

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2012–0144; Notice 2]

General Motors, LLC; Ruling on Petition for Decision of Inconsequential Noncompliance

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

ACTION: Ruling on petition.

SUMMARY: General Motors, LLC (GM) has determined that certain model year 2013 Chevrolet Malibu passenger cars manufactured between June 21, 2011 and July 24, 2012, do not fully comply with paragraphs S3.1.4.1 (a) and (b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*. GM has filed an appropriate report dated August 3, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Mr. Vince Williams, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2319, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. *GM's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM submitted a petition 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.

Notice of receipt of GM's petition was published, with a 30-day public comment period, on September 30, 2013, in the **Federal Register** (78 FR 60019.) No comments were received. 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–2012–0144."

II. *Vehicles Involved:* Affected are approximately 23,910 model year 2013 Chevrolet Malibu passenger cars manufactured between June 21, 2011 and July 24, 2012.

III. *Noncompliance:* GM explains that the noncompliance is that in the subject vehicles, because the primary shift lever position backlight in the console shift indicator can fail to illuminate, the

transmission shift position selected in relation to the other gears is not always provided under the required conditions specified in S3.1.4.1 (a) and (b).

IV. *Rule Text:* Paragraph S3.1.4.1 (a) and (b) of FMVSS No. 102 specifically states:

S3.1.4 Identification of shift positions and of shift position sequence.

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

- (a) The ignition is in a position where the transmission can be shifted; or
- (b) The transmission is not in park.

V. *Summary of GM's Analyses:* GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. There is minimal risk that the operator will shift the vehicle out of park without being aware that the transmission shift position sequence display is not illuminated since the condition can only be initiated at key-up (engine crank). The condition cannot be initiated while driving.

2. The condition corrects on the next ignition cycle. Throughout our investigation it never repeated on consecutive ignition cycles.

3. The gear selected is always provided in a redundant display located in the instrument panel (IP) cluster.

a. The up-level IP cluster is utilized in 85% of the vehicle production and displays the gear selected in relation to the other gears for 3 seconds whenever the vehicle is shifted. After 3 seconds the IP cluster displays only the gear selected.

b. 15% of production has the base IP cluster which displays only the gear selected.

4. The system is designed to minimize the risk that the operator will shift to an unintended gear.

a. When shifting, a secondary motion (button push on shifter) is required to help prevent mis-shift. A button on the shift lever must be depressed when shifting from:

- i. PARK to any other gear;
- ii. REVERSE to any other gear; or
- iii. DRIVE to PARK or REVERSE

b. NEUTRAL gear selection from DRIVE does not require a secondary motion (button push on shifter), making location of NEUTRAL easier in a panic situation.

c. The gear selected is provided as a secondary display in the IP cluster and the shifter in the subject vehicle utilizes

a linear shift pattern (used on U.S. vehicles for more than 50 years). Since the relationship between PARK, REVERSE, NEUTRAL and DRIVE is well understood by the driving public, this should assist the operator in determining the shift lever's position in relationship to the other gear positions even when not illuminated.

d. Brake Transmission Shift Interlock (BTSI) helps to assure the driver is not caught unaware when shifting from PARK since the operator must first apply the brake.

e. On the subject vehicles miss-shifting is prevented while the vehicles are in motion. At speeds above 10 MPH, shifting from DRIVE to REVERSE or PARK; or shifting from REVERSE to PARK or DRIVE, is electronically inhibited.

5. The frequency of the condition occurring is rare and random.

a. As of 25 July 2012, there were only ten reported incidents which occurred on seven of 285 captured test fleet (CTF) vehicles. The condition was reported twice on two of the CTF vehicles and did not occur on consecutive ignition cycles.

b. During the investigation, it took more than a week of testing during which approximately 1000 ignition cycles were conducted on each of four CTF vehicles reported to have the condition in order to recreate the occurrence.

c. Warranty claims as of 25 July 2012

- i. U.S. Warranty 3 of 8,573 vehicles
- ii. China Warranty 2 of 11,872 vehicles
- iii. Korea Warranty 3 of 4,968 vehicles
- d. None of the Warranty claims or CTF reports indicated that the operator had experienced a mis-shift condition.

e. No claims were discovered related to injury or crash.

f. As of August 1, 2012, GM found no Vehicle Owner's Questionnaires (VOQs) resulting from the subject condition during its search of the NHTSA database.

6. GM stated its belief that NHTSA granted a similar petition in the past.

On August 16, 2013 GM additionally informed NHTSA in an email message that it corrected the noncompliance on August 3, 2012 so that all future production would comply with FMVSS No. 102.

In summation, GM believes that the described noncompliance of the subject vehicles 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.

VI. *NHTSA's Decision*: NHTSA has reviewed GM's analyses that the subject noncompliance is inconsequential to motor vehicle safety. GM has identified an intermittent condition during which the automatic transmission positions on the console-mounted transmission control will not be illuminated at key startup. FMVSS No. 102, paragraph S3.1.4.1 requires the indicator to display identification of an automatic transmission's positions, including the position selected and the positions in relation to each other in view of the driver. FMVSS No. 101, paragraph S5.3.1(b) and Table 1 require the automatic transmission control position indicator to be illuminated whenever the headlamps are activated. GM stated that the failure of illumination is very rare, has occurred only at startup (not during driving), and has never been found to repeat on consecutive ignition cycles. However, when it does occur, the transmission position indicator on the console will not be illuminated throughout that operating period. The indicator identifies P,R,N,D or M (M1–M6) and, except when the noncompliance occurs at key startup, is illuminated as required.

FMVSS No. 102 paragraph S3.1.4 permits a redundant display providing some or all of the required information. GM identified two instrument clusters used in the affected vehicles that provide different amounts of redundant information. The transmission position selected is always displayed on both clusters. In addition, for vehicles other than the base model (approximately 15 percent of the affected vehicles), the cluster display includes the position selected and the positions in relation to each other for three seconds whenever the transmission is shifted.

The redundant display on the cluster identifies the transmission position selected for all affected vehicles. It is likely that drivers will become accustomed to looking at the instrument cluster rather than looking down at the console to confirm the desired transmission position, *i.e.*, "D," has been selected. So the lack of illumination on the console at startup may go unnoticed. In a panic situation, an inexperienced driver may not be familiar with the other positions, *i.e.*, how to shift from "D" to "N" to recover control of the vehicle if an unintended acceleration occurs. Since the cluster of 85 percent of the vehicles displays this information for 3 seconds after every shift, this frequent reminder is considered sufficient to alert the driver about the relationship to the other

transmission positions. The 15 percent (base models) are not so equipped and present an unreasonable risk to safety.

In consideration of the foregoing, NHTSA has decided that for all except the base model vehicles, GM has met its burden of persuasion that the subject FMVSS No. 102 noncompliance is inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby partially granted and GM is exempted from the obligation of providing notification of, and a remedy for the subject noncompliance for the non-base model Malibu vehicles (approximately 85 percent of the affected vehicles) under 49 U.S.C. 30118 and 30120.

For the base model Malibu vehicles (approximately 15 percent of the affected vehicles), NHTSA has decided that GM has not met its burden of persuasion that the FMVSS No. 102 noncompliance is inconsequential to motor vehicle safety. Accordingly, for those vehicle's GM's petition is hereby denied and GM is obligated to provide notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 23,910 model year 2013 Chevrolet Malibu passenger cars that GM no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

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

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: 60-day notice of request for extension: Notifications of Trails Act Agreement and Substitute Sponsorship.

SUMMARY: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek from the Office of Management and Budget (OMB) an extension of approval for the collection: Notifications of Trails Act Agreement and Substitute Sponsorship.

Under 16 U.S.C. 1247(d) and its regulations, the STB will issue a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU) to a prospective trail sponsor who offers to assume managerial, tax, and legal responsibility for a right-of-way that a rail carrier would otherwise abandon. The CITU/NITU permits parties, for 180 days, to negotiate for a railbanking agreement. If parties reach an agreement, the CITU/NITU automatically authorizes railbanking/interim trail use. If no agreement is reached, then upon expiration of the negotiation period, the CITU/NITU authorizes the railroad to exercise its option to fully abandon the line without further action by the Board.

Pursuant to 49 CFR 1152.29, parties must jointly notify the Board when a trail use agreement has been reached, and must identify the exact location of the right-of-way subject to the agreement, including a map and milepost marker information. The rules also require parties to file a petition to modify or vacate the CITU/NITU if the trail use agreement applies to less of the right-of-way than covered by the CITU/NITU. Finally, the rules require that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time.

Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.