returned, if any, and that in doing so would leave the owners without a helmet while the subject helmets are retrofitted with a new label.

5. KBCA expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance regarding other products that have incorrect or missing label information required by other FMVSS's.

KBCA has additionally informed NHTSA that it no longer manufactures the subject helmets.

In summation, KBCA believes that the described noncompliance of the subject helmets is inconsequential to motor vehicle safety, and that its petition, to exempt KBCA 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.

VI. NHTSA'S DECISION:

NHTSA's Analysis of KBCA's Petition:

Because the goggle strap on this helmet can cover the certification label and prevents it from being easily read, KBCA acknowledges and NHTSA agrees that the subject helmets do not comply with the following language of Paragraph S5.6.1(e) of FMVSS No. 218:

S5.6.1 Each helmet shall be labeled . . . in a manner such that the label(s) can be read easily . . . with the following: . . .

(e) The symbol DOT . . . This symbol shall appear on the outer surface . . .

The certification label indicates that the manufacturer has certified the helmet to meet or exceed all requirements of FMVSS No. 218. FMVSS No. 218 requires the certification label be placed in a specified location so that it is readily visible. Being visible to consumers is important so that consumers can ensure motorcycle helmets they purchase are certified to the standard. In addition, law enforcement personnel need to be able to easily read certification labels to enforce motorcycle helmet laws. This point was recently discussed in a Notice of Proposed Rulemaking¹ issued by NHTSA.

KBCA raises several points in support of its request to be exempt from the notification and remedy requirements for this helmet. KBCA believes that a very low percentage of helmets would be returned if a recall were conducted. In addition, they believe conducting a recall would leave owners without a helmet while the subject helmets are retrofitted with a new label. NHTSA notes that anticipating a low recall completion rate is no justification for not conducting a notification and

remedy campaign. Furthermore, NHTSA has worked with many manufacturers who have devised strategies to minimize customers' inconvenience while having their recalled products remedied.

KBCA states and NHTSA agrees that the presence of the strap holder which obscures the DOT label does not affect the helmet's ability to protect the wearer in the event of a crash if that helmet meets or exceeds the performance requirements of FMVSS No. 218. In this instance, KBCA has certified this helmet and states in their petition that this helmet complies with all aspects of the standard other than the aspect for which it is requesting relief.

KBCA points out that when the goggle strap holder is unfastened, the helmet certification label can be read easily. Consumers, who might be asked by law enforcement personnel about the certification of this helmet, would be able to unfasten the goggle strap holder to reveal the certification label which conforms in content and location to the requirements of FMVSS No. 218.

KBCA expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance regarding other products that have incorrect or missing label information required by other FMVSS's. NHTSA responds that the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts of each case.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that KBCA has met its burden of persuasion and that in this instance, the subject FMVSS No. 218 noncompliance is inconsequential to motor vehicle safety. Accordingly, KBCA's petition is hereby granted and KBCA is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

However, a recent publication of changes to FMVSS No. 218 became effective on May 13, 2013 and allowed helmets manufactured on or after May 13, 2013 to display the certification label in a wider range of locations and therefore accommodate a variety of helmet designs. Along with the recently published changes came an emphasis on the importance of label visibility to law enforcement. For these reasons and others, NHTSA may not view future, similar requests for inconsequential non-compliance as inconsequential to safety.

NHTSA also notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of

¹ 73 FR 57297 published October 2, 2008.

inconsequentiality allows 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 subject helmets that KBCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not 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 helmets under their control after KBCA notified them that the subject noncompliance existed.

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

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0078; Notice 1]

AGC Flat Glass North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of Petition.

SUMMARY: AGC Flat Glass North America, Inc., dba AGC Automotive Americas Co. (AGC) has determined that certain glazing that it manufactured as replacement equipment for model year 2003-2008 Toyota Matrix vehicles, do not fully comply with paragraphs S5.1 and S5.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. AGC has filed an appropriate report dated May 23, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

DATES: The closing date for comments on the petition is September 15, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Deliver:** Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at http://www.regulations.gov by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. AGC's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), AGC submitted a petition 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.

This notice of receipt of AGC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Replacement Equipment Involved: Affected are approximately 1,435 replacement back windows (backlites) for model year 2003-2008 Toyota Matrix vehicles that AGC manufactured on February 28, 2012. The subject glass is labeled "AGC Automotive, DOT-376 M2H5 AS2, 30B, Temperlite."

In the associated Defect and Noncompliance Report that AGC submitted to NHTSA pursuant to 49 CFR Part 573, AGC indicated that, as of May 23, 2014, approximately 941 of the affected backlites have already been removed from the stream of commerce.

III. Noncompliance: AGC explains that the noncompliance is that the affected glazing does not fully comply with Paragraph S5.1 of FMVSS No. 205 because some portions of the glass located in the wing area of the backlites may not fragment into pieces that are small enough to meet the standard set forth in ANSI Z26.1-1996 (fragment must weigh less than 4.25 g).

IV. Rule Text: Paragraph S5.1 of FMVSS No. 205 incorporates by reference ANSI Z26.1-1996 and other industry standards. Paragraph S5.7 (Fracture Test) of ANSI Z26.1-1996 requires that no individual fragment free of cracks and obtained within 3 minutes subsequent to test shall weigh more than 4.25 g (0.15 oz.).

V. Summary of AGC's Analyses: AGC stated its belief that the noncompliance exhibited by some glass fragments breaking into pieces that weigh more than 4.25 g does not create a risk to motor vehicle safety for the following reasons:

1. AGC testing demonstrates that the noncompliant fragments have no adverse impact on the characteristics of the glass performing as tempered glass.

2. The design of the 2003-2008 Toyota Matrix leaves it unlikely to cause any safety risks to any vehicle occupant if the ARG backlite breaks.

3. AGC's destructive testing confirmed all noncompliant fragments do not impact the safety of the vehicle or its occupants.

AGC stated that while it recognizes that its tests were static and that the actual results in a crash might be somewhat different if a collision broke this glass, AGC stated its belief that in a rear or partial rear collision, if the glass breaks, most of that glass will fall and remain in the general area of the breakage since the remainder of the vehicle will be propelled forward in the