began to show signs of the instrument panel warping and that by spring 2006, ''the defrost bezel began to rattle.'' In July 2006, he contacted the same dealership and ''was told that this $400 repair would not be covered [under the TSB]'' because his vehicle was past warranty coverage (36,000 miles/3 years).

Determining an appropriate response to Mr. Moening's petition requires assessment of the potential safety consequences of the alleged defect. A review of NHTSA's consumer complaint database for the MY 1999 and 2000 Ford Contour and Mercury Mystique vehicles in February 2007 revealed 302 complaints regarding instrument panel warping. Most of the complaints report that the warping of the instrument panel reduces forward visibility or degrades the performance of the defroster. Other complaints indicate that the repair performed by the dealer was only a temporary fix and the problem returned. A considerable number of complaints express concern that the instrument panel warping may affect the performance of the air bag system, either by causing the air bag to deploy prematurely or by hindering proper inflation of the air bag. However, as of November 2006 there were no reports of actual improper deployments, nor were there reports of injuries, crashes or loss of control because of instrument panel warping while driving the subject vehicle.

NHTSA evaluated forward visibility from the driver's seating position in a subject vehicle, a 1999 Ford Contour, with a warped instrument panel (more than 3 inches of vertical warping at the centerline of the vehicle) and compared this to the forward visibility in the vehicle with the warped portion of the instrument panel held down in its proper position. Also, NHTSA used for comparison two other vehicles: a 2000 Ford Contour with an unwarped instrument panel and a peer vehicle, a 2005 Saturn Ion with an unwarped instrument panel. NHTSA evaluated the visibility using both a 12-inch and a 28-inch tall traffic cone placed at various positions in front of the subject and peer vehicles. NHTSA selected three subject drivers; two were short females (4′9″ and 5′3″ tall) and the other a tall male (6′1″). NHTSA recorded the minimum distance from the front of the vehicle to the cone that allowed the driver to see the top of the cone.

When conducting the test using the 28-inch cone, there were negligible visibility differences between the subject and peer vehicles for all three drivers. Similarly, when conducting the test using the 12-inch cone, there were negligible visibility differences when each driver viewed the cone through the portion of the windshield directly in front of the driver. However, in order for each short female to see the top of the 12-inch cone through the right side of the windshield of the 1999 Contour with the warped instrument panel, the cone needed to be moved two feet further from the vehicle than was necessary for the same driver to see the same cone through the same portion of the windshield for either the 1999 Contour with the instrument panel held down or the 2000 Contour with the unwarped instrument panel. The practical effect of this difference is minimal: the smallest drivers still have a clear view as they approach such a small object (12 inches or less), but could lose sight of such an object if it is off to the right of their forward field of vision just two feet sooner than a taller driver would. We believe that the observed slight reduction in one portion of the field of view that might be experienced by the smallest of drivers fails to demonstrate any material effect on safety. This conclusion is supported by the absence of any report in the agency's complaint database of alleged loss of control or crash attributed to this problem for these vehicles, which have now acquired nearly 8 years of field experience.

NHTSA also evaluated the ability of the defroster in a 1999 Ford Contour with a warped instrument panel to clear the windshield of heavy early morning frost. NHTSA compared these results with the performance of the defrosters in three other vehicles with unwarped instrument panels: a 2000 Ford Contour, a 2005 Saturn Ion and a 1999 Volvo S80. The comparison demonstrated that the defroster in the subject vehicle with the warped instrument panel, though functional, required approximately three to four minutes longer to clear most of the frost from the windshield compared with the other vehicles. However we do not find this reduction in the speed of the defroster's performance to be a likely safety hazard. The defroster is still capable of performing its intended function.

The principal concern expressed by the petitioner was the potential for warping of the instrument panel to degrade the performance of the air bag system. As of November 2006, NHTSA's consumer complaint database contained no allegations that instrument panel warping affected the actual deployment of the passenger air bag, nor are there reports of instrument panel components becoming projectiles during air bag deployments. Through examination of the construction of the instrument panel on a subject vehicle, NHTSA determined that warping of the instrument panel is confined to the surface materials of the instrument panel, and does not extend to the supporting structure of the air bag system. Based on a review of the agency's complaint database and examination of subject vehicles, we find no evidence that the warping of the instrument panel could cause either inappropriate deployment of the passenger air bag, impede proper deployment of the passenger air bag, or block the air bag deployment path.

Based on a review of the petitioner's request and the information provided above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7–6545 Filed 4–6–07; 8:45 am]

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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 Impreza 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. In a letter dated November 27, 2006, the agency granted the petitioner's request for confidential treatment of the indicated areas of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated October 31, 2006, FUSA requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the Subaru Impreza vehicle line, beginning with the 2008 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 line 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 Impreza vehicle line. FUSA stated that all Impreza vehicles will be equipped with a passive, transponder-based electronic immobilizer device as standard equipment beginning with MY 2008. Features of the antitheft device will include an electronic key, a passive immobilizer system which includes a key ring antenna and an engine control unit (ECU). The 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 (key not removed). The device will also have a visible and audible alarm feature. The alarm system will monitor the door status and key identification. Unauthorized opening of a door will activate the alarm system horn and 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. In a letter dated November 27, 2006, NHTSA granted FUSA confidential treatment for the test information. FUSA provided a list of the tests it conducted. FUSA based its belief that the device is reliable and durable on the fact that the device complied with the specific requirements for each test.

FUSA stated that theft rates for its Subaru vehicles have typically been low and that based on the most recent National Insurance Crime Bureau's (NICB) state-by-state theft results, only in 2 out 48 states, including the District of Columbia have any Subaru vehicle appeared in the top ten list of stolen vehicles. Review of the theft rates published by the agency through MY/CY 2004 also revealed that, while there is some variation, the theft rates for Subaru vehicles has on average, remained below the median theft rate of 3.5826. On December 21, 2006, by email, FUSA provided a list of similar devices for which NHTSA has already granted parts marking exemptions. FUSA believes that this comparison supports its claim that its MY 2008 immobilizer device will be at least as effective in reducing theft as similar devices for which the agency has already granted exemptions. Additionally, FUSA referred to the most recent Highway Loss Data Institute's (HLDI) reports that support the effectiveness of immobilizing antitheft devices and believes that the enhancement of electronic immobilization will further help to reduce its lower theft rates. 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 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 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: April 3, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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