

General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance, 69 FR 19897 (Apr. 14, 2004).

In order to demonstrate inconsequentiality, the petitioner must demonstrate that the noncompliance “does not create a significant safety risk.” See *Dorel Juvenile Group*; 75 FR at 510, quoting *Cosco, Inc., denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999). There have been instances in the past where NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety. These include a noncompliance concerning labeling where the discrepancy with the safety standard was determined not to lead to any misunderstanding, especially where sources of the correct information were available (e.g. in the vehicle owner’s manual). See *General Motors Corp.*, 69 FR at 19899.

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a safety standard is more substantial and difficult to meet, and the Agency has not found many noncompliances related to a safety standard to be inconsequential. See *Id.*

Combi’s Argument and NHTSA’s Response: In support of its petition, Combi makes several different arguments. First, Combi argues that the company has not received notice of any partial or complete breakage or tearing of the harness system in any Coccoro and Zeus child restraints. The Agency, however, does not consider the absence of complaints to show that the noncompliances are inconsequential to safety. The absence of a complaint does not mean there have not been any problems or failures, and it does not mean that there will not be failures in the future. See *Dorel Juvenile Group, Denial of Petition for Decision of Inconsequential Noncompliance*, 78 FR 53189, 53190 (August 28, 2013).

Second, Combi argues that, based on measured forces acting on the harness system when subjected to FMVSS No. 213 and NCAP crash pulse dynamic testing, the subject child restraints present no motor vehicle safety risk since the measured forces acting on the harness system are less than 22 percent of the breaking strength results determined by NHTSA. The Agency is not persuaded by this argument. NHTSA does not simply have one performance test, a dynamic test. NHTSA has multiple performance tests because a single test does not address the range of safety concerns with child

restraints. The webbing breaking strength test and the child restraint system dynamic test do not test for the same conditions and serve distinct purposes. The webbing breaking strength test conditions are necessarily more severe than those for dynamic testing to help ensure that the webbing will afford effective protection for severe crashes, even after the webbing degrades due to abrasion in use and exposure to sunlight. In addressing past similar arguments raised by child restraint system manufacturers who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, the Agency stated that “[a] 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that child restraints will withstand even the most severe crashes. These are well above 30 mph.” *Dorel Juvenile Group [Cosco] (DJG); Denial of Applications for Determination of Inconsequential Noncompliance*, 73 FR 41397, 41399 (July 19, 2008). While Combi also conducted dynamic testing using the higher NCAP crash pulse, this provides an increase of only 5 mph over the FMVSS No. 213 dynamic crash pulse. In adopting the webbing strength standard, NHTSA has never said and NHTSA does not believe that it is enough that webbing withstands a 35 mph crash. There are real-world severe crashes which take place above this level. In those crashes, the force on the webbing is higher than in a 30 or 35 mph based crash. And, it must be recognized that webbing in child restraints that have been used may be degraded. In such crashes, a child occupant restrained in a child seat with webbing, when new, that merely met a strength test related to a 35 mph crash would be at an increased risk of injury compared with a child restrained in a child seat with webbing that meets the webbing strength test in FMVSS No. 213 S5.4.1.2(a).

Next, Combi asserts that given the relative small number of subject child restraint systems affected, the effectiveness of any notification campaign will be limited. This type of argument is immaterial to the inconsequentiality analysis because “the number or percentage of vehicles or equipment affected by the noncompliance is not relevant to the issue of consequentiality”. See *General Motors Corp.*, 69 FR 19899; *Cosco, Inc., Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR

29408, 029409 (June 1, 1999). In addition, the Agency would not necessarily consider an affected population of over 33,000 to be considered a small number when evaluating safety risk.

Finally, Combi argues that any noncompliance notice campaign may result in customers deciding to discontinue using their subject restraint(s) for a period of time thereby adding risk of injury. This argument was not supported with any evidence and the Agency is not persuaded by this argument. The Agency’s Recall Management Office will review Combi’s noncompliance notification campaign to assure that it is effective and the notification makes it clear to the affected customer(s) that it is better to continue to use the subject child restraint(s) while awaiting the remedy provided by the manufacturer, and that it is unsafe, and in almost all cases unlawful, to transport a child passenger in a motor vehicle without the use of a proper restraint.

Decision: After carefully considering the arguments presented in this matter, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Combi’s petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Dated: November 21, 2013.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0005; Notice 2]

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

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

ACTION: Denial of Petition.

SUMMARY: Ford Motor Company (Ford) has determined that certain model year 2011 Ford E–150, E–250, E–350 and E–450 motor vehicles manufactured

between May 12, 2011 and May 26, 2011, do not fully comply with paragraph S5.1.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. Ford has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated August 22, 2011.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Ford 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.

NHTSA published a notice of receipt of the petition, with a 30-day public comment period, on February 2, 2012, in the **Federal Register** 77 FR 5301. In response to the petition, NHTSA did not receive any comments.

ADDRESSES: 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-2012-0005."

FOR FURTHER INFORMATION CONTACT: For further information on this decision contact Mr. Luis Figueroa, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5298, facsimile (202) 366-7002.

SUPPLEMENTARY INFORMATION:

Vehicles Involved: Affected are approximately 4,532 model year 2011 Ford E-150, E-250, E-350 and E-450 trucks manufactured between May 12, 2011, and May 25, 2011, at Ford's Ohio assembly plant.

Summary of Ford's Analysis and Arguments: Ford described the noncompliance as the formation of air bubbles in the windshields when subjected to high temperatures specified in paragraph S5.1 of FMVSS No. 205.

Paragraph S5.1 of FMVSS No. 205 requires in pertinent part:

S5.1 Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1-1996 (incorporated by reference, see § 571.5) unless this standard provides otherwise . . .

S5.1.1 Multipurpose passenger vehicles. Except as otherwise specifically provided by this standard, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANSI/SAE Z26.1-1996 (incorporated by reference, see § 571.5).

Ford expressed its belief that only approximately 100 of the 4,532 subject vehicles may actually develop air bubbles in their windshields.

Ford argues that paragraph S5.1.1 of FMVSS No. 205 specifies meeting the

requirements of ANSI Z26.1-1996 Section 5.4 Boil, Test 4. The affected paragraph 5.4.3 "Interpretation of Results" states "The glass itself may crack in this test, but no bubbles or other defects shall develop more than 13 mm (½ in) from the outer edge of the specimen or from any cracks that may develop." Although the affected windshields may develop air bubbles, Ford believes this condition does not present a risk to motor vehicle safety for the reasons described below.

The initiation of the air bubbles will most likely occur when the vehicle is parked in the sun with ambient temperatures greater than 80° F, and they occur very early in the life of the vehicle. This was the case for the initial vehicles that exhibited the condition while still at the assembly plant, that was experiencing high seasonal temperatures at the time. Of the 41 field reports of the condition that had occurred as of August 16, 2011, only one occurred subsequent to delivery to a customer. All other field reports were found during pre-delivery vehicle preparation.

The appearance of the air bubbles is a slow process, and there are no reports of air bubbles affecting the entire windshield. If bubbles do occur in the driver vision zone, the vision zone is initially only partially affected. This condition would be noticed by the customer prior to a significant spread of the air bubbles, and the customer would seek repair under Ford's normal 3/36 warranty.

Ford is not aware of accidents or injuries attributed to this condition.

In summation, Ford believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 205 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.

Background: FMVSS No. 205 specifies labeling and performance requirements for automotive glazing. FMVSS No. 205 incorporates by reference ANSI Z26.1 (1996). The purpose of Test No. 4 Boil Test (Section 5.4 of ANSI Z26.1 (1996)) is to determine if the glazing material will withstand exposure to tropical temperatures over an extended period of time.

NHTSA's Analysis: Ford believes this condition does not present a risk to motor vehicle safety because the initiation of the air bubbles will most likely occur when the vehicle is parked in the sun with ambient temperatures

greater than 80° F. However, data from the National Oceanic and Atmospheric Administration (NOAA) shows that the condition that Ford describes "sun with ambient temperatures greater than 80° F" is a very likely event. Data from the NOAA for the USA shows that in early spring (around the month of March 2011) the southern states are already experiencing mean maximum temperatures in excess of 80° F. The same data shows that in July most of the nation is experiencing mean maximum temperatures over 80° F with some states experiencing mean maximum temperatures of over 100° F.

More importantly, the agency believes that the true measure of inconsequentiality is whether there is a safety effect of the noncompliance on the operational safety of the vehicle. In this case if the noncompliance (a bubble or bubbles in the windshield) were to manifest, this condition causes delamination of the glazing material which could weaken the structural integrity around the windshield edge and pose a safety risk to the occupants. Bubbles also could affect the vision of the driver and thus would have a detrimental effect on the operational safety of the vehicle. The agency also notes that the low number of vehicles involved in this case does not lessen the safety issue that the non-compliance creates. The degraded visibility created by the bubbles in the windshield still creates a safety risk even if it only occurs in a few vehicles.

The fact that customers might notice the non-compliance and seek repairs from Ford on their own does not mean that the safety risk posed by the bubbles in the windshield has been completely mitigated.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Ford has not met its burden of persuasion that the FMVSS No. 205 noncompliances identified in Ford's Noncompliance Information Report. Accordingly, Ford's petition is hereby denied, and the Ford must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.95 and 501.8).

Dated: November 21, 2013.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

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