

plane. Notwithstanding this requirement, the horizontal member may extend rearward of the plane, and guards with rounded corners may curve forward within 255 mm of the longitudinal vertical planes that are tangent to side extremities of the vehicle.

Paragraph S5.1.2 *Guard Height* of FMVSS No. 224 requires:

The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm at any point across the full width of the member. Notwithstanding this requirement, guards with rounded corners may curve upward within 255 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

Sidump'r states that NHTSA has granted temporary exemptions based on: Infrequent highway use (69 FR 30989, 68 FR 7406 and 64 FR 49049), as well as small production quantities of vehicles (66 FR 22069, 63 FR 16857, 66 FR 20028 and 68 FR 7406). Those temporary exemptions were granted based on petitions submitted by vehicle manufacturers under 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*. The statutory provision (49 U.S.C. 30113) that permits manufacturers to file petitions for a determination of exemption allows NHTSA to temporarily exempt manufacturers from specific FMVSS or bumper standard requirements. This provision applies to vehicles that have not yet been passed from the manufacturer to an owner, purchaser, or dealer, which is not the case for the subject trailers. Exemptions are available under this provision to permit vehicles to be built without complying with the standards based on certain specific criteria, including the petitioner's economic hardship. Under each of the criteria, the number of vehicles produced is a specific consideration. See, e.g., 49 CFR 555.6(a)(2)(v). The primary basis for NHTSA granting the temporary exemptions cited above was because the petitioners had met the burden of persuasion that compliance would have caused substantial economic hardship. Economic hardship is not a consideration in the evaluation process for inconsequentiality petitions. See 49 CFR Part 556. Accordingly, NHTSA does not find those decisions under Part 555 relevant here.

NHTSA agrees with Sidump'r's assessment that the rear impact guards on the subject trailers do not conform to the requirements of S5.1.3 of 49 CFR 571.224 because they are mounted too far forward of the rear extremities of the trailers.

Also, NHTSA agrees with Sidump'r's assessment that if a guard-like structure

under the push block complies with the dimensional and performance requirements of FMVSS No. 223 and FMVSS No. 224 that the guard-like structure can serve as a rear impact guard.<sup>2</sup> Sidump'r used a finite element model analysis<sup>3</sup> to make a determination that the guard like structure would meet the performance requirements. Finite element modeling is a mature science and appropriately accurate for modeling the rudimentary force deflection characteristics of the guard-like structure under the push block. Based on that analysis, which Sidump'r submitted to the docket, the guard-like structure appears to meet the loads and energy absorption requirement under FMVSS No. 223.

In addition, based on the drawings provided by Sidump'r, NHTSA agrees that the guard-like structure meets all of FMVSS No. 224 configuration requirements except for guard height. While the maximum height requirement was exceeded by an inch and a half, NHTSA does not consider the difference significant in this particular instance. Using NCAP (2003–2009) test data OVSC selected compact and subcompact vehicles to determine the part of the frame structure that would most likely engage the bumper of a trailer and the height of that structure in the car. We determined that the area most likely to be engaged by the rear impact guard would be the area of the unibody where the front shock absorbers (struts) are attached. We also looked at the height of the engine block in those cars. The shock absorber height and the top of the engine block height are data points measured as part of the NCAP frontal impact evaluation of vehicles. The average shock absorber height was 838 mm (33 in) with a minimum of 566 mm (22 in) and a maximum of 972 mm (38 in). The average engine block height was 836 mm (33 in) with a minimum of 748 mm (29 in) and a maximum of 935 mm (37 in). In addition, we asked laboratory personnel to measure the depth of the engine block cover of several vehicles to be crash tested. The average depth was between 2 and 4 in. This depth was used to assess shearing of the engine block cover during a crash and possible impact. Based on this NCAP data we believe the car's frontal structure will effectively engage the rear impact guard during a crash incident and that Sidump'r's guard placement of 1 in (38

<sup>2</sup> NHTSA's Chief Counsel interpretation letter to Jason Backs (CPS Trailers, May 28, 1998).

<sup>3</sup> Finite element analysis can be used as a basis for establishing certification to performance requirements of a standard.

mm) over the required FMVSS No. 224 guard height is inconsequential to vehicle safety based on the particular facts in this case.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Sidump'r has met its burden of persuasion that the dimensional noncompliance described in Sidump'r's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Sidump'r's petition is granted, and the Sidump'r is exempted from the obligation of providing notification of, and a remedy for, the noncompliances under 49 U.S.C. 30118 and 30120.

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

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 3120, 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 trailers that Sidump'r no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

Issued On: April 11, 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–2009–0092; Notice 2]

#### Pilkington North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

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

**SUMMARY:** Pilkington North America, Inc. (Pilkington) has determined that certain replacement rear windows manufactured for model year 2006 through 2009 Honda Civic two-door coupe passenger cars manufactured on April 16, 2008, do not fully comply with paragraphs S6.2 and S6.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials*. Pilkington

has filed an appropriate report pursuant to 49 CFR Part 573, Defect and Noncompliance Responsibility and Reports, dated February 4, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Pilkington 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 Pilkington's petition was published, with a 30-day public comment period, on May 20, 2009, in the **Federal Register** (74 FR 23775). 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-2009-0092."

For further information on this decision, contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5298, facsimile (202) 366-7002.

**Equipment Involved:** Affected are approximately 206 replacement rear windows (National Auto Glass Specifications (NAGS) part number FB22692GTY) for model year 2006 through 2009 Honda Civic two-door coupe passenger cars that were manufactured at Pilkington's Versailles, Kentucky plant on April 16, 2008.

**Summary of Pilkington's Analysis and Arguments:** Pilkington explains that the noncompliance for the 205 replacement rear windows exists due to Pilkington's failure to label the replacement rear windows with the marks required by section 7 of ANSI/SAE Z26.1-1996, the symbol "DOT," and its NHTSA assigned manufacturer code mark. As of the time of the petition,

Paragraphs S6.2 and S6.3 of FMVSS No. 205 require in pertinent part:

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1 1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration,  
\* \* \*

S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must (a) Mark that material in accordance with section 7 of ANSI/SAE Z26.1 1996; and

(b) Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

Pilkington states that it believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The noncompliances relate solely to product monograms or markings and the noncompliant rear windows. Pilkington has tested a number of the parts in its possession and confirmed that they meet or exceed all other applicable performance requirements in FMVSS No. 205.

(2) NHTSA has previously granted other exemptions for noncompliant product labeling. In the past, the agency has recognized that the failure to meet labeling requirements often is inconsequential to motor vehicle safety.

(3) The information contained in the noncompliant product markings is not required in order for consumers to operate their vehicles safely.

Pilkington also stated its belief that the noncompliance will not interfere with any future tracing of the windows because Pilkington is only one of three manufacturers of rear windows for this particular Honda Civic, the other two being PGW (Pittsburgh Glass Works, formerly known as PPG) and Auto Temp, Inc. Given that the windows produced by the two other manufacturers will be properly marked, Pilkington's unlabeled rear windows should easily be identified and traced, if necessary, should any future defects or noncompliances be discovered.

**Discussion:** NHTSA has reviewed and accepts Pilkington's analyses that this noncompliance is inconsequential to motor vehicle safety. Pilkington has provided documentation that the windows do comply with all other safety performance requirements of the standard, except the labeling. This documentation is a surrogate for the certification labeling. NHTSA believes that the lack of labeling would not result in inadvertent replacement of the windows with the wrong glazing. Broken tempered glass can readily be identified as tempered glass, rather than plastic or laminated glass. Anyone who intended to replace the window with an identical tempered glass window would have to contact Pilkington for the proper part, since tempered glass windows cannot be easily manufactured by small field facilities. At that point, Pilkington, or their representative, would be able to provide the correct replacement window by use of their parts system.

**NHTSA Decision:** In consideration of the foregoing, NHTSA has decided that Pilkington has met its burden of persuasion that the FMVSS No. 205

noncompliance in the noncompliant windows described in Pilkington's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Pilkington's petition is hereby granted and the petitioner 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 206 noncompliant windows that Pilkington 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.

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**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0177; Notice 2]

#### OSRAM SYLVANIA Products, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of Petition.

**SUMMARY:** OSRAM SYLVANIA Products, Inc., (OSRAM SYLVANIA), has determined that certain Type "H11 C" light sources that it manufactured fail to meet the requirements of paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. OSRAM SYLVANIA has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated August 24, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), OSRAM SYLVANIA has petitioned for an exemption from the