

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: May 27, 2008.

Kathleen C. DeMeter,

Director, Office of Defects Investigation.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-0053]

Motley Rice, LLC, Denial of Petition for Compliance Investigation

Motley Rice, LLC (Motley Rice), counsel of record for the plaintiffs in the lawsuit styled *Day v. Ford Motor Company*, Civ. No. 04CVS-10181 (N.C., Guilford County), has petitioned National Highway Traffic Safety Administration (NHTSA) pursuant to 49 CFR 552.3 seeking an order finding that certain vehicles manufactured by Ford Motor Company (Ford) are not in compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 206,¹ *Door Locks and Door Retention Components*. In addition, petitioner seeks an order finding that Ford's use of the Modified Dynamic Test Method to demonstrate compliance was inappropriate or, stated alternatively, that Ford's use of the 1960 Severy acceleration pulse is not a uniform approved pulse that can be inserted into any test for the purpose of determining regulatory compliance. Petitioner asserts that the following Ford vehicles are non-compliant with FMVSS No. 206: (1) Model Year (MY) 1997-2000 F-150-PN-96, (2) MY 1997-2000 F-250-Light Duty, (3) MY 1997-2000 Ford Expedition, and (4) MY 1997-2000 Lincoln Navigator vehicles. Collectively, this notice refers to these vehicles as "subject vehicles."

Motley Rice contends that the identified vehicles are not in compliance with FMVSS No. 206. Specifically, the petitioner contends that the identified vehicles are not in

compliance with the 30g (inertia load) requirement of FMVSS No. 206 as a result of a defect in the outside handle torsion spring. The spring tension in these handles, petitioner contends, is substantially below specification and may reduce the level for inertia activation of the system to approximately half that needed to meet the 30g calculation requirements of FMVSS No. 206 per the calculation referenced in Society of Automotive Engineers Recommended Practice J839 (SAE-J839).

Under the National Traffic and Motor Vehicle Safety Act, as amended and recodified, 49 U.S.C. 30112(a)(1), a person may not manufacture for sale or sell any motor vehicle manufactured on or after the date of an applicable motor vehicle safety standard takes effect unless the vehicle complies with the standard and is covered by a certification issued under 49 U.S.C. 30115. Except with regard to vehicles not manufactured to comply with the FMVSSs but later imported, the prohibition of section 30112(a) does not apply to the sale of a motor vehicle after the first purchase of the vehicle in good faith other than for resale. The FMVSSs generally apply to the manufacture and sale of new vehicles, as distinguished from used vehicles.

In general, NHTSA's enforcement of the FMVSSs is based on compliance testing of samples of new products conducted using the test procedures set forth in the relevant safety standard. However, manufacturers certifying compliance with FMVSSs are not required to follow exactly the compliance test procedures set forth in the applicable standard. Manufacturers are required to exercise reasonable care to assure compliance in making their certifications. 49 U.S.C. 30115(a). It may be simplest and is best for a manufacturer to establish that it exercised reasonable care if it has strictly followed NHTSA's test procedures. However, NHTSA has recognized that reasonable care might also be shown using modified procedures if the manufacturer could demonstrate that the modifications were not likely to have had a significant impact on test results. In addition, reasonable care might be shown using engineering analyses or computer simulations.

FMVSS No. 206, *Door Locks and Door Retention Components* contains a number of requirements. One is the inertia load requirement. S4.1.1.3 *Inertia Load*, provides:

The door latch shall not disengage from the fully latched position when a longitudinal or

transverse inertia load of 30g is applied to the door latch system (including the latch and its actuating mechanism with the locking mechanism disengaged).

The accompanying compliance provision states:

S5.1.1.2. *Inertia Load*. Compliance with S4.1.1.3 shall be demonstrated by approved tests or in accordance with paragraph 6 of Society of Automotive Engineers Recommended Practice J839, *Passenger Car Side Door Latch Systems*, June 1991.

SAE-J839 paragraph 6 specifies a 30g-based calculation. Apart from the SAE calculation, the only NHTSA-approved test² for compliance with the transverse inertia load requirement of FMVSS No. 206 at the time the vehicles were produced was the 1967 General Motors Corporation (GM) dynamic pulse test. There, GM developed a side impact pulse in light of the 30g Federal requirement. GM used research on side impacts conducted by D. Severy in 1960 as well as some GM test data. Using the Severy and GM data, GM developed a characteristic pulse shape with a maximum value exceeding 30g and a duration from GM data. This pulse was duplicated on a sled by altering the variables of pin shape and air pressure. In a sled test using this pulse, on-board, high speed movie cameras monitoring the latch determine that unlatching does not occur.

Ford certified the subject vehicles to the inertia load requirements of FMVSS No. 206 by using the SAE-J839 calculation. According to the petition, Ford thereafter determined that compliance (to the transverse inertia load requirement) could be demonstrated by using a modified version of the 1967 GM Dynamic Pulse Test Method; Ford used a computer-simulated program that relied upon the 1960 Severy acceleration pulse.

If NHTSA were to grant the Motley Rice petition, the agency would proceed to conduct a compliance investigation that might or might not result in an order to Ford under 49 U.S.C. 30118(b). In deciding whether to open a compliance or defect investigation, NHTSA considers, among other factors, allocation of agency resources, agency priorities, and the likelihood of success in litigation that might arise from an order the agency may issue. 49 CFR 552.8. See *Center for Auto Safety v. Dole*, 846 F.2d 1532, 1535 (D.C. Cir. 1988).

In this case, as discussed in further detail below, Ford has a simulation

¹ Throughout this Notice, all references to FMVSS No. 206 are based on the version of the standard in effect for the applicable manufacturing dates of the subject vehicles.

² U.S. DOT Federal Highway Administration, National Highway Safety Bureau Letter Dated 12/22/1967, <http://isearch.nhtsa.gov/gm/67/nht67-1.26.html>.

purporting to show compliance using the approved GM test. To evaluate the compliance of the subject vehicles with FMVSS No. 206's transverse inertia load requirements based on the approved 1967 GM dynamic pulse test, NHTSA likely would test the vehicles using the approved GM test. However, the agency does not have an in-house test procedure for the 1967 GM dynamic pulse test and we likely would develop one to evaluate the latch on the subject vehicles. This effort would be time consuming, likely would involve some trials and subsequent refinements (and therefore would be expensive), and would be of no broad-based benefit to the agency.

Assuming that NHTSA were to undertake testing, there would be significant practical difficulties. The subject vehicles were sold to their first purchasers about eight or more years ago. Programmatically, NHTSA has tested new, rather than used, vehicles for compliance with FMVSSs because NHTSA's burden would be to demonstrate that the vehicle did not comply at the time of sale or offer for sale. It is extremely unlikely that new vehicles for the model years in question could be obtained. In view of these limiting circumstances, NHTSA could consider expending some of its limited funds to have a test vehicle or vehicle subassembly containing a new latch system assembly identical to the original Ford latch assembly manufactured. The specifics of the test assembly would have to be developed in conjunction with the development of the test procedure. Such an approach would be novel and might be challenged on various grounds, including whether testing was permissible and whether the test assembly replicated or was representative of latches in the subject vehicles.

Even if NHTSA decided to invest considerable resources and time in such an investigation, the agency could issue an order finding noncompliance only after giving Ford an opportunity for an administrative hearing, and the agency would have the burden of substantiating such an order in a *de novo* proceeding in Federal court. In any such proceeding, Ford likely would present its simulation analysis that used commercially available dynamic analysis software, Working Model™. Ford's Working Model™ simulation was detailed and based on the dimensional specifications of the components. The acceleration pulse used in the simulation analysis was based on the NHTSA approved GM dynamic pulse test for certification to the transverse inertia load requirements

of FMVSS No. 206. The simulation analysis methodology also included conservative measures where spring forces and part masses were set to levels, based either on design or measured values, that would provide the least contribution to maintaining a latched position. The effects of friction were also eliminated since those forces would improve latch performance by tending to resist unlatching. Based on our preliminary review, NHTSA would be very unlikely to develop sufficient evidence to overcome the simulation analysis conducted by Ford. Even if NHTSA were somehow to prevail in making such a case, by the time such an order were upheld few if any of the subject vehicles would be within the 10-year age limit for a free remedy under 49 U.S.C. 30120(g).

We have also considered safety issues presented by the latches in our testing and in our database. Our review of available New Car Assessment Program (NCAP) vehicle side impact test data included results for the MY 1999 Ford F150, and MY 2000 Ford F150 extended cab. Each vehicle tested yielded the highest government safety rating of 5–Stars for side impact protection and none of the results from these tests indicated that door unlatching occurred.

Lastly, our review of consumer complaints filed with NHTSA for the model year motor vehicles identified in the subject petition yielded only two cases potentially related to inertia door opening, one of which involved a severe 50 mph rollover crash. Given the three million-plus sales volume for the subject vehicles, the number of years of exposure already experienced by these vehicles, and the low number of alleged incidents reported to the agency, it does not appear that these vehicles are experiencing performance issues in the field.

In view of the available safety-related information that does not indicate the existence of a safety problem, the plausible position taken by Ford with regard to the vehicle's compliance, the substantial resources that would be required to address this matter in detail, and the agency's need to allocate its resources carefully to address issues involving appreciable safety risks, NHTSA has concluded that no further action is warranted. Therefore, the petition is denied.

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

Issued on: May 29, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2008–0109]

Meeting Notice—Federal Interagency Committee on Emergency Medical Services

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services to be held in Washington, DC. This notice announces the date, time and location of the meeting, which will be open to the public.

DATES: The meeting will be held on June 23, 2008, from 10 a.m. to 12 Noon.

ADDRESSES: The meeting will be held at the Department of Homeland Security (DHS), Office of Health Affairs, 1120 Vermont Avenue, NW., 4th Floor—Conference Room #1, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590; Telephone number (202) 366–9966; E-mail Drew.Dawson@dot.gov.

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal