Issued on: December 20, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

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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 a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition DP06–005) submitted by Public Citizen to NHTSA's Office of Defects Investigation (ODI) pursuant to 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with regard to engine stalling in Model Year (MY) 2003–2005 Ford Taurus/Mercury Sable Flex Fuel Vehicles that operate using E85, an alternative fuel.

After reviewing all available information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issue raised by the petition is not warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Ajit Alkondon, Safety Defects Engineer, Defects Assessment Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington DC 20590. Telephone 202–366–3565.

SUPPLEMENTARY INFORMATION: On October 11, 2006, Public Citizen sent a letter to NHTSA regarding MY 2003–2005 Ford Taurus and Mercury Sable Flex Fuel Vehicles (FFV). The Ford Motor Company (Ford) produced 228,000 of these vehicles in those model years. In the letter, Public Citizen petitioned NHTSA to investigate and determine whether the alleged stalling of these vehicles while operating on E85 constitutes a safety defect under the vehicle safety laws (49 U.S.C. Chapter 301).

E85, an ''alternative fuel'' within the meaning of 49 U.S.C. 32901(a)(1)(D), is an alcohol/fuel mixture consisting of 85% denatured ethanol and 15% gasoline or diesel fuel. Flex fuel vehicles (FFVs, also known as ''dual fueled automobiles'') are vehicles ''capable of operating on alternative fuel and on gasoline or diesel fuel.'' 49 U.S.C. 32901(a)(8)(A). An FFV is identical to its non-FFV counterpart, except that, because of the corrosive nature of the alternative fuel (in this case, the ethyl alcohol in E85), exposed metallic and rubber surfaces within the FFV fuel system have been replaced with materials more capable of resisting the corrosive effects of the alternative fuel to prevent excessive wear of these surfaces from exposure to E85.

Public Citizen's Petition

In addition to seeking a defect investigation, the petition also asks NHTSA to reclaim credits claimed by Ford for these vehicles due to their dual fuel status under the Corporate Average Fuel Economy (CAFE) program. See 49 U.S.C. 32905–32906. Although that issue is not addressed in this notice, the petition focuses primarily on this CAFE credit issue and the availability of E85. The great majority of the allegations in the petition concern difficulty in starting the vehicles and make no reference to safety issues. The petition mentions one instance in which, after the owner experienced difficulty starting the vehicle and drove the car out of his garage, the vehicle ''began to stall.'' The petition does not allege any crashes, injuries, or (with the possible exception of the one alleged stalling incident), any unsafe events involving these vehicles.

NHTSA's Review of the Allegations Made in the Petition

With little to go on based on the petition itself, ODI looked at various sources of information to determine whether or not there was any basis for a safety investigation of these vehicles with regard to alleged engine stalling. ODI reviewed complaints submitted by owners of these vehicles to NHTSA and to Ford (including a complaint concerning the one instance of possible stalling cited in the petition), the experience of state-owned fleets of these vehicles, Early Warning Reporting (EWR) data, actions taken by Ford, and certain information submitted by Ford.

In any investigation involving allegations of stalling, ODI examines a number of factors, including: The rate at which stalling occurs in the whole population of subject vehicles (often expressed as the number of vehicles that have experienced the phenomenon per hundred thousand), the speeds at which stalling occurs, the type of operation during which stalling occurs (*e.g.*, when starting, accelerating, decelerating, or cruising), whether the vehicle can quickly be restarted after stalling, whether the stalling affects steering functions, whether the stalling affects braking functions, and any crashes or other unsafe events that may have resulted from the stalling. In deciding whether or not alleged stalling merits a full investigation, ODI also considers those criteria.

Ford's Actions Concerning These Vehicles

In response to customer complaints about the operation of these vehicles, Ford released two Technical Service Bulletins (TSBs): TSB 05–11–13 and TSB 06–05–05. TSB 05–11–13, issued on June 13, 2005, pertains to both FFV and non-FFV Ford Taurus/Mercury Sable vehicles for MY 2004 and 2005. The TSB addresses the following issues: lack of power at highway speeds, RPM dip after cold start, malfunction indicator lamp (MIL) on with diagnostic trouble code (DTC) P0316, intermediate clutch failure due to low transmission oil pressure, misfire at low load/low RPM, or load surge at low speeds, hard start and rough idle, and inaccurate display of fuel economy in message center. Ford explained that TSB 05–11–13 was created to address specific drivability symptoms associated with the 3.0L engine in MY 2004 through 2005 model Taurus/Sable vehicles, independent of the type of fuel used. The repair procedure for this TSB includes reprogramming the Powertrain Control Module (PCM) with updated software.

TSB 06–05–05, published on March, 20, 2006, pertains to Ford Taurus/Mercury Sable FFVs for MY 2004–2006. This TSB addresses a long crank/hard start condition when the vehicles operate on E85 fuel. Similar to TSB 05–11–13, the repair procedure for this TSB requires reprogramming the PCM with an updated software release.

While the letter from Public Citizen concerns subject vehicles in MY 2003 through 2005, the two TSBs issued by Ford cover MY 2004 through 2005 and 2004 through 2006, respectively. Ford explained that the model years 2001 through 2003 Taurus/Sable vehicles have a different PCM than the MY 2004 through 2006 Taurus/Sable vehicles. Further, the issues brought up in the Public Citizen letter—long crank/hard start and low speed stalls—are predominantly confined to the 2004 to 2006 model year vehicles.

As stated above, Ford issued TSB 06–05–05 to address the long crank/hard start problems associated with MY 2004 through 2006 Ford Taurus/Mercury Sable vehicles. Ford also initiated Extended Coverage Program (ECP) 06N07 to address this condition. Ford did not extend ECP 06N07 to MY 2003 vehicles since these vehicles have a

different PCM and are covered under a separate ECP.

A search of Ford's Analytical Warranty System database revealed that of the 649 vehicles receiving the TSB 06–05–05 repair, only 12, or 1.8%, of the vehicles required service for similar issues after the repair. Of these 12, only one vehicle complained of a stall while driving. (As explained below, this stall was apparently not related to use of E85.) This suggests a high TSB effectiveness.

The Complaint Cited in the Petition

ODI interviewed the complainant named in the Public Citizen letter and inquired concerning his experiences with the subject vehicle and its performance when operated on either gasoline or E85. The consumer stated that he had purchased a new 2005 Ford Taurus FFV and that, when operating the vehicle on gasoline alone, he had experienced no driving problems. However, when the consumer operated the vehicle on E85, he experienced hard starting and low speed stalls while the engine was cold. The consumer had the adjustments called for by TSB 05–11–13 performed on his vehicle three times, but the problems persisted. He then sold the vehicle back to the Ford dealership after driving only 980 miles. TSB 06–05–05 was never performed on the vehicle.

Other Complaints

In addition to the vehicle owned by the complainant discussed above, ODI confirmed only three other vehicles that had experienced instances of stalling from a population of 228,000 vehicles. One, a 2004 Ford Taurus FFV, was the subject of a Vehicle Owner Questionnaire (VOQ) submitted to NHTSA. ODI contacted this consumer and learned that the consumer's main concern was difficulty starting the vehicle. The consumer stated that he brought the vehicle into a repair shop for service and had TSB 06–05–05 performed on his vehicle. Eventually, the work Ford did on the car reduced the hard starting problem and apparently eliminated the stalling problem.

The second vehicle that experienced stalling, a 2005 Ford Taurus FFV, was the subject of a complaint received by Ford and recorded in its complaint database. ODI has contacted this consumer and learned that the consumer experienced both engine stalling and hard starting problems. The consumer did not have TSB06–05–05 performed on his vehicle, and sold the vehicle shortly after his vehicle exhibited these symptoms.

The third vehicle that experienced stalling, a 2004 Ford Taurus FFV, was the vehicle returned for repair after application of TSB 06–05–05, mentioned above. This particular complaint suggested a single stalling event while driving, after which the vehicle restarted with no additional problems. Ultimately, this vehicle was repaired by performing technical service unrelated to the repair methods for engine stalling due to E85 usage. Therefore, the stalling problem was apparently unrelated to E–85 usage, and this vehicle is not considered as one that experienced E85-related stalling.

In total, ODI was able to confirm that just three FFV vehicles (one 2004 Taurus and two 2005 Tauruses) experienced stalls related to E85 operation. ODI was not able to confirm any stalls in the population of 2003 Ford Taurus/Mercury vehicles.

Fleet Experience

To assess E85 performance in vehicles most likely to use it frequently, ODI obtained a list of fleets operating the subject vehicles. ODI contacted six of the fleets-the State of Minnesota; the Iowa, Illinois, Nebraska, and Wisconsin Departments of Transportation; and the Minnesota Department of Natural Resources. In total, these fleets operate approximately 500 of the subject vehicles. Five out of the six fleets reported incidents of long crank/hard start in the subject vehicles. However, none of the six fleets reported stalling issues. Fleet customers report that they have taken advantage of the TSBs issued by Ford that address this long crank/hard start issue, and that there have been significant improvements in the subject vehicle performance while using E85 subsequent to the repairs.

Conclusions

Nearly all of the allegations concerning the operation of these vehicles involve long crank/hard starting, not stalling. Based on ODI's inquiry, only three of the subject vehicles (out of a population of 228,000 vehicles) have experienced engine stalling in connection with their operation using E85. This indicates a very low rate of stalling that is nearly identical to the rate of stalling in non-FFV Taurus and Sable vehicles and very low when compared to the rates experienced by non-FFV that ODI has reviewed. The stalling that has occurred has apparently not resulted in any crashes, loss of steering or braking control, or high risk events. The stalling seems to occur either at start-up or at low speeds. Moreover, at least with regard to the one vehicle that experienced stalling apparently related to E85 use and later received the repair procedure called for by Ford's TSB 06–05–05, this procedure seemed to cure the problem.

Due to the very low incidence of vehicle stalling resulting from the use of E85 within the subject vehicles and the extremely low likelihood of an unsafe occurrence arising from the type of stalls that have occurred, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety defect in this matter. NHTSA notes that the issues consumers primarily complain of—namely long crank/hard start and stall while driving—are adequately addressed by the TSBs issued by Ford in response to consumer complaints. Because we believe the petition does not provide a technical basis on which to proceed, and in view of the need to allocate NHTSA's limited resources so as to accomplish the agency's safety priorities, 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); delegation of authority at CFR 1.50 and 501.8.

Issued on: December 13, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–97–2995]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2008.

DATES: Effective January 1, 2008, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas, Director, Drug and Alcohol Policy and Investigations, PHMSA, U.S. Department of Transportation, telephone (202) 550–0629 or e-mail *Stanley.kastanas@dot.gov.*