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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

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

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (DP06-004) submitted by Mr. Eric Moening. In his petition, dated August 23, 2006, the petitioner requests the agency to remedy a failure of his model year (MY) 1999 Ford Contour to “comply with Federal Motor Vehicle Safety Standard 208 Occupant Crash Protection.” He describes the failure on his vehicle as instrument panel warping, and he believes that the warping may adversely affect performance of the air bag system or create loose instrument panel components (such as the defrost bezel) that could “become projectiles during air bag deployments.” After a review of the petition and other information, including the results of NHTSA’s own testing, NHTSA has concluded that further expenditure of the agency’s resources on the issue raised by the petition is not warranted. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Glass, Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2920.

SUPPLEMENTARY INFORMATION: On August 23, 2006, NHTSA’s Office of Defects Investigation (ODI) received a petition submitted by Mr. Eric Moening (hereinafter identified as the petitioner), requesting that NHTSA “remedy a failure” of the instrument panel of his MY 1999 Ford Contour so that it complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208. The petitioner alleges that his instrument panel has warped and the defrost bezel rattles. He contends that “improperly retained instrument panel components can be detrimental to the desired performance of front air bag deployments as well as become projectiles during air bag deployments.”

Federal law prohibits manufacturers from selling motor vehicles and equipment that do not comply with all

applicable Federal Motor Vehicle Safety Standards (FMVSS). 49 U.S.C. 30112(a)(1). However, this prohibition does not apply after the first purchase of the vehicle or equipment. 49 U.S.C. 30112(b)(1). The petitioner alleges that the problem with his vehicle first began to develop at least three years after its first purchase. Accordingly, the alleged facts provide no basis for a compliance investigation. NHTSA has no authority to intervene in disputes between an individual and a manufacturer with regard to repairs unrelated to safety recalls. However, because the petitioner has characterized his letter as a “petition”, we are construing his letter as a request for a defect investigation into warping of the leading edge of the dashboard in MY 1999–2000 Ford Contour and Mercury Mystique vehicles under 49 U.S.C. 30162.

Under 49 U.S.C. 30166, NHTSA has the authority to conduct an investigation to consider whether a motor vehicle or motor vehicle equipment contains a safety-related defect. In addition, any interested person may file a petition under 49 U.S.C. 30162 requesting that NHTSA begin a proceeding to decide whether to issue an order under § 30118. NHTSA is authorized under 49 U.S.C. 30118(b) to make a determination that a motor vehicle or motor vehicle equipment contains a defect related to motor vehicle safety. If NHTSA makes such a determination, NHTSA issues an order directing the manufacturer of the vehicle or equipment to notify the owners, purchasers and dealers of the defect and to remedy the defect under § 30120.

As a practical matter, NHTSA’s grant of a petition under § 30162 begins an investigation that may or may not result in a recall. In determining whether to grant or deny a petition under § 30162, NHTSA conducts a technical review of the petition. 49 CFR 552.6. This review may consist of an analysis of the material submitted, together with the information already in possession of the agency or acquired in the course of the review. NHTSA has discretion to decide which matters are worthy of investigation and a possible recall order. In addition to the technical merits of the petition, NHTSA may consider additional factors, such as the allocation of agency resources, agency priorities, and the likelihood of success of litigation that might arise from the order sought by the petitioner. 49 CFR 552.8. As noted above, if NHTSA grants the petition, an investigation is commenced to determine the existence of the defect. 49 CFR 552.9.

In August 2001, the petitioner received a letter from Ford Motor Company describing Ford’s Customer Satisfaction Program Number 01B78 (01B78). Ford initiated this program in August 2001, and it was in effect through August 31, 2002. Ford offered free repair of any 1999 and 2000 Ford Contour and Mercury Mystique vehicle experiencing panel warping at the front edge of the instrument panel cover near the windshield. Initially, Ford offered customers a dealer inspection of the instrument panel and a free repair as required. Ford instructed dealers to repair all vehicles with a panel repair kit unless the warping was greater than 2 inches at the defroster grill opening. For vehicles with greater than 2 inches warping, Ford instructed dealers to replace the instrument panel.

Ford issued to Ford and Lincoln Mercury dealers two supplements to the original 01B78 program that superseded each preceding program. In December 2001, Ford issued Supplement #1 (01B78S1), which provided a revision of the original repair procedure to “address some dealer-identified issues.” 01B78S1 did not affect Ford’s policy of replacing the instrument panel only when the panel warping is greater than 2 inches and repairing other vehicles with a panel repair kit. In May 2002, Ford issued Supplement #2 (01B78S2), which provided a revised repair procedure that “requires the use of a new repair kit that includes a new defroster grille cover that is placed on top of the defroster grille.” 01B78S2 also provided that “[i]nstrument panel replacement is no longer covered under this program.” And, 01B78S2 states that, “All vehicles that have not had 01B78 or 01B78S1 completed, regardless of whether the warpage is visible or not, should be serviced as soon as possible before expiration of this program.” Neither 01B78S1 nor 01B78S2 changed the program’s August 31, 2002, expiration date.

In February 2003, after Customer Satisfaction Program Number 01B78 expired, Ford issued technical service bulletin “TSB 03-4-6, Trim—Instrument Panel Warpage Repair.” This TSB described Ford’s most current repair procedure for a warped instrument panel, which was identical to the procedure provided in 01B78S2. The TSB did not extend the expiration date of the offer for free repair that had now expired.

The petitioner indicates that when he took his car into his Lincoln-Mercury dealership in 2001 in response to 01B78, the dealership advised him that his vehicle “was not in need of repair.” He reports that, by late 2002, his vehicle

began to show signs of the instrument panel warping and that by spring 2006, "the defrost bezel began to rattle." In July 2006, he contacted the same dealership and "was told that this \$400 repair would not be covered [under the TSB]" because his vehicle was past warranty coverage (36,000 miles/3 years).

Determining an appropriate response to Mr. Moening's petition requires assessment of the potential safety consequences of the alleged defect. A review of NHTSA's consumer complaint database for the MY 1999 and 2000 Ford Contour and Mercury Mystique vehicles in February 2007 revealed 302 complaints regarding instrument panel warping. Most of the complaints report that the warping of the instrument panel reduces forward visibility or degrades the performance of the defroster. Other complaints indicate that the repair performed by the dealer was only a temporary fix and the problem returned. A considerable number of complaints express concern that the instrument panel warping may affect the performance of the air bag system, either by causing the air bag to deploy prematurely or by hindering proper inflation of the air bag. However, as of November 2006 there were no reports of actual improper deployments, nor were there reports of injuries, crashes or loss of control because of instrument panel warping while driving the subject vehicle.

NHTSA evaluated forward visibility from the driver's seating position in a subject vehicle, a 1999 Ford Contour, with a warped instrument panel (more than 3 inches of vertical warping at the centerline of the vehicle) and compared this to the forward visibility in the vehicle with the warped portion of the instrument panel held down in its proper position. Also, NHTSA used for comparison two other vehicles: a 2000 Ford Contour with an unwarped instrument panel and a peer vehicle, a 2005 Saturn Ion with an unwarped instrument panel. NHTSA evaluated the visibility using both a 12-inch and a 28-inch tall traffic cone placed at various positions in front of the subject and peer vehicles. NHTSA selected three subject drivers; two were short females (4'9" and 5'3" tall) and the other a tall male (6'1"). NHTSA recorded the minimum distance from the front of the vehicle to the cone that allowed the driver to see the top of the cone.

When conducting the test using the 28-inch cone, there were negligible visibility differences between the subject and peer vehicles for all three drivers. Similarly, when conducting the test using the 12-inch cone, there were

negligible visibility differences when each driver viewed the cone through the portion of the windshield directly in front of the driver. However, in order for each short female to see the top of the 12-inch cone through the right side of the windshield of the 1999 Contour with the warped instrument panel, the cone needed to be moved two feet further from the vehicle than was necessary for the same driver to see the same cone through the same portion of the windshield for either the 1999 Contour with the instrument panel held down or the 2000 Contour with the unwarped instrument panel. The practical effect of this difference is minimal: the smallest drivers still have a clear view as they approach such a small object (12 inches or less), but could lose sight of such an object if it is off to the right of their forward field of vision just two feet sooner than a taller driver would. We believe that the observed slight reduction in one portion of the field of view that might be experienced by the smallest of drivers fails to demonstrate any material effect on safety. This conclusion is supported by the absence of any report in the agency's complaint database of alleged loss of control or crash attributed to this problem for these vehicles, which have now acquired nearly 8 years of field experience.

NHTSA also evaluated the ability of the defroster in a 1999 Ford Contour with a warped instrument panel to clear the windshield of heavy early morning frost. NHTSA compared these results with the performance of the defrosters in three other vehicles with unwarped instrument panels: a 2000 Ford Contour, a 2005 Saturn Ion and a 1999 Volvo S80. The comparison demonstrated that the defroster in the subject vehicle with the warped instrument panel, though functional, required approximately three to four minutes longer to clear most of the frost from the windshield compared with the other vehicles. However we do not find this reduction in the speed of the defroster's performance to be a likely safety hazard. The defroster is still capable of performing its intended function.

The principal concern expressed by the petitioner was the potential for warping of the instrument panel to degrade the performance of the air bag system. As of November 2006, NHTSA's consumer complaint database contained no allegations that instrument panel warping affected the actual deployment of the passenger air bag, nor are there reports of instrument panel components becoming projectiles during air bag deployments. Through examination of the construction of the instrument panel

on a subject vehicle, NHTSA determined that warping of the instrument panel is confined to the surface materials of the instrument panel, and does not extend to the supporting structure of the air bag system. Based on a review of the agency's complaint database and examination of subject vehicles, we find no evidence that the warping of the instrument panel could cause either inappropriate deployment of the passenger air bag, impede proper deployment of the passenger air bag, or block the air bag deployment path.

Based on a review of the petitioner's request and the information provided above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

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

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Fuji Heavy Industries U.S.A., Inc.

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Fuji Heavy Industries U.S.A., Inc.'s (FUSA) petition for exemption of the Subaru Impreza vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). FUSA requested confidential treatment for the information and attachments it submitted in support of