

business “culture.” There are other States (Idaho, Michigan, North Dakota, Ohio, and Wyoming) that have established training plans that TxDOT could draw upon as examples. These examples may benefit TxDOT and TxDOT should consider evaluating components of these State’s training plans in their future annual updates of their own training plan.

#### Observation #14

The team found evidence that some aspects of training tasks were either unattended and/or appear to have been forgotten based on the training plan information provided to the team. The TxDOT has a section of their Web site devoted to training, that the team learned from interviews, is out of date. Some courses are no longer taught and several classes are in need of updating, all of which provided for training of non-TxDOT staff (*i.e.* local governments and consultants). The team urges TxDOT to assess whether the proposed training approach for non-TxDOT staff (relying heavily upon the annual environmental conference) is adequate and responsive enough to address a need to quickly disseminate newly developed procedures and policy.

#### Observation #15

The TxDOT training plan is currently silent on whether certain subjects and topics are mandatory or required for certain job responsibilities. The TxDOT staff told the team they would be developing a “progressive training plan” that will identify the range of training necessary for each job classification. District Environmental Coordinators, and particularly District managers who allocated training resources, indicated in interviews that they needed to know which training was required for various TxDOT job categories, to set budgeting priorities. The team recognized the important connection between getting District staff trained and a clear statement whether training was required for a certain job. Due to the connection potentially being tenuous, this may explain the inconsistency the team heard in interview responses to questions on training commitments from District managers. The team suggests that the progressive training plan clearly identify training required for each job classification.

#### Observation #16

From the perspective of the MOU, training planning and implementation is a partnership effort amongst TxDOT, FHWA, and other agencies. Training should be an ongoing task that follows

an up-to-date and mid-to-long range training plan. The current training plan includes mostly TxDOT self-identified training needs and addresses those needs. The MOU (Part 12.2) allows for 3 months after the MOU is executed, to develop a training plan in consultation with FHWA and other agencies. The TxDOT has committed in the MOU to consider the recommendations of agencies in determining training needs, and to determine with FHWA, the required training in the training plan MOU (Part 12.2). The TxDOT considered and will address the specific comments from the U.S. Army Corps of Engineers in the current training plan. However, the team learned through interviews that individuals responsible for training planning were unaware of the coordination between TxDOT subject matter experts and other agencies related to training. It may be useful for the TxDOT training coordinator to be fully involved and aware of the range of coordination other TxDOT staff performs so that the training plan benefits from this coordination.

#### Finalization of Report

The FHWA received no comments during the 30-day comment period for the draft audit report. The FHWA has finalized the draft Audit #1 report previously published in the **Federal Register** without substantive changes.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0111]

#### Notice of Buy America Waiver

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

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** This notice provides NHTSA’s finding with respect to a request to waive the requirements of Buy America from the North Carolina Governor’s Highway Safety Program (GHSP). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of a Nikon prismless total station using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

**DATES:** The effective date of this waiver is December 4, 2015. Written comments

regarding this notice may be submitted to NHTSA and must be received on or before: December 4, 2015.

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

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

- **Fax:** Written comments may be faxed to (202) 493–2251.

- **Internet:** To submit comments electronically, go to the Federal regulations Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Instructions:** All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202–366–9324.

**FOR FURTHER INFORMATION CONTACT:** For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This notice provides NHTSA’s finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for North Carolina’s GHSP to purchase a Nikon Nivo 5M Plus and its accessories for \$8,995 using grant funds authorized under 23 U.S.C. 402. Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, and unsafe driving behavior. 23 U.S.C. 402(a). Section 402 funds are also available to state programs that encourage the proper use of occupant protection devices and improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. *Id.*

Buy America provides that NHTSA “shall not obligate any funds authorized

to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. 313(b).

Recently, NHTSA published its finding that a public interest waiver of the Buy America requirements is appropriate for a manufactured product whose purchase price is \$5,000 or less, excluding a motor vehicle, when such product is purchased using Federal grant funds administered under Chapter 4 of Title 23 of the United States Code. See 80 FR 37359 (June 30, 2015). Under the public interest waiver, therefore, states are no longer required to submit a waiver of Buy America to NHTSA for items costing \$5,000 or less, except for motor vehicles, when they purchase the item with Federal grant funds.

In this instance, the North Carolina’s GHSP seeks a waiver to purchase one (1) Nikon Nivo 5M Plus Reflectorless Total Station equipment<sup>1</sup> for its subgrantee, the Raleigh Police Department, using Federal grant funds, at a cost of \$8,995.<sup>2</sup> A total station is an electronic/optical instrument used in modern surveying and accident reconstruction. Specifically, a total station is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. According to North Carolina’s GHSP, the total station provides law enforcement with the equipment necessary to provide accurate and detailed crash reconstruction to aid in improving highway safety and for use with the enforcement of traffic safety laws. North Carolina’s GHSP states that the total

station reduces the time officers need to stand in the roadway with a prism to mark evidence at crash scenes. In addition, the State notes that, with a total station, evidence can be plotted from the side of the road after a roadway has been opened to traffic.

In support of its waiver request, North Carolina’s GHSP states that there are no total station models that are manufactured or assembled in the United States. The state contacted total station equipment manufacturers to learn of the origin of their equipment. While several domestic corporations offer total station equipment for sale, North Carolina states its research revealed that all total stations are manufactured overseas. It discovered that CT Berger (China), Leica (Switzerland) Nikon (Japan), Spectra Precision (Japan), Northwest Instruments (China), Topcon (Japan), and Trimble (Sweden) total station equipment are all foreign made.

NHTSA agrees that the total stations advance the purpose of section 402 to improve law enforcement services in motor vehicle accident prevention and post-accident reconstruction and enforcement. A total station is an on-scene reconstruction tool that assists in the determination of the cause of the crash and can support crash investigations. It is an electronic/optical instrument that specializes in surveying with tools to provide precise measurements for diagramming crash scenes, including a laser range finder and a computer to assist law enforcement to determine post-accident reconstruction. The total station system is designed to gather evidence of the events leading up to, during and following a crash. These tools are used to gather evidence to determine such facts as minimum speed at the time of a crash, the critical speed of a roadway curve, the distance a vehicle may have traveled when out of control and other factors that involve a crash investigation. In some instances, the facts collected through the use of a total station are used to form a basis of a criminal charge or evidence in a criminal prosecution.

NHTSA conducted similar assessments<sup>3</sup> to those conducted by North Carolina’s GHSP. NHTSA was unable to locate domestic manufacturers of total stations with the specifications that North Carolina’s GHSP required. In

addition to the manufacturers researched by North Carolina’s GHSP, and confirmed by the agency’s research, NHTSA identified the following total station manufacturers and their production locations: Hi-Target Instrument Surveying Co. Ltd. (China); geo-Fennel GmbH (Germany); Hilti (Liechtenstein); North Surveying (Spain); South Precision Instrument (China); Ruide Surveying Instrument Co. (China); Pentax (Japan/China); and Topcon (Japan, China and Thailand). Based upon NHTSA’s market analysis, it is unaware of any total station equipment that is manufactured domestically. Since a total station is unavailable from a domestic manufacturer and the equipment would assist in post-accident reconstruction and enforcement to advance the purpose of 23 U.S.C. 402, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to North Carolina’s GHSP in order to purchase the Nikon Nivo 5M Plus Reflectorless Total Station equipment. This waiver applies to North Carolina and all other states seeking to use section 402 funds to purchase Nikon Nivo 5m Plus Reflectorless total stations for the purposes mentioned herein. This waiver is effective through fiscal year 2016 and expires at the conclusion of that fiscal year (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the Nikon Nivo 5m Plus Reflectorless total station.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns additional relevant information regarding its decision to grant the North Carolina’s GHSP waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

<sup>1</sup> The Nikon Nivo 5M Plus Reflectorless total station has integrated Bluetooth technology, and includes battery packs, a dual charger, lens cap, CD manual, hard carrying case, tripod, prism kit, prism pole, prism pole bag, strobe prism with tilting mount, carrying bag and data cable.

<sup>2</sup> As part of its waiver request, GHSP submitted a sales quote for the Nikon total station that included seven (7) additional items costing less than \$5,000. Because these additional items are under the \$5,000 threshold of NHTSA’s public interest waiver, NHTSA did not conduct a market analysis for these items.

<sup>3</sup> NHTSA conducted internet searches and reviewed several Web sites that catalog domestic made products ([www.usaonly.us](http://www.usaonly.us); [www.americansworking.com](http://www.americansworking.com); [www.madeinamericaforever.com](http://www.madeinamericaforever.com); and [www.madeinusa.org](http://www.madeinusa.org)) to locate domestically made Total Station equipment.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Paul A. Hemmersbaugh,  
Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0066; Notice 2]

#### Mitsubishi Motors North 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:** Mitsubishi Motors North America, Inc. (MMNA), has determined that certain model year (MY) 2015 Mitsubishi Outlander Sport multipurpose passenger vehicles (MPV) do not fully comply with paragraph S6 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. MMNA has filed an appropriate report dated June 4, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Luis Figueroa, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5298, facsimile (202) 366–3081.

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MMNA 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 the petition was published, with a 30-day public comment period, on September 8, 2015 in the **Federal Register** (80 FR 53911). 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 locate docket number “NHTSA–2015–0066.”

*II. Vehicles Involved:* Affected are approximately 300 MY 2015 Mitsubishi Outlander Sport multipurpose passenger vehicles manufactured

between December 8, 2014 and December 22, 2014.

*III. Noncompliance:* MMNA explains that the quarter panel window glazing installed in the subject vehicles was labeled with the manufacturer’s model number “M–66,” indicating a tempered glass construction and “AS2,” incorrectly indicating the glass has light transmission properties of at least 70%. The correct manufacturer’s model number, which should have been affixed to the quarter panel glass window, is “M–131” (which corresponds to a tempered “privacy” glass construction and a light transmission of 25%) and the correct item of glazing number should have been “AS–3” (which corresponds to glazing with less than 70% light transmittance).

*IV. Rule Text:* Paragraph S6 of FMVSS No. 205 requires in pertinent part:

S6. *Certification and marking.*

...  
S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, . . .

[Note that ANSI Z26.1–1996 and other industry standards are incorporated by reference in paragraph S5.1 of FMVSS No. 205. Specifically, Section 7 (Marking of Safety Glazing Materials) of ANSI Z26.1–1996 requires that:

“In addition, to any other markings required by law, ordinance, or regulation, all safety glazing materials manufactured for use in accordance with this standard shall be legibly and permanently marked . . . with the words American National Standard or the characters AS, in addition with a model number<sup>38</sup> that will identify the type of construction of the glazing material. They shall also be marked with . . .

<sup>38</sup> The model number shall be assigned by the manufacturer of the safety glazing material and shall be related by the manufacturer to a detailed description of a specific glazing material.”]

*V. Summary of MMNA’s Arguments:* MMNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) MMNA stated that the quarter panel glass windows otherwise meet all other marking and performance requirements of FMVSS No. 205.

(B) MMNA believes that because the affected glazing fully meets all of the applicable performance requirements, the absence of the correct “M” number in their monogram has no effect upon the degree of driver visibility or the possibility of occupants being thrown through the vehicle windows in a collision.

(C) MMNA stated its belief that NHTSA has previously granted inconsequential noncompliance

petitions regarding what it believes are similar noncompliances.

(D) MMNA is not aware of any crashes, injuries, customer complaints or field reports associated with this condition.

In summation, MMNA believes that the described FMVSS No. 205 noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt MMNA 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’s Decision

*NHTSA’s Analysis:* MMNA indicated that as many as 142<sup>1</sup> incorrectly labeled quarter panel windows were mounted on the subject 300 vehicles during production of those vehicles. MMNA also stated that the installed windows meet or exceed all other labeling and performance requirements of FMVSS No. 205, and the remaining noncompliant windows produced by its supplier Pilkington North America, Inc., have been destroyed or exported.

NHTSA therefore believes there is no effect of the noncompliance on the operational safety of the subject vehicles and that none of the subject noncompliant windows will be installed on any additional new production vehicles or delivered as replacement parts for existing vehicles.

*NHTSA’s Decision:* In consideration of the foregoing, NHTSA has decided that MMNA has met its burden of persuasion that the FMVSS No. 205 noncompliance is inconsequential to motor vehicle safety. Accordingly, MMNA’s petition is hereby granted and MMNA 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

<sup>1</sup> Pilkington North America (PNA) determined that they had manufactured 8927 quarter panel glass windows with the incorrect model number and item of glazing number (AS). Of these 8927 windows, PNA scrapped all but 1139 windows that had been shipped to MMNA. MMNA retrieved and returned to PNA 997 noncomplying windows, but 142 were installed in a suspect population of 349 vehicles that were shipped to the USA (300 vehicles) and to Mexico and Canada (49 vehicles).