

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96-113; Notice 2]

Ford Motor Company; Denial of Application for Decision of Inconsequential Noncompliance

This notice denies the application by Ford Motor Company (Ford) for exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with the requirements of 49 CFR 571.118 Federal Motor Vehicle Safety Standard No. 118 "Power-Operated Window, Partition, and Roof Panel Systems." Ford applied for the exemption on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on October 28, 1996, and an opportunity afforded for comment (61 FR 55686).

Paragraph S4(e) of Standard No. 118 requires that "power operated windows may be closed only" during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

From September 18, 1995, through July 31, 1996, Ford manufactured approximately 57,400 Mercury Villager and 46,500 Nissan Quest vehicles that do not comply with Paragraph S4(e) because their power-operated windows can be closed after the ignition key is turned to the "off" position and the right front (passenger) door is opened.

Ford supported its application for inconsequential noncompliance with the following arguments:

In the affected Villager and Quest vehicles, it is likely that as long as the driver's door has not been opened, an adult (the driver) would remain present in the vehicle to supervise any children because a driver would exit the vehicle through the driver's door under all but the most extraordinary circumstances. As previously noted, the power window operation is canceled when the driver door is opened—the door through which the operator would be expected to exit the vehicle—thus eliminating any potential risk associated with operation of the power windows by unsupervised children remaining in the vehicle. In addition, the design of the front door power window control switches located on the door arm rests is such that closing these windows requires the switch to be pulled up and held. Further the switches are recessed in a cavity below the switch assembly surface. The intent of these design features is to minimize the chance of unintentional activation of

power window closing that could, with other switch design configurations, result from a child leaning or resting a foot on the switch. An additional feature that minimizes the potential risk of injury to unsupervised children in the affected vehicles is that no power window switch controls are located in the rear seat positions, and the control switches for the third row seat optional power quarter windows are located in an overhead console in the front passenger compartment, relatively out of sight. In addition to the items cited above to mitigate the risk of injury, the Villager and Quest owner guides warn against leaving children unattended in the vehicle, specifically warn of the potential danger of children playing with the vehicle's power windows, and identify the fact that the accessory delay feature allows the power windows to be operated for a fifteen minute period after the ignition is turned off or until the driver door is opened.

Neither Ford nor Nissan is aware of any field or owner reports or allegations of injuries related to this condition. We [Ford] believe the likelihood of unsupervised children left in one of the affected vehicles being exposed to injury during the fifteen minute period after the ignition key has been turned off and a driver has exited the vehicle through other than the driver's door is very remote, and therefore the noncompliance presents no reasonably anticipated risk to motor vehicle safety. We [Ford] request that the agency find this condition to be inconsequential to motor vehicle safety, and accordingly that Ford and Nissan be exempted from the notice and remedy requirements of the Code. The agency recently granted a petition from Volkswagen of America, Inc., as documented in **Federal Register**, Volume 60, page 48197, (September 18, 1995), for vehicles with power windows operating in a manner similar to the affected Villagers and Quests.

No comments were received in response to the public notice.

Ford is correct that the Volkswagen noncompliance is similar. The power windows in the noncompliant Volkswagen GTIs and Jetta IIIs could be operated when the ignition key was in the "off" position and the passenger side front door has been opened. And as in the Mercury and Nissan vehicles, if the operator exits by the driver's door, the system is disabled. In granting Volkswagen's application, the agency concluded that it was "not likely that an operator would exit by means of the passenger door since that would entail passing over the cumbersome console between the two seats. Thus, the purpose of the requirement in this situation is still highly likely to be met." (61 FR at 48198).

The agency examined the front seating area in the noncompliant Mercury and Nissan vehicles and found no console or other impediment such as a transmission tunnel that would hinder a driver from exiting on the passenger

side. Indeed, a prudent driver might well choose to exit by the front passenger door when parked on a busy city street. Thus, the configuration of the vehicles that the agency exempted from notification and remedy is clearly distinguishable from that of the Mercury/Nissan vehicles for which exemption is sought. Further, there is a greater floor pan to ceiling height resulting in the seating in the Quests and Villagers being more upright, making it easier for the driver to move across the front seats and out the passenger side.

The purpose of requiring inoperative power windows is to reduce the possibility of unsupervised children operating them. The agency is sensitive to the fact that a greater number of children are likely to be at risk from Ford's noncompliance. Although children can be carried in the approximately 20,000 GTIs and Jetta IIIs that were excused from notification and remedy, these passenger cars are not advertised and promoted for family use in the same manner that minivans are marketed, including the approximately 103,900 noncomplying Villagers and Quests.

For the reasons expressed above, it is hereby found that the applicant has not met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety, and the application is denied.

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

Issued on September 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of final scope of environmental impact statement (EIS).

SUMMARY: On June 23, 1997, CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Corporation, and Norfolk Southern