

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 552; 557

**Denial of Motor Vehicle Defect Petition and
Petition for a Hearing**

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Denial of Petition

SUMMARY: The Center for Auto Safety has petitioned NHTSA to open defect investigations on Model Year (MY) 2002-2004 Ford Escape and 2001-2004 Mazda Tribute vehicles with certain cruise control cables. The Center for Auto Safety has also petitioned for a hearing to address whether Ford Motor Company (Ford) and Mazda North American Operations (Mazda) met their obligations to notify owners and correct a defect in certain Ford Escape and Mazda Tribute vehicles. The petitions to open investigations are denied as moot and the petitions to conduct hearings are denied.

FOR FURTHER INFORMATION CONTACT: Derek Rinehardt, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590 (Telephone: 202-366-3642).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The Center for Auto Safety, in letters dated July 8, 2012 and July 13, 2012, petitioned for a Defect Order under 49 CFR Part 552 and for a Hearing on Notification and Remedy of Defects under 49 CFR Part 577. The petitions relate to Ford's recall of

MY 2002-2004 Ford Escape vehicles (Recall 04V-574) and Mazda's recall of MY 2002-2004 Mazda Tribute vehicles (Recall 04V-583).

In 49 CFR Part 573 Defect and Information Reports (Part 573 Report) filed in December 2004, Ford and Mazda both informed NHTSA that the inner liner of the accelerator cable in certain Ford Escape and Mazda Tribute vehicles could migrate out of place during vehicle operation, and prevent the throttle body from returning to the idle position. Ford and Mazda said that the safety consequence of a throttle body not returning to the idle position was a progressive, and in some cases sudden increase in speed. Ford and Mazda notified vehicle owners of the recalls (Recall 04V-574 and 04V-583) in January 2005. Thereafter, on October 6, 2005, Ford released a recall update to dealers. In that update, Ford provided supplemental instructions on how to remove the accelerator cable. The instructions indicate that damage to the speed (or cruise) control cable can result if the accelerator cable is not properly removed. Mazda, however, did not issue a recall update.

The Center for Auto Safety (CAS) asserts that Ford and Mazda failed to notify about 319,500 Ford Escape owners and 84,700 Mazda Tribute owners that their vehicles' speed (or cruise) control cables may have been damaged during the accelerator cable replacements conducted in Recall 04V-574 and Recall 04V-583. According to CAS, these vehicles were repaired prior to September 30, 2005. Related to this potential damage, CAS states that Ford and Mazda did not file Part 573 Reports with NHTSA which would have initiated a second recall. CAS adds that Ford and Mazda did not file Part 573 Reports and recall the cruise control cables. CAS claims that the cruise control

cable can fail independently of being damaged in the course of repairs conducted pursuant to Recall 04V-574 and Recall 04V-583.

In its July 8 petition, CAS refers to a crash involving a MY 2002 Ford Escape which occurred in January 2012 in Payson, Arizona. The driver of the Ford Escape was killed in the crash. CAS states that the driver's vehicle had been repaired in January 2005, after Recall 04V-574 was announced but before the October 2005 recall update was released.

NHTSA has been gathering information on the Arizona crash since early 2012 when it first learned of it. NHTSA obtained the police report when it became available. In June 2012, NHTSA contacted counsel representing the driver's family to obtain more information on the crash. Independent of CAS's petition, NHTSA opened a preliminary investigation (PE 12-019) on July 17, 2012 that among other things will encompass issues raised by the Center for Auto Safety's petition.

II. CAS'S PETITION THAT NHTSA OPEN A DEFECT INVESTIGATION IS DENIED AS MOOT

CAS requests that NHTSA open a defect investigation into MY 2002-2004 Ford Escapes and MY 2001-2004 Mazda Tributes with cruise control cables of the same design as in Recall 04V-574, Recall 04V-583, and in the Arizona vehicle. Pursuant to 49 CFR 552.3, any interested person may file a petition requesting that the Administrator commence a proceeding to decide whether to issue an order concerning the notification and remedy of a failure of a motor vehicle or item of replacement equipment to comply with an applicable motor vehicle safety standard or a defect in such vehicle or equipment that relates to motor vehicle safety. If NHTSA grants the petition, NHTSA opens an investigation.

Based on the information obtained by NHTSA prior to the filing of the CAS petition, NHTSA opened an investigation on July 17, 2012 that will, among other issues, assess the scope and remedy of Recall 04V-574 (involving certain model year 2002-2004 Ford Escape vehicles) and Recall 04V-583 (involving certain model year 2002-2004 Mazda Tribute vehicles). In view of the fact that NHTSA has opened an investigation that will examine the issues on the Ford Escape and Mazda Tribute speed control cables, including claims raised by CAS, the agency denies this portion of CAS's petition as moot.

III. CAS'S PETITION FOR A HEARING ON NOTIFICATION AND REMEDY OF DEFECTS IS DENIED

CAS's petition for a hearing on notification and remedy of defects pursuant to 49 CFR Part 557 requests that NHTSA hold a hearing to determine whether Ford and Mazda reasonably met their obligations to notify owners and correct the defects at issue in Recall 04V-574 and Recall 04V-583. In determining whether to hold a hearing, the agency considers (1) the nature of the complaint; (2) the seriousness of the alleged breach of obligation to remedy; (3) the existence of similar complaints; (4) the ability of the NHTSA to resolve the problem without holding a hearing; and (5) other pertinent matters. 49 CFR 557.6.

We first consider the nature of the complaint. CAS claims that Ford did not notify owners of about 319,500 vehicles of potential damage to speed control cables caused by a faulty recall repair in Recall 04V-574. CAS claims that Mazda did not notify owners of about 84,700 vehicles of potential damage to speed control cables caused by a faulty recall repair in Recall 04V-583. CAS also claims that Ford and Mazda did not file Reports pursuant to 49 CFR Part 573 with NHTSA which would have initiated a second

recall. Finally, CAS claims that Ford and Mazda did not file Part 573 Reports and recall the cruise control cable. Federal regulations require vehicle manufacturers to submit reports to NHTSA for each defect that the manufacturer or the Administrator of NHTSA determines to be related to motor vehicle safety. 49 CFR 573.6. Issues of the nature raised by CAS will be addressed in PE 12-019.

Second, we consider the seriousness of the alleged breach of obligation to remedy. If CAS's claims are true, they are serious. NHTSA will consider them in PE 12-019.

Third, we consider the existence of similar complaints. NHTSA received complaints from consumers by way of Vehicle Owner Questionnaires (VOQ's) regarding accelerator cable failure, cruise control cable failure, and/or stuck throttles. These are identified in the PE 12-019 Opening Resume in certain MY 2002-2004 Ford Escape and Mazda Tribute vehicles. NHTSA takes these complaints seriously. Considering the VOQ complaints in the context of the 2012 crash in Arizona, NHTSA opened a preliminary evaluation to investigate the safety consequence broadly including the scope and adequacy of Recall 04V-574 and Recall 04V-583. However, aside from the petition from CAS, NHTSA has not received any other complaints that Ford and Mazda failed to notify owners of vehicles that had been repaired pursuant to Recall 04V-574 or Recall 04V-583 of a faulty recall repair, file a Part 573 Report with NHTSA and initiate a second Ford Escape or Mazda Tribute recall, or file a Part 573 Report reporting the cruise control cable defect and recalling the Ford Escape and Mazda Tribute cruise control cables. Nor has NHTSA received any other requests that the Agency conduct a hearing

to assess whether Ford and Mazda have met their statutory and regulatory obligations to notify owners and correct the defects at issue in Recall 04V-574 and Recall 04V-583.

Fourth, we consider the likelihood that NHTSA can resolve this alleged problem without a hearing. NHTSA believes that it can obtain the information it needs to resolve this matter by directly using its information gathering authorities with respect to Ford and Mazda, contacting Ford Escape and Mazda Tribute owners and otherwise conducting an agency investigation. We do not believe that there would be benefits to holding a hearing. In fact, the time taken to plan for and hold a hearing would detract from the investigation.

Finally, the Agency will consider other pertinent factors. The Agency has opened PE 12-019 to assess the Ford Escape and Mazda Tribute recalls and broader issues that may not be related to those recalls. We believe that an investigation is a more efficient way of obtaining the information necessary to evaluate the issues presented in CAS's petition than holding a hearing.

CAS's petition for a hearing is denied.

Authority: 49 U.S.C. 30118-30120, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 2012

A handwritten signature in black ink, appearing to read 'D. Strickland', written over a horizontal line.

David Strickland
Administrator

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