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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2021-0089, Notice 1]**

**Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance**

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

ACTION: Receipt of petition.

SUMMARY**:** Mercedes-Benz USA, LLC (Mercedes-Benz) has determined that certain model year (MY) 2019-2021 Mercedes-Benz motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, Controls and Displays, and FMVSS No. 102, Transmission Shift Position. Mercedes-Benz filed a noncompliance report dated September 24, 2021, and subsequently petitioned NHTSA (the "Agency") on October 25, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Mercedes-Benz's petition.

**DATES:** Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE,

Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.

Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at https://www.regulations.gov/. Follow the online instructions for submitting comments.

Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at https://www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

**FOR FURTHER INFORMATION CONTACT:** Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7487 or Ahmad Barnes, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7236.

**SUPPLEMENTARY INFORMATION:**

I. Overview: Mercedes-Benz determined that certain MY 2020 Mercedes-Benz CLS450, MY 2019 Mercedes-Benz E300, MY 2019-2020 Mercedes-Benz E450, MY 2019 Mercedes-Benz AMG E53, MY 2019-2020 Mercedes-Benz AMG G63, MY 2020-2021 Mercedes-Benz E350, MY 2019-2020 Mercedes-Benz G550 do not fully comply with paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101, Controls and Displays (49 CFR 571.101) and paragraph S3.1.4.1 of FMVSS No. 102, Transmission Shift Position, (49 CFR 571.102.) Mercedes-Benz filed a noncompliance report dated September 24, 2021, pursuant to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. Mercedes-Benz petitioned NHTSA on October 25, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, Exemption for Inconsequential Defect or Noncompliance.

This notice of receipt of Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 27,742 MY 2020 Mercedes-Benz CLS450, MY 2019 Mercedes-Benz E300, MY 2019-2020 Mercedes-Benz E450, MY 2019 Mercedes-Benz AMG E53, MY 2019-2020 Mercedes-Benz AMG G63, MY 2020-2021 Mercedes-Benz E350, MY 2019-2020 Mercedes-Benz G550, manufactured between January 29, 2018, and August 25, 2020, were reported by the manufacturer.

III. Noncompliance: Mercedes-Benz explains that the illumination of the instrument cluster in the subject vehicles may be interrupted under certain circumstances, and therefore does not

comply with paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101 and paragraph S3.1.4.1 of FMVSS No. 102. Specifically, the digital indicators including the shift position indicator, digital/analog speedometer, tachometer, time, and temperature may briefly fade to dark for a maximum of 2.5 seconds and then intensify back to full illumination.

IV. Rule Requirements: Paragraph S5.3.1(a), S5.3.1(b), S5.3.2.1, S5.3.2.2(a), S5.3.3(a). of FMVSS No. 101 and paragraph S3.1.4.1. of FMVSS No. 102 include the requirements relevant to this petition. Except as provided in FMVSS 101 S5.3.1(c), the identifications of controls for which the word "Yes" is specified in column 5 of Table 1 must be capable of being illuminated whenever the headlamps are activated. This requirement does not apply to a control located on the floor, floor console, steering wheel, steering column, or in the area of windshield header, or to a control for a heating and air-conditioning system that does not direct air upon the windshield. Except as provided in S5.3.1(c), the indicators and their identifications for which the word "Yes" is specified in column 5 of Table 1 must be illuminated whenever the vehicle's propulsion system and headlamps are activated. Means must be provided for illuminating the indicators, identifications of indicators and identifications of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions. The means of providing the visibility required by S5.3.2.1: must be adjustable to provide at least two levels of brightness. Means must be provided for illuminating telltales and their identification sufficiently to make them visible to the driver under daylight and nighttime driving conditions. Except as specified in FMVSS 102 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 the ignition is in a position where the transmission can be shifted, or the transmission is not in park.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section, "V. Summary of Mercedes-Benz's Petition," are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the

Agency. Mercedes-Benz describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mercedes-Benz claims that the conditions needed to cause the FMVSS No. 101 noncompliance is rare. In order for the subject FMVSS No. 101 noncompliance to occur, three events must occur simultaneously. First, the CPU load must approach the limits of the instrument cluster's input capacity. Second, while there is a high CPU load, a specific diagnostic function must be activated and the combined effect of the already high CPU load and the diagnostics is sufficient to threaten an instrument cluster freeze, which would trigger a preventative reset. Finally, during the reset, which would last no more than 2.5 seconds, a separate equipment malfunction or condition must occur that would activate an indicator or telltale.

Mercedes-Benz believes that "the likelihood of a telltale being activated in any particular 2.5 second period is very low." Compounded with the probability of the being activated following the first two events, the Mercedes-Benz contends that the likelihood of the subject noncompliance occurring is "negligible."

Mercedes-Benz says that its engineers determined that the maximum duration of illumination loss is 2.5 seconds, and the maximum time of analog display illumination loss is 0.8 seconds. Additionally, Mercedes-Benz claims that the subject noncompliance "would not cause the instrument cluster to report inaccurate information."

Mercedes-Benz also claims that a driver is unlikely to be confused if the display experiences diminished illumination for 2.5 seconds and the driver would be unlikely to notice a 2.5 second interruption of illumination. Mercedes-Benz refers to a prior NHTSA decision in which the agency granted a similar petition based on its belief that a reset of the instrument panel

would happen quickly within seconds before the driver would be distracted to realize what was happening.[1]

According to Mercedes-Benz, it is difficult to formulate an outcome in a situation had the instrument cluster displays made the driver aware of the situation 2.5 seconds sooner. Mercedes-Benz explains that the purpose of the IC displays is to inform the driver of the vehicle and equipment functions, metrics, and status. They have no control over the vehicle's operation or the equipment and functions that they monitor and report on. The subject noncompliance would therefore have no effect on the vehicle's operation.

Finally, Mercedes-Benz contends that the IC reset is a functional safety measure designed to prevent a permanent IC display failure. Mercedes-Benz asserts that if this reset feature is determined to be consequential to vehicle safety and manufacturers were required to remove or disable it, vehicle occupants would be exposed "to a much higher and enduring safety risk. Mercedes-Benz believes that NHTSA precedent supports the granting of its petition for the subject noncompliance. According to Mercedes-Benz, "NHTSA has consistently held that brief interruption of vehicle display visibility, lasting only seconds, is inconsequential to motor vehicle safety." Mercedes-Benz says that the subject noncompliance is similar to the noncompliances at issue in past petitions that were granted. Mercedes-Benz says that NHTSA granted a petition by General Motors, LLC, in which MY 2014 Chevrolet Silverado motor vehicles were noncompliant with FMVSS No. 101 and FMVSS No. 102 due to an instrument cluster reset.[2] According to Mercedes-Benz, in this case, the affected vehicles were equipped with an instrument cluster that would reset if the driver used the steering wheel controls to operate an external device connected to the vehicle's USB port. All warning lights would go out, the shift position indicator (PRNDM) would extinguish, and the analog gauges (such as the speedometer) would drop to zero for 1.5 seconds. All telltales would then turn on for 5 seconds following the

[1] *See* Grant of Petition for Inconsequential Noncompliance to General Motors, Docket No. NHTSA-2013-0134, 81 FR 6928. (February 9, 2016)

reset. Mercedes-Benz notes that the noncompliance in the Chevrolet Silverado vehicles would cause telltale activation to be obscured for 6.5 seconds in total which is more than 2.5 times the maximum time the digital displays in the subject vehicles would be affected in the present case and more than eight times the maximum time the analog meters would be affected. Mercedes-Benz says that NHTSA found that the noncompliance in the Chevrolet Silverado vehicles was inconsequential to vehicle safety because the reset would be corrected within seconds, "before the driver would be distracted, or realize what was happening."

Mercedes-Benz contends that the granting of another petition by General Motors, LLC, further supports the granting of the current petition. In 2016, NHTSA granted General Motors' petition in which GMC Denali motor vehicles were equipped with an instrument cluster that "would reset if the design input rate of the CPU was exceeded due to simultaneous use of multiple functions (such as navigation, Bluetooth calling, pairing a media device, or others)." In this case, the reset would cause a loss of illumination to all digital warning lights and the shift position indicator, and the indicator gauges would drop to zero for 1.3 seconds. After the reset, all telltales would illuminate for 5 seconds. Mercedes-Benz says that NHTSA determined this noncompliance to be inconsequential to vehicle safety because the reset would be a momentary condition and "the instrument panel telltales and indicators would extinguish and return to normal very quickly, with little, if any, impact to the driver."

Mercedes-Benz contends that the subject noncompliance is similar to the aforementioned noncompliances because the instrument cluster reset in question is likely to be infrequent because the reset is "triggered by the simultaneous occurrence of two unusual and independent events." Mercedes-Benz claims that the subject noncompliance has been difficult for its engineers "to induce or observe, in large part because of the infrequent coincidence of the two events."

Mercedes-Benz believes that the loss of display visibility is not likely to cause driver distraction or other increased risk to motor vehicle safety. The subject noncompliance causes the

illumination of the speedometer and tachometer to be interrupted for up to 0.8 seconds and would interrupt the illumination of the digital indicators and telltale lamps for less than 2.5 seconds. Mercedes-Benz contends that it is unlikely that an IC indicator or telltale would activate during this reset period and even in the event that it did, activation of the indicator or telltale after the 2.5 second reset would not cause an increased risk to motor vehicle safety. According to Mercedes-Benz, NHTSA has not previously required a recall "to address a seconds-long interruption of instrument cluster illumination." The interruption of illumination affecting the Chevrolet Silverado and GMC Denali motor vehicles in the aforementioned General Motors petitions is more than twice the duration of the reset in the subject Mercedes-Benz motor vehicles. Mercedes-Benz contends that NHTSA found that the displays "would return to normal quickly with little to no impact to the driver," and should therefore have the same finding for the subject noncompliance. Like the Chevrolet Silverado and GMC Denali motor vehicles, none of the subject vehicles' operating functions would be affected by the instrument cluster reset. Mercedes-Benz adds that many signals on the digital main instrument cluster involve comfort or convenience features unrelated to vehicle safety and conditions communicated by other indicators or telltales would not be significantly affected by a driver response that is 2.5 seconds earlier. Furthermore, the analog gauges, like the speedometer, would continue to display the correct information when illumination is interrupted and during daylight, the analog gauges remain visible.

Finally, Mercedes-Benz contends that any risk to motor vehicle safety related to the subject noncompliance is "lower than the risk posed by instrument cluster malfunctions NHTSA has previously exempted." Mercedes-Benz says that the analog gauge readings in the Chevrolet Silverado and GMC Denali noncompliances dropped to zero during a reset and the instrument clusters would stop functioning whereas the analog gauges in the subject vehicles continue to display accurate information and the instrument clusters would lack illumination but would otherwise remain functional during the reset. Further, the operation of the instrument panels in

the Chevrolet Silverado and GMC Denali vehicles was interrupted and only the illumination of the instrument panels in the subject vehicles is interrupted. In the Chevrolet Silverado and GMC Denali vehicles, any meaningful message would be further obscured for 5 seconds while all the telltales are illuminated which Mercedes-Benz claims could cause confusion, but no such confusion would occur in the subject vehicles because once the reset is completed, only those controls or telltales that have been activated would be displayed to the driver. Therefore, Mercedes-Benz believes that the instrument cluster reset in the subject vehicles poses an even lower risk to safety than the Chevrolet Silverado and GMC Denali noncompliance which NHTSA determined to be inconsequential to motor vehicle safety.

Mercedes-Benz claims that the subject noncompliance has no effect on the operation of headlights, taillights, or other vehicle lights. Mercedes-Benz states that they are not aware of any reports or claims regarding crashes or injuries concerning the subject noncompliance.

Mercedes-Benz concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be 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, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles 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 Mercedes-Benz 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)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

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