

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

[Docket No. NHTSA–2012–0004; 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<sup>1</sup> (Ford), has determined that certain model year 2012 Ford Focus model passenger cars manufactured between May 12, 2011 and May 18, 2011, do not fully comply with the requirements of S5.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays* and the requirements of S5.5.5 of FMVSS No. 135, *Light Vehicle Brake Systems*. Ford has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated July 7, 2011.

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.

Notice of receipt of Ford's petition was published, with a 30-day public comment period, on February 2, 2012 in the **Federal Register** (77 FR 5302). 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–2012–0004."

**Contact Information:** For further information on this decision contact Mr. Stuart Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5287, facsimile (202) 366–7002.

**Vehicles Involved:** Affected are approximately 485 model year 2012 Ford Focus passenger cars that were manufactured at Ford's Michigan Assembly Plant between May 12, 2011 and May 18, 2012.

**Summary of Ford's Analyses:** Ford explains that the affected vehicles

display a red International Standards Organization (ISO) symbol for the brake telltale and warning indicator within the instrument cluster instead of the word "BRAKE" as required in FMVSS No. 101 and FMVSS No. 135.

Ford stated its belief that although the instrument cluster telltale symbols are displayed using ISO symbols the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The Owners Guide for the subject vehicles is written for multiple markets and depicts both the "BRAKE" and ISO symbol telltales for brake warning conditions.

(2) Paragraph S5.5.1 of FMVSS No. 135 states that the warning indicator must identify a gross loss of fluid or fluid pressure and identify if the parking brake is applied and is satisfied by a separate ABS lamp which complies with all requirements of FMVSS No. 135 and FMVSS No. 101.

(3) In the event that the brake fluid level in the master cylinder reservoir is less than the recommended safe level, the ISO symbol will illuminate and a warning message will display in the Message Center that states "BRAKE FLUID LEVEL LOW SERVICE NOW" and an initial warning chime will sound. The message will stay continuously displayed until acknowledged by the operator, provided there are no other serious message(s), which would result in the messages alternating. If the brake fluid is still low on subsequent key cycles the message will be redisplayed in the message center. If the message is acknowledged by the operator a red "i" is illuminated on the instrument cluster noting that an important message is stored and can be re-accessed by requesting a System Check.

(4) The parking brake in the subject vehicle is set by pulling up on the parking brake handle, which is located on the center console adjacent to the gear shift lever. Thus the application of the parking brake is in full view of the operator. When the parking brake is engaged it illuminates the ISO symbol and should the operator proceed with the parking brake engaged, a warning message "PARK BRAKE APPLIED" and an initial audible chime will sound when the vehicle is driven at six miles per hour or greater for more than five seconds, in addition to the vehicle feedback of a lack of acceleration. The warning message will time out after ten seconds but a red "i" remains illuminated noting that an important message is stored and can be re-accessed by requesting a System Check. If the operator continues to drive with the

parking brake engaged, after 30 seconds the warning message "PARK BRAKE APPLIED" will return, along with a warning chime.

(5) In all cases the ISO symbol for the brake telltale illuminates and remains illuminated in accordance with the requirements of FMVSS No. 135.

(6) Ford is unaware of any field or owner complaints regarding the issue of non-compliant telltales.

In summation, Ford believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt it 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.

**Requirement Background:** FMVSS No. 101 S5.2.1 and S5.5.2 specifically state:

S5.2.1 Except for the Low Tire Pressure Telltale, each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must be substantially similar in form to the symbol as it appears in Table 1 or Table 2. If a symbol is used, each symbol provided pursuant to this paragraph must have the proportional dimensional characteristics of the symbol as it appears in Table 1 or Table . . .

S5.5.2 The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, electronic stability control malfunction (as of September 1, 2011), passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.

Additionally, Table 1 Note 9 states:

Refer to FMVSS 105 of FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is to be used to indicate more than one brake system condition, the brake system malfunction identifier must be used.

FMVSS No. 135 S5.5.5 specifically states:

(a) Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (1/8 inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of clarity.

(b) Vehicles manufactured with a split service brake system may use a common brake warning indicator to indicate two or more of the functions described in S5.5.1(a)

<sup>1</sup> Ford Motor Company is a motor vehicle manufacturer incorporated under the laws of the state of Delaware.

through S5.5.1(g). If a common indicator is used, it shall display the word "Brake" (emphasis added).

**NHTSA Analysis and Reasoning:** Ford stated that there are two conditions which will cause the brake system warning indicator, located on the instrument cluster and labeled with an ISO symbol instead of BRAKE, to illuminate:

1. The brake fluid level in the master cylinder reservoir is less than the recommended safe level; and
2. The parking brake control, a handle located on the center console, is applied.

Ford also stated that each warning to the driver includes an audible chime and a warning message in the vehicle's message center. The message "brake fluid low service now" would remain illuminated until brake fluid is added. However, that message may alternate with other serious message(s) should they appear. If the vehicle's parking brake is applied, an audible chime will sound when the vehicle reaches 6 mph for more than 5 seconds. The message "park brake applied" will time out after 10 seconds, but it will be stored in the message information center for subsequent retrieval by the driver. In addition, the parking brake control is readily visible to the driver and the vehicle will lack acceleration if the parking brake is applied. For either or both conditions 1 and 2, the red brake system warning indicator labeled with the ISO symbol will remain illuminated until the problem is corrected.

We believe that the combination of the red color of the ISO symbol, the audible chimes, message center warnings, and additionally for the parking brake, the position of the applied lever and reduced drivability, all described in the owner's manual, will be sufficient to adequately warn the driver should these serious problems in the braking system occur, even in the absence of the required BRAKE label on the indicator. The manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding especially since other sources of correct information beyond the ISO symbol are available. We also believe the ISO symbol has over time evolved to become more recognizable and understandable to drivers. In addition, NHTSA has not received any consumer complaints regarding the subject vehicles.

**NHTSA Decision:** In consideration of the foregoing, NHTSA has determined that Ford has met its burden of persuasion that the FMVSS No. 101 and 135 noncompliance for the BRAKE telltale is inconsequential to motor

vehicle safety. Accordingly, Ford's petition is hereby granted.

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 485 vehicles that Ford no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. 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 Ford notified them that the subject noncompliance existed.

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

Issued on: November 18, 2013.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2013-27950 Filed 11-20-13; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. MCF 21056]

#### **Tedesco Family ESB Trust, et al.— Purchase of Certain Assets and Membership Interests—Evergreen Interests—Evergreen Trails, Inc. d/b/a Horizon Coach Lines, et al.**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice tentatively authorizing finance transaction.

**SUMMARY:** On October 22, 2013, the Tedesco Family ESB Trust (Family Trust), on behalf of Franmar Leasing, Inc. (Franmar), together with the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust (collectively, Applicants), all noncarriers, filed an application under 49 U.S.C. 14303 for approval of two companion transactions. The first transaction involves Franmar's purchase of certain motor coach and non-motor coach assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Evergreen) from three garage and terminal facility locations in Florida. The second transaction

involves the purchase by the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust of FSCS Corporation's (FSCS) membership interest in Cabana Coaches, LLC (Cabana). The Board is tentatively approving and authorizing the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules set forth at 49 CFR 1182.5 and 1182.8.

**DATES:** Comments must be filed by January 6, 2014. Applicants may file a reply by January 21, 2014. If no comments are filed by January 6, 2014, the notice shall be effective on January 7, 2014.

**ADDRESSES:** Send an original and 10 copies of any comments referring to Docket No. MCF 21056 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Fritz R. Kahn, 1919 M Street NW., 7th Floor, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Jonathon Binet, (202) 245-0368. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Family Trust owns and controls three motor carriers of passengers, Academy Express, L.L.C. (MC-413682), Academy Lines, L.L.C. (MC-41016), and Number 22 Hillside, L.L.C. (MC-413631) (collectively, Academy Companies), through Academy Bus, L.L.C., a noncarrier. Francis Tedesco is the sole manager of the individual Academy Companies. According to Applicants, Academy Lines, L.L.C. and Number 22 Hillside, L.L.C. are leading commuter regular route transportation companies operating in the New York metropolitan area and in New Jersey, respectively. Academy Express, L.L.C. operates primarily in the Northeast.

Family Trust also owns and controls Franmar through two noncarriers, Franmar Logistics, Inc. and Academy Services, Inc. Franmar is primarily engaged in the purchase and leasing of motor coaches to the Academy Companies. The persons who own and control the Academy Companies are the trustees of the Francis Tedesco Revocable Trust (Francis Tedesco, sole trustee) and the Mark Tedesco Revocable Trust (Mark Tedesco, sole trustee), noncarriers, through Family Trust.<sup>1</sup>

<sup>1</sup> Francis Tedesco and Mark Tedesco are the settlors of Family Trust.