



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0065; Notice 2]

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

Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Mercedes-Benz AG (MBAG) and Mercedes-Benz USA, LLC, (MBUSA) (collectively, “Mercedes-Benz” or “Petitioner”) have determined that certain model year (MY) 2020 Mercedes-Benz CLA 250 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 111, *Rear Visibility*. Mercedes-Benz filed a noncompliance report dated May 11, 2020. Mercedes-Benz subsequently petitioned NHTSA on June 3, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Mercedes-Benz’s petition.

FOR FURTHER INFORMATION CONTACT: Kamna Ralhan, Compliance Engineer, Office of Vehicle Safety Compliance, the National Traffic Safety Administration (NHTSA), telephone (202) 366-6443.

SUPPLEMENTARY INFORMATION:

I. Overview:

Mercedes-Benz has determined that certain MY 2020 Mercedes-Benz CLA 250 motor vehicles do not fully comply with the requirements of paragraph S5.5.1 of FMVSS No. 111, *Rear Visibility* (49 CFR 571.111). Mercedes-Benz filed a noncompliance report dated May 11, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Mercedes-Benz subsequently petitioned NHTSA on June 3, 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 September 18, 2020, in the **Federal Register** (85 FR 58425). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number NHTSA-2020-0065.

II. Vehicles Involved:

Mercedes-Benz reported approximately 155 MY 2020 Mercedes-Benz CLA 250 vehicles manufactured between June 19, 2019, and August 21, 2019, do not meet the requirements of FMVSS No. 111.

III. Noncompliance:

Mercedes-Benz explains that the noncompliance is that the rearview camera displays in the subject vehicles do not fully meet the field-of-view requirements outlined in paragraph S5.5.1 of FMVSS No. 111. Specifically, the warning message text box obscures a portion of the top of the rear middle test object (Object B).

IV. Rule Requirements:

Paragraph S5.5.1 of FMVSS No. 111 includes the requirements relevant to this petition. When tested according to the procedures in paragraph S14.1, the rearview image must include: (a) A minimum of a 150-mm wide portion along the circumference of each test object located at positions F and G specified in S14.1.4; and (b) The full width and height of each test object located at positions A through E specified in paragraph S14.1.4 of FMVSS No. 111.

V. Summary of Mercedes-Benz's Petition:

The following views and arguments presented in this section are the views and arguments provided by Mercedes-Benz and do not reflect the views of NHTSA. Mercedes-Benz described the subject noncompliance and contended that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mercedes-Benz explains that subject vehicles' rearview camera visibility systems display a text box with an alert message when the vehicle is placed in reverse and throughout the backing maneuver. Mercedes-Benz states that this message is intended to remind drivers "to pay attention to their surroundings." The alert message remains on the display until the vehicle is no longer in the reverse position.

When the alert message appears, there is a black border surrounding the text box that obscures approximately the topmost 10 percent of Test Object B. This 10 percent obstruction of the rear middle test object is not compliant with the "field of view" requirements given in S5.5.1 of FMVSS No. 111. According to Mercedes-Benz, the remaining 90 percent of Test Object B appears on the display without issue. In its May 11, 2020, report, Mercedes-Benz adds that no other test objects are affected by the noncompliance and the rearview camera display otherwise functions as intended.

Mercedes-Benz states that the purpose of field of view requirement is "to ensure that persons located at the rear of the vehicle remain visible to the driver." Mercedes-Benz contends that the subject noncompliance is inconsequential to motor vehicle safety because the purpose of the field of view requirement is still fulfilled by the remaining 90 percent of the lower portion of the test object being visible.

Mercedes-Benz states that overall, FMVSS No. 111 is intended "to mitigate against the potential for accidents or injuries due to striking persons, including children, located at the rear of the vehicle." Mercedes-Benz claims that when developing FMVSS No. 111, NHTSA "considered the safety benefits related to the use of overlays such as text-based alert messages, guidance markers, and other indicators on rear camera visibility systems during the development

of the FMVSS No. 111 rulemaking” and identified specific concerns related to the use of overlays. Mercedes-Benz says that NHTSA “carefully considered whether and how to regulate the use of overlays in order to mitigate against a specific type of concern, the potential for overlays to create blind spots in the rearview image that could obscure or mask small objects or persons at the rear of the vehicle, particularly children. *See* 79 FR 19178, 19210 (April 7, 2014).”

Mercedes-Benz says that NHTSA ultimately “declined to mandate specific performance criteria related to the use of overlays, largely due to a lack of practical means of testing the wide variations of overlay use and design without additional research.” Mercedes-Benz states that NHTSA instead “considered the field of view requirements to have been met as long as they did not cover any of the required portions of the test objects if activated automatically or if the overlay was manually activated by the driver.” Mercedes-Benz adds that while declining to mandate specific performance requirements NHTSA stated that this “decision does not relieve manufacturers from designing the overlay system to provide a reasonable ability to see the required field of view. *Id.* at 19211.” Mercedes-Benz claims that at the time of publishing the FMVSS No. 111, NHTSA’s “key concern related to the use of overlays” was the potential for an overlay to obscure the required field of view.

Mercedes-Benz argues that the topmost 10 percent of Test Object B obscured by the subject noncompliance is “limited to the extreme edge of the test object.” Mercedes-Benz specifies that the height of the test object as shown on the display is 800 mm and the “uppermost portion of the test object is 150 mm.” Mercedes-Benz says that when the text box appears on the display, the border causing the noncompliance obscures “approximately half of the 150 mm strip of the text object, or 75 mm.” According to Mercedes-Benz, the rear camera visibility system “still operates to provide the driver an ability to fully and safely see the required field of view” despite the subject noncompliance. Mercedes-Benz adds that a driver would still be able to use the display to recognize if a person or child was present behind the vehicle.

Mercedes-Benz notes that it is not aware of any reports or complaints regarding the subject noncompliance.

Mercedes-Benz concluded 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 by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Public Comment:

NHTSA received one comment from the public. This comment was submitted by Pee Yaw who expressed the opinion that the subject noncompliance is inconsequential. The commenter expressed the view that this feature is a plus providing more information to drivers, and that the pop-up box only takes up a small portion of the screen.

VII. NHTSA's Analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement*—as opposed to a *labeling requirement with no performance implications*—in an FMVSS is substantial and difficult to meet. Accordingly, the NHTSA has not found many such noncompliances inconsequential.¹

In determining 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.²

¹ 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).

² 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); *Osrham Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using

Additionally, the number of non-compliant vehicles is not a primary consideration, it is important to emphasize the importance of safety irrespective of the quantity of vehicles affected. Furthermore, 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 be safety issues in the future.³

NHTSA has reviewed the Mercedes-Benz inconsequentiality petition and does not concur with the conclusion that the noncompliance is inconsequential to motor vehicle safety. The petition is therefore denied.

NHTSA issued the Rear Visibility (FMVSS No. 111) final rule in 2014 to reduce the risk of devastating backover crashes involving vulnerable populations (including very young children) and to satisfy the mandate of the Cameron Gulbransen Kids Transportation Safety Act of 2007. The final rule established a required field of view with complete visibility of designated test objects for all passenger cars, trucks, multipurpose passenger vehicles, buses, and low-speed vehicles with a gross vehicle weight of less than 10,000 pounds. NHTSA anticipated the final rule would significantly reduce backover crashes involving children, persons with disabilities, the elderly, and other pedestrians who currently have the highest risk associated with backover crashes. Specifically, the rule specified an area behind the vehicle which must be visible to the driver when the vehicle is placed into reverse and other related performance requirements.

The final rule established a minimum field of view of 10 feet by 20 feet behind the vehicle where the full width and height of test objects A through E must be observed (the test

noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ 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”).

objects are 0.3 m wide and 0.8 m tall).⁴ These requirements are based on safety needs, extensive research on backover, and considerations of practicability.⁵ Mercedes-Benz's overlay blocks the required field of view in violation of FMVSS No. 111.

Mercedes-Benz concedes that NHTSA "considered the field of view requirements to have been met as long as [overlays] did not cover any of the required portions of the test objects if activated automatically or if the overlay was manually activated by the driver." Mercedes-Benz acknowledges its overlay covers 10 percent of Test Object B, in violation of the quoted language. However, Mercedes-Benz argues this 10 percent is inconsequential to motor vehicle safety because "the driver is still able to recognize a person or child present behind the vehicle." Similarly, NHTSA received one comment in favor of granting the petition because the feature provides more information to drivers, and the pop-up box only takes up a small portion of the screen.

To the extent the text box covers a minimal area of the backup camera view, NHTSA disagrees with Mercedes and commenters that the obstruction is inconsequential to safety. NHTSA is concerned that, the text box overlay by covering 10 percent of the Test Object B reduces the rearview area covered for a driver to ascertain certain situations such as an approaching vehicle from a distance, children playing, and a person walking. Also, it would be difficult to ascertain in a situation if there is an uneven terrain. Not having a clear rear view on a hilly road or a road with turns and slopes would make it difficult in case one wants to use a backup camera view for a clear rear view. The agency notes that Test Object B is among the furthest objects from the vehicle making it possible for the driver to confuse far away objects especially those that would be obscured by the text box.

NHTSA finds that Mercedes-Benz has not met its burden of persuasion and disagrees with its assertion. Ultimately, Mercedes-Benz's noncompliant rearview image leads to a greater

⁴ The reasoning behind the minimum field of view requirement in FMVSS No. 111 is thoroughly explained in the 2014 Rear Visibility (FMVSS No. 111) final rule. *See* 79 FR 19178, 19205 (April 7, 2014).

⁵ *Id.* at 19179-19184.

risk of backover crashes since it does not show the minimum required field of view during a backing maneuver and is consequential to motor vehicle safety. Therefore, NHTSA does not find that the subject noncompliance is inconsequential to motor vehicle safety.

VIII. NHTSA's Decision:

In consideration of the foregoing, NHTSA has decided that Mercedes-Benz has not met its burden of persuasion that the subject FMVSS No. 111 noncompliance is inconsequential to motor vehicle safety. Accordingly, Mercedes-Benz's petition is hereby denied, and Mercedes-Benz is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

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

Eileen Sullivan,

Associate Administrator for Enforcement.

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