

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

[Docket No. NHTSA-2002-12544; Notice 2]

Mercedes-Benz, U.S.A. Inc.; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Mercedes-Benz, U.S.A., Inc. (MBUSA), has determined that "a limited number" of model year 2003 Mercedes-Benz SL-Class, E-Class and CLK-Class vehicles that it produced and sold do not fully comply with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, "Passenger Car Brake Systems," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." MBUSA 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.

Notice of receipt of the application was published in the **Federal Register** on July 8, 2002, with a 30-day comment period (67 FR 45180). NHTSA received no comments on this application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5 (a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning indicator lamp. The standard enumerates specific minimum parameters applicable to the warning:

Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) [i.e., "Brake"] 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 and symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of safety.

The affected vehicles are equipped with "Brake" indicator warning lamps located in the upper right hand corner of the speedometer display. The letters in the indicator warning "BRAKE" were changed from all upper-case letters to mixed upper and lower-case letters. As a result, the letters "B" and "k" in the "Brake" indicator lamp meet the minimum height requirements of FMVSS No. 135, but the letters "r," "a," and "e" are 7/10 mm shorter than

the minimum 3.2 mm requirements. MBUSA does not believe that the 7/10 mm difference is discernible by the average driver for the following reasons:

1. The "Brake" warning indicator is still easily recognizable due to its positioning on the dashboard, the color of the indicator, and other factors.

2. In addition to the "Brake" warning indicator, each of the affected Mercedes-Benz vehicles is also equipped with a dual screen message center that provides brake system information in a highly visible and audible manner.

MBUSA also cited an agency action from 1982, 47 FR 31347, in which the agency granted an application for a decision that a noncompliance by Subaru was inconsequential to vehicle safety. As with MBUSA, Subaru failed to use letters of sufficient height for the brake malfunction telltale in a number of its vehicles. MBUSA believes that the Subaru issues were essentially the same as the current MBUSA noncompliance issues and further believes the Subaru case should support the MBUSA request for a determination that the noncompliance is inconsequential to vehicle safety. Also, MBUSA believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted.

The agency has reviewed the section of FMVSS No. 135 that discusses the requirements for character height in the brake warning indicator lamp, paragraph S5.5.5 (a), and concurs with MBUSA's decision that it is in noncompliance with that paragraph. However, the agency does not believe that the noncompliance will degrade the legibility of the brake malfunction telltale, or will have an adverse effect on vehicle safety. According to MBUSA, three of the letters in the word "Brake", the "r", "a", and the "e" are about 78% of the minimum height required for such letters, while the other two letters in the word "Brake," the "B" and the "k", meet the minimum height requirement of 3.2 mm. MBUSA stated in its petition that the affected vehicles are equipped with a dual screen message center that displays brake system information in addition to the brake telltale required by FMVSS No. 135 whenever a brake system problem is detected. The messages displayed by the message center, which provide information about the specific problem the vehicle diagnostic system has detected, are illuminated along with the "Brake" telltale. When the vehicle detects a high priority brake system malfunction, the message center also triggers an audible signal in addition to the illumination of the "Brake" telltale

and the specific brake malfunction message.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the application is granted and the applicant is exempted from providing the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120, respectively.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02-30520 Filed 12-2-02; 8:45 am]

BILLING CODE 4910-59-P

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

[Docket No. NHTSA 2002-13895; Notice 1]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 750 size 215/55R16 Energy MXV4 Plus tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the sidewall markings. Michelin's Ardmore, Oklahoma plant produced approximately 750 tires with incorrect markings during the period from March 13, 2002, through March 27, 2002. The tires were marked: "Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester."