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Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8014; Notice 2]

Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz, U.S.A., L.L.C., (MBUSA) of Montvale, New Jersey, determined that a number of Mercedes-Benz CL500 vehicles were produced with upper beam headlamps that exceed the photometric limits of FMVSS No. 108, ''Lamps, Reflective Devices, and Associated Equipment.'' MBUSA has applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (65 FR 59247) on October 4, 2000. Opportunity was afforded for public comment until November 3, 2000. No public comments were received.

Mercedes-Benz CL500 vehicles are equipped with high intensity discharge headlamps (HIDs). When the HIDs are activated, their light is, through the use of a mechanical flap, directed at an angle that optimizes illumination of the road surface in front of the vehicle. When the upper beam mode is activated, a mechanical flap alters the angle of the HID illumination to provide a higher angle of illumination. In 613 model year 2000 CL500 vehicles, a separate H7 lamp was improperly wired to illuminate at the same time the mechanical flap was activated to increase the HID light angle. In the upper beam mode, the HID and H7 lamp combination produce 89,000 candela (cd) at test point H–V and 12,731 cd at test point 4D–V. FMVSS No. 108 establishes maximums of 75,000 cd at H–V and 12,000 cd at 4D–V. When they are in the lower beam mode, these headlamps meet all photometric requirements of FMVSS No. 108.

MBUSA supports its application for inconsequential noncompliance with the following statements:

(1) Only a very limited number of Mercedes-Benz CL500 vehicles were produced containing the foregoing noncompliance (613 units). This number represents only minimal percentage of all vehicles operating in the United States.

(2) Upper beam headlamps are not legal in states for operation in the presence of oncoming traffic. Therefore, the higher output upper beam headlamps will likely not even be noticed by other drivers or vehicle occupants. Moreover, MBUSA believes that the approximately 20% increase in upper beam headlamp output in affected CL500's is indistinguishable to occupants of oncoming vehicles.

(3) With regards to the driver of the affected vehicles, MBUSA believes that the increase in output for upper beam headlamps may actually enhance vehicle safety in that drivers will have a greater view down the road thereby providing earlier warning of obstacles in the vehicle's intended path of travel.

(4) MBUSA has not received, nor is the Company aware of any complaints, accidents or injuries caused by the higher output upper beam headlamps.

The agency has reviewed the application and has decided that the noncompliances are not inconsequential to motor vehicle safety. The noncompliant vehicles' headlamps, in their upper beam mode, produce 18.6 percent more light at H–V and 6.1 percent more light at 4D–V than the standard allows. The noncompliance at H–V is particularly troubling in that it could be further exacerbated by factors such as poor aiming and increased voltage. This could increase the light intensity significantly and, thus, contribute more problematic glare at the distances prescribed by the various states for dimming headlamps in the presence of oncoming vehicles.

We are aware of a University of Michigan Transportation Research Institute (UMTRI) report titled ''Just Noticeable Differences for Low-Beam Headlamp Intensities'' (UMTRI–97–4, February 1997). This report concludes that drivers in oncoming vehicles will not notice differences in the intensity of headlamps that are less than 25 percent.

We believe, however, that it would not be appropriate to use this study to judge the merits of MBUSA's application. This is based on two factors. First, the study focuses only on the lower beam mode in headlamp systems. The MBUSA vehicles do not comply when the upper beam mode is activated. We cannot presume that a study which examines light intensity associated with the lower beam mode would also apply to the light intensity of the upper beam mode. The upper beam mode produces substantially more intensity down the road. UMTRI does not mention any correlations between upper and lower beam modes in its study.

Second, the research finds that the just noticeable differences, under controlled conditions, are between 11 and 19 percent. UMTRI concludes that, in real world conditions, the just noticeable differences would be somewhat larger due to the rather simple and uncluttered environment of a controlled study. In a controlled study, observers can devote much more attention to small differences due to the lack of other distractions that are common during driving. This leads UMTRI to conclude that 25 percent is a reasonable value upon which to judge inconsequential noncompliance applications. However, we have noticed in the many complaints received that consumers are very aware of and sensitive to the glare produced by oncoming drivers' headlamps. This public sensitivity leads us to believe that glare in the ''real-world'' is not necessarily like that in laboratory studies. Many of these complaints can be found on the Department of Transportation's Docket Management System website, *http://dms.dot.gov* docket NHTSA–98–4820. This demonstrates that glare is of great significance to the public.

MBUSA attempts to support its rationale for granting the application by pointing out that there is a limited number of noncompliant vehicles (613). In order for the agency to grant an inconsequentiality application, it is necessary to determine whether the particular noncompliance is likely to increase the risk that the requirement is intended to prevent. Arguments that only a small number of vehicles or pieces of motor vehicle equipment are affected generally will not justify granting a petition. But, more importantly, the key issue is whether the noncompliance is likely to increase the safety risk.

MBUSA states that there are State laws prohibiting the operation of upper beam headlamps in the presence of oncoming traffic. For this reason, it believes that the increased output of the subject lamps will not be noticed by other drivers. The agency does not concur with this rationale. State laws generally require drivers to dim their headlamps at a prescribed distance from oncoming traffic. This distance is based on the intensity of available upper beams. Therefore, if the intensity of upper beams is increased, this distance may not be effective in reducing glare for oncoming drivers.

Finally, MBUSA states that the increase in output from the subject lamps may actually enhance vehicle safety as drivers will have greater visibility. We agree with MBUSA that

the increased output of the subject lamps will increase drivers' views down the road. However, the purpose of the minimum light intensity requirements for upper beam headlamps is to protect oncoming drivers from problematic glare. There must be a balance between the need of drivers to have a clear view of the roadway and the need to reduce glare for oncoming drivers. While MBUSA is correct in assuming that the extra light provided by the subject lamps would be advantageous to drivers of the vehicle, it does not mention the obvious ill effects it would have on oncoming drivers. For this reason, we do not accept MBUSA's rationale.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety, and it should not be exempted from the notification and remedy requirements of the statute. Accordingly, its application is hereby denied.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7705; Notice 2]

Mootness of Application for Decision of Inconsequential Noncompliance

The following companies, Osram Sylvania Products, Inc., (Osram); Subaru of America, Inc., (Subaru); Koito Manufacturing Co., LTD. (Koito); North American Lighting, Inc. (NAL); Stanley Electric Co., LTD, (Stanley); and General Electric Company (GE) have determined that certain H1 replaceable light sources they manufactured or used in lamp assemblies did not have the ''DOT'' marking required under 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment.'' These companies have also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol ''DOT.''

Notice of receipt of the application was published in the **Federal Register** (66 FR 10052) on February 13, 2001. Opportunity was afforded for public comment until March 15, 2001. No comments were received.

Between January 1998 and January 2000, Osram produced 841,283 H1 replaceable light sources without the required ''DOT '' marking. In its Part 573 report, Osram stated that it was not possible to determine exactly how many light sources were used in headlamp assemblies as opposed to those which were used in fog lamp assemblies. However, the point is irrelevant, since light sources are subject to the requirements of the standard if they are, in fact, capable of being used as a replaceable light source in a headlamp.

Between February 1999 and January 2000, NAL used 118,756 of these Osram replaceable light sources in headlamp assemblies. Subaru installed 110,784 of these NAL headlamp assemblies in model year 2000 Legacy vehicles from February 1999 through February 2000.

Stanley used 30,426 of the Osram replaceable light sources in headlamp assemblies intended for Honda Preludes produced between October 22, 1998 and January 27, 2000. Koito used 12,340 of the Osram replaceable light sources in headlamp assemblies it manufactured between June 1999 and January 2000.

Also, a separate group of replaceable light sources with similar certification problems were manufactured by GE. GE produced 2,490 of these between April 1, 1999 and March 23, 2000. The GE replaceable light sources are included in this notice because of these similarities.

All of the applicants have indicated that the subject replaceable light sources, with the exception of the absence of the ''DOT'' marking, fully comply with all the performance and design requirements of FMVSS No. 108 and do not constitute any risk to motor vehicle safety. Osram has submitted confidential test data to show this.

We have reviewed the applications. Since the purpose of the ''DOT'' marking is to certify that the replaceable light sources comply with all applicable standards, the failures to mark light sources with DOT symbols are considered as violations of 49 U.S.C. 30115, *Certification*, which does not require notification or remedy. Therefore, after due consideration, we have decided that the applications referenced above are moot.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8808; Notice 2]

Philips Lighting Company; Mootness of Application for Decision of Inconsequential Noncompliance

Philips Lighting Company (Philips), of Somerset, New Jersey, has determined that certain H3–55W replaceable light sources it manufactured do not have the ''DOT'' marking required under 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Philips has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety. Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol ''DOT.''

Notice of receipt of the application was published in the **Federal Register** (66 FR 10053) on February 13, 2001. Opportunity was afforded for public comment until March 15, 2001. No comments were received.

Between January 1998 to December 1999, Philips produced 67,299 H3–55W replaceable light sources that do not have the ''DOT'' marking. Philips has indicated that the subject replaceable light sources, with the exception of the absence of the ''DOT'' marking, fully comply with all the performance and design requirements of FMVSS No. 108 and do not constitute any risk to motor vehicle safety. Philips has submitted test results to support this.

We have reviewed the application. Because the purpose of the ''DOT'' marking is to certify that the replaceable light sources comply with all applicable standards, the failure to mark light sources with a DOT symbol is considered a violation of 49 U.S.C.