



National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0085; Notice 2]

Mercedes-Benz USA, LLC, Grant of Petition for Decision of Inconsequential

Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Mercedes-Benz AG (MBAG) and Mercedes-Benz USA, LLC (MBUSA) (collectively, “Mercedes-Benz”) a subsidiary of Daimler AG have determined that certain model year (MY) 2019–2020 Mercedes-Benz Sprinter and MY 2019–2020 Freightliner Sprinter vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 5,536 Kilograms (10,000 Pounds) or Less*. Daimler Vans USA LLC, on behalf of Mercedes-Benz filed a noncompliance report dated July 15, 2020. Mercedes-Benz subsequently petitioned NHTSA on August 6, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Mercedes-Benz’s petition.

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz, a subsidiary of Daimler AG, has determined that certain MY 2019–2020 Mercedes-Benz Sprinter and 2019–2020 Freightliner Sprinter vehicles do not fully comply with the requirements of paragraph S4.3(a) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor*

Vehicles with a GVWR of 5,536 Kilograms (10,000 Pounds) or Less (49 CFR 571.110). Daimler Vans USA LLC on behalf of Mercedes-Benz filed a noncompliance report dated July 15, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Mercedes-Benz subsequently petitioned NHTSA on August 6, 2020, 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*.

Notice of receipt of Mercedes-Benz's petition was published with a 30-day public comment period, on October 29, 2020, in the **Federal Register** (85-FR 68622). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2020-0085."

II. Vehicles Involved: Approximately 33 MY 2019–2020 Mercedes-Benz Sprinter and MY 2019–2020 Freightliner Sprinter vans manufactured between April 18, 2019, and February 25, 2020, are potentially involved.

III. Noncompliance: Mercedes-Benz explains that the noncompliance is that the subject vehicles are equipped with vehicle placards that incorrectly state the maximum combined weight of occupants and cargo in pounds, and, therefore, do not meet the requirements set forth in paragraph S4.3(a) of FMVSS No. 110. Specifically, the last digit of the value in pounds for the combined weight of occupants and cargo is missing. The vehicle placard states that the combined weight of occupants and cargo should never exceed 353 pounds when it should state 3,532 pounds. Mercedes-Benz also states that it has corrected future production and that those vehicles will comply with FMVSS No. 110 S4.3(a).

IV. Rule Requirements: Paragraph S4.3 of FMVSS No. 110 includes the requirements relevant to this petition. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g), and may show, at the manufacturer's option the

information specified in S4.3(h) and (i), on a placard permanently affixed to the driver's side B-pillar. Specifically, S4.3(a) states that vehicle capacity weight expressed as "[t]he combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds" must be present on the driver's side B-pillar.

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 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 says that the value given for the vehicle capacity weight in pounds on the affected placards is missing the last digit and is therefore incorrect. However, Mercedes-Benz notes that the placards contain the correct value in kilograms and all other information is correct. For example, Mercedes-Benz states that a vehicle placard states that a vehicle would have a maximum capacity weight of 353 pounds, but it should be 3,532 pounds.

Mercedes-Benz argues that the subject noncompliance does not cause an increased risk to motor vehicle safety because there is no risk of vehicle overloading. Mercedes-Benz explains that if a consumer were to rely upon the incorrect vehicle capacity weight listed on the placard, then the subject vehicle would be "substantially underloaded."

Furthermore, Mercedes-Benz says that the consumer has access to other sources that contain the correct vehicle capacity weight, like the certification label required by 49 CFR Part 567 and the owner's manual. Mercedes-Benz adds that the placard includes the statement instructing the operator to refer to the owner's manual for further information. Mercedes-Benz says that the operator can use the instructions included in the owner's manual to calculate the accurate vehicle weight capacity in both pounds and kilograms. Mercedes-Benz contends that an operator of the subject vehicle would question the

incorrect vehicle capacity weight in pounds on the placard because it “is extremely low and differs significantly from the maximum weight listed in kilograms.” As a result, Mercedes-Benz asserts that the vehicle operator would refer to the owner’s manual, as instructed on the placard.

Mercedes-Benz claims that NHTSA has granted past petitions for inconsequential noncompliance involving discrepancies in the vehicle weight capacity, “particularly where the vehicle is technically capable of handling any increased loading.”¹ As an example, Mercedes-Benz refers to a petition that the Agency granted in which the maximum combined weight of occupants and cargo was listed as a higher value on the placard than the actual vehicle capacity. Mercedes-Benz says the Agency found the noncompliance to be inconsequential “because the tire size and pressure were accurate, and the tires and vehicle axles would have been able to safely carry any additional loading on the vehicle.” Mercedes-Benz notes that, as of the date of its current petition, the Agency is considering a petition in which “the last digit was left off the printed label and the maximum loading capacity was similarly understated.”² Mercedes-Benz argues that the omission of the final digit in the vehicle capacity weight provided indicates a “substantially lower than calculated maximum vehicle loading capacity. Therefore, Mercedes-Benz believes that there is no risk of overloading if a consumer relies solely on the placard.

Mercedes-Benz further states that the Agency has granted past petitions in which the noncompliance “also involved missing information or typographical errors on the vehicle placard, but where the information was otherwise readily available from another source, such as the owner’s manual.” For example, Mercedes-Benz provides that the Agency granted a petition submitted by Kia Motors, Inc., in which the placard did not contain

¹ See, e.g., Mercedes-Benz USA, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 82 FR 33547, July 20, 2017

² See Jayco, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance, 85 FR 554 (January 6, 2020).

wheel size information and the letter “i” in “psi” was omitted but was available from another source.³

Finally, Mercedes-Benz states that it is not aware of any reports or complaints about the issue from the field and that it has corrected the condition in production.

Mercedes-Benz concludes by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that 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.

Mercedes Benz’s complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at:

<https://www.regulations.gov> and following the online search instructions to locate the docket number listed in the title of this notice.

VI. NHTSA’s Analysis: The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.⁴

In determining the inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.⁵ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not

³ See e.g., *Kia Motors America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance*

⁴ Cf. *Gen. Motors Corporation: Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

⁵ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

be safety issues in the future.⁶ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

Section S4.3 of FMVSS No. 110 includes a requirement that each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. Under FMVSS 110, S4.3(f), the placard must state "see owner's manual for additional information."

As described by Mercedes-Benz in its noncompliance report, the labels at issue were not completely printed and the final digit for the vehicle capacity in pounds was omitted. This omission means a vehicle user seeking to determine the loading capacity would find that the maximum allowable weight of cargo and passengers could not exceed 353 pounds. Given that this petition concerns cargo vans and the driver's weight alone could amount to half that figure, the error should be obvious and would be made even more so by comparing it to the carrying capacity provided in kilograms.

As the required FMVSS No. 110 vehicle placard states, the vehicle operator can "see owner's manual for additional information" in an effort to verify the vehicle's correct maximum loading capacity. The owner's manual for the affected vehicles (both hard-copy manuals and the electronic version available online) describes the methodology for the customer to calculate the accurate maximum weight capacity information in both pounds and kilograms. NHTSA agrees with Mercedes-Benz that it would be reasonable to expect the vehicle operator to question the

⁶ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

low value in pounds in terms of maximum “cargo” load capacity especially in comparison to the listed maximum “cargo” capacity in kilograms.

Mercedes Benz also noted that NHTSA has previously granted a similar petition for inconsequential noncompliance for inaccurate tire placards in which the noncompliance was a failure to provide wheel size information and the letter “i” in “psi.” In that case, the information could be obtained from the owners’ manual. *See* Kia Motors America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 85 FR 39676 (July 1, 2020). The agency notes that inconsequentiality determinations are highly fact specific and as such should not be regarded as persuasive or binding precedent.

VII. NHTSA’s Decision: In consideration of the fact that the misprinted loading information present here is clearly erroneous and correct loading information is readily available from other sources, including consideration of the properly presented metric loading data on the label itself, NHTSA finds that Mercedes-Benz has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Mercedes-Benz’s petition is hereby granted, and Mercedes-Benz is consequently exempted from the obligation of providing notification of, and a free remedy for, that 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 subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vans 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)

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