

advanced air bag requirements of FMVSS No. 208 is of significant concern to the agency. NHTSA is therefore particularly interested in comments regarding the ability of a Registered Importer to readily alter the subject vehicles to fully meet the driver and front outboard passenger frontal crash protection and child passenger protection requirements of FMVSS No. 208. The following is a partial listing of the components that may be affected:

- a. Driver's frontal air bag module
- b. Passenger frontal air bag module
- c. Passenger frontal air bag cover
- d. Knee air bags
- e. Knee bolsters
- f. Passenger outboard frontal seat belt system
- g. Driver and front outboard seat assemblies including seat tracks and internal seat components
- h. Steering wheel components, including the clock spring assembly, the steering column, and all connecting components
- i. Instrument panel
- j. Instrument panel support structure (i.e. cross beam)
- k. Occupant sensing and classification systems, including sensors and processors
- l. Restraint control modules
- m. Passenger air bag status indicator light system, including related display components and wiring
- n. Wiring harnesses between the restraint control module, occupant classification system and restraint system components
- o. Control system computer software and firmware

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0066; Notice 1]

Ford Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: Ford Motor Company (Ford) has determined that certain model year (MY) 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 do not fully comply with paragraph S3.1.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 102 *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*, or paragraph S5.2.1 of FMVSS No. 114 *Theft Protection and Rollaway Prevention*. Ford has filed an appropriate report dated March 4, 2013, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

DATES: The closing date for comments on the petition is April 2, 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 delivery: 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. Ford's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), Ford 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 Ford'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. Vehicles Involved: Affected are approximately 4,727 MY 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 at the Hermosillo Stamping and Assembly Plant (HSAP) in Hermosillo, Mexico.

III. Noncompliance: Ford has determined that because the affected vehicles were inadvertently shipped to dealers in the "Factory Mode" that the transmission gear selected in relation to other gears is not always displayed by the shift position sequence indicator (aka, PRNDL) as required by paragraph S3.1.4.1(a) of FMVSS No. 102. In addition, the affected Ford Fusion vehicles manufactured with mechanical key ignition systems do not fully meet the requirements of paragraph S5.2.1 of FMVSS No. 114 because under certain

conditions the mechanical key may be removed from the ignition lock cylinder when the transmission shift lever is in a position other than “park.”

IV. Rule Text: Paragraph S3.1.4.1(a) of FMVSS No. 102 specifically states:

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted; . . .

Paragraph S5.2.1 of FMVSS No. 114 specifically states:

S5.2.1 For each vehicle type manufactured by a manufacturer, the manufacturer must provide at least 1,000 unique key combinations, or a number equal to the total number of the vehicles of that type manufactured by the manufacturer, whichever is less. The same combinations may be used for more than one vehicle type.

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

1. The vehicle design is self-remediating. The affected vehicles are designed to automatically switch from Factory Mode to Transport Mode after 60 key cycles (beginning with assembly line initialization). Once in Transport Mode the vehicles are fully compliant with FMVSS requirements.

2. While in Factory Mode, affected vehicles clearly display the message “Factory Mode Contact Dealer” in either the message center or instrument cluster). Additionally, the “Factory Mode Contact Dealer” message does not obscure any regulatory malfunction indicator lamps, or (non-mandated) cautionary warnings.

3. The dealership's Pre-Delivery Inspection instructions require dealerships to change the vehicle into Customer Mode, prior to delivery, which ensures the condition will be remedied before delivery to the customer. Ford is not aware of any of the subject vehicles being delivered to customers in Factory Mode.

4. All other requirements of FMVSS No. 102 and FMVSS No. 114 are fully satisfied.

5. Ford is not aware of any owner complaints, accidents, or injuries attributed to this condition.

Ford has additionally informed NHTSA that it has corrected the noncompliance so that all future vehicles will comply with FMVSS Nos. 102 and 114.

In summation, Ford believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt 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 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, these provisions only apply to the 4,727 vehicles that Ford no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction for delivery or introduction into interstate commerce of the noncompliant vehicles under their control after Ford 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)

Claude H. Harris,
Director, Office of Vehicle Safety Compliance.
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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35803]

United States Environmental Protection Agency—Petition for Declaratory Order

On January 24, 2014, the United States Environmental Protection Agency (EPA), Region IX, filed a petition for declaratory order requesting that the Board institute a proceeding to consider whether two rules concerning railroad locomotive idling issued by the South Coast Air Quality Management District (SCAQMD) would be preempted by 49 U.S.C. 10501(b), if those rules were approved into the California State Implementation Plan (SIP) under the Clean Air Act, 42 U.S.C. 7401 et seq.¹

¹ SCAQMD submitted the rules to the California Air Resources Board (CARB), which then submitted the rules to the EPA for approval into the California SIP.

The EPA indicates that it must decide whether to approve the rules into the California SIP and therefore seeks guidance on whether § 10501(b) would preempt the implementation of the rules if they are approved.

Replies to the EPA's petition were submitted by United States Representative Henry A. Waxman, SCAQMD, CARB, the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP),² Norfolk Southern Railway Company, the Association of American Railroads, BNSF Railway Company, Union Pacific Railroad Company, East Yard Communities for Environmental Justice, and the Center for Community Action & Environmental Justice and Sierra Club.

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, it is appropriate to institute a declaratory order proceeding to remove the uncertainty raised in EPA's petition regarding whether the idling rules, if approved into the California SIP, would be preempted by § 10501(b). The record presented to date reveals that this is a matter of widespread and significant public interest and warrants thorough consideration by the Board after the development of a complete record. The Board will therefore institute a declaratory order proceeding to consider the issues and establish a procedural schedule for the filing of comments and replies.³

In its January 24, 2014 filing, the EPA also requested an expedited proceeding due to a statutory deadline of February 28, 2014, for the EPA to take action on CARB's request that the state-developed rules be accepted into the California SIP, which CARB had submitted to the EPA on August 30, 2012. The EPA's proposed schedule, submitted in its petition to the Board, would not provide sufficient time for all interested parties to comment on the preemption issue and for the Board to fully consider the matter. Accordingly, the Board hereby provides notice that issuance of a decision by February 28, 2014, will not be possible.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted.

² MassDEP filed a petition to intervene, which will be granted.

³ Parties that have already replied to the petition need not refile unless they wish to supplement what they have already filed.