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**John Simkins,**

*Planning and Environment Team Leader.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0159, Notice 2]

#### Decision That Nonconforming 2006–2010 BMW M3 Passenger Cars Are Eligible for Importation

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

**ACTION:** Grant of petition.

**SUMMARY:** This document announces a decision by the National Highway Traffic Safety Administration that certain 2006–2010 BMW M3 passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States that were certified by their manufacturer as complying with all applicable FMVSS (the U.S. certified version of the 2006–2010 BMW M3 PC), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision became effective on July 13, 2015.

**ADDRESSES:** For further information contact George Stevens, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As

specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US Specs, of Havre de Grace, Maryland (Registered Importer 03-321), petitioned NHTSA to decide whether 2006–2010 BMW M3 PCs are eligible for importation into the United States. NHTSA published a notice of the petition on December 28, 2012 (77 FR 76598) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

#### Comments

On January 28, 2013, J.K. Technologies, LLC (JK), another Registered Importer, submitted comments on the petition. In its comments, JK expressed the belief that the petition contained several omissions and errors.

On May 20, 2013, US Specs responded, in part, to JK's comments by submitting to NHTSA a revised listing of parts associated with FMVSS No. 208 compliance.

On October 21, 2013, NHTSA informed US Specs by letter that the parts listing it submitted appeared to only partially address the comments made by JK. The agency offered US Specs the opportunity to further address JK's comments.

On December 2, 2013 US Specs submitted further comments and parts information to NHTSA.

A summary of JK's comments, US Specs' responses, and the conclusions that NHTSA has reached with regard to the issues raised by those parties is set forth below.

#### Comments, Conclusions and Conditions

JK commented that the software alterations necessary to conform the vehicles to FMVSS No. 114 *Theft Protection and Rollaway Prevention* may also require replacement of the CAS (theft prevention electronic control unit or "ECU") hardware because some versions of the European CAS units will not accept U.S.-model programming.

US Specs responded: "Each vehicle will need to be inspected on a case-by-case basis to see that they contain US parts. The US parts will be installed if not already so equipped. The Digital Motor Electronics and Car Access

System control unit will be replaced and programmed as necessary."

JK also commented that US Specs did not include in its description of modifications needed to conform the vehicles to FMVSS No. 208 *Occupant Crash Protection* the need to replace the following components with U.S.-model components: Driver's airbag, front acceleration sensors (including front body wiring harness and mounting hardware), front door sensors (including center body wiring harness and mounting hardware), and rear seat belts. JK also commented that the system ECU's will have to be reprogrammed and may require replacement.

US Specs responded by submitting additional parts lists and diagrams and by stating: "Each vehicle will need to be inspected on a case-by-case basis to see if they contain the US-model parts. The US-model parts will be installed if a vehicle is not already so equipped. The Digital Motor Electronics and Car Access System control units will also be replaced and reprogrammed as necessary."

JK also commented that in order for the vehicle to be conformed to FMVSS No. 301 *Fuel System Integrity*, the following U.S.-model parts would have to be substituted for those originally equipped on the vehicle: Fuel tank, filler neck, all fuel and vapor lines, and vapor storage canister.

US Specs responded by stating that BMW uses many of the same components for multiple vehicles worldwide. US Specs further stated that each vehicle will need to be inspected on a case by case basis to see if it contains the US-model parts and that US-model parts will be installed on vehicles not already so equipped. US Specs also provided additional parts lists and diagrams.

After reviewing the petition, JK's comments and US Specs' responses to those comments, NHTSA has concluded that the vehicles covered by the petition are capable of being readily altered to comply with all applicable FMVSS. However, in light of JK's comments and consistent with recent decisions that the agency has made in granting several import eligibility petitions for late-model vehicles (See Docket Numbers: NHTSA-2013-0107, NHTSA-2013-0108, and NHTSA-2014-0004), NHTSA has decided that an RI who imports or modifies the subject vehicles must include a detailed description of all modifications it makes to achieve conformity with applicable FMVSS in each statement of conformity with supporting documents (referred to as a "conformity package") it submits to NHTSA under 49 CFR part 592.6(d).

The description of the alterations must include: Identification of all parts removed and installed, how software programming changes were completed, and how compliance was verified after alterations were performed. The descriptions must be accompanied by photographs of the software installation and testing systems used, as well as printouts and/or screenshots of their displays showing successful software installation or reports indicating such results.

With regard to FMVSS No. 208, NHTSA has decided that each conformity package must also include a detailed description of the occupant protection system in place on the vehicle at the time it was delivered to the RI, and a similarly detailed description of the occupant protection system in place after the vehicle is altered, including photographs of all labeling required by FMVSS No. 208. The description must also include parts assembly diagrams.

Should an RI decide to alter the vehicles to conform to FMVSS No. 138, *Tire Pressure Monitoring Systems* by adding TPMS system, it must submit a test report verifying that the vehicle meets the requirements of the standard with the system installed or refer to such a test report previously submitted to verify that the installed system allowed a vehicle of the same make, model, and model year to achieve conformity with FMVSS No. 138.

In addition to the information specified above, each conformity package must include information showing how the RI verified that the changes it made in loading or reprogramming vehicle software to achieve conformity with each individual FMVSS did not cause the vehicle to fall out of compliance with any other applicable FMVSS.

#### Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 2006–2010 BMW M3 passenger cars that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 2006–2010 BMW M3 PCs manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal Motor Vehicle Safety Standards.

#### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry

the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–571 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

**Authority:** 49 U.S.C. 30118, 30120; Delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0066; Notice 2]

#### Ford Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of petition.

**SUMMARY:** Ford Motor Company (Ford) has determined that certain model year (MY) 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 do not fully comply with paragraph S3.1.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 102 *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*, or paragraph S5.2.1 of FMVSS No. 114 *Theft Protection and Rollaway Prevention*. Ford has filed an appropriate report dated March 4, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5307, facsimile (202) 366–7002.

#### SUPPLEMENTARY INFORMATION:

**I. Overview:** Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions 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.

Ford submitted its petition on March 21, 2013. On February 11, 2014, Ford submitted a petition supplement to

clarify how the specific vehicles affected do not fully comply with FMVSS No. 102 and FMVSS No. 114.

Notice of receipt of the petition was published, with a 30-day public comment period, on March 3, 2014, in the **Federal Register** (79 FR 11871.) 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–2013–0066.”

**II. Vehicles Involved:** Affected are approximately 4,727 MY 2013 Ford Fusion and Lincoln MKZ passenger cars built from August 12, 2012 through January 14, 2013 at the Hermosillo Stamping and Assembly Plant (HSAP) in Hermosillo, Mexico.

**III. Noncompliance:** Ford has determined that because the affected vehicles were inadvertently shipped to dealers in the “Factory Mode” instead of “Transport Mode,” the transmission gear selected in relation to other gears is not always displayed by the shift position sequence indicator (aka, PRNDL) as required by paragraph S3.1.4.1(a) of FMVSS No. 102. In addition, the affected Ford Fusion vehicles manufactured with mechanical key ignition systems do not fully meet the requirements of paragraph S5.2.1 of FMVSS No. 114 because under certain conditions the mechanical key may be removed from the ignition lock cylinder when the transmission shift lever is in a position other than “park.”

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

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; . . .

Paragraph S5.2.1 of FMVSS No. 114 specifically states:

S5.2.1 Except as specified in S5.2.3, the starting system required by S5.1 must prevent key removal when tested according to the procedures in S6, unless the transmission or gear selection control is locked in “park” or becomes locked in “park” as a direct result of key removal.

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

1. The vehicle design is self-remediating. The affected vehicles are