

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 approximately 5,700 vehicles that BMW no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the granting of this petition does not relieve vehicle 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 BMW 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)

Issued On: June 19, 2013.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0166; Notice 2]

#### Panda Power LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of Petition.

**SUMMARY:** Panda Power LLC (Panda Power)<sup>1</sup>, has determined that High Intensity Discharge (HID) lighting kits<sup>2</sup> that it imported and sold during 2007, 2008 and 2009 failed to meet the requirements of paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Panda Power has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance*

<sup>1</sup> Panda Power, LLC (Panda Power) is organized under the laws of the State of Arizona and is the importer of the subject nonconforming replacement equipment. Panda Power sold the nonconforming replacement equipment while doing business under the name Mobile HID.

<sup>2</sup> Panda Power's high-intensity lighting (HID) kits each contained 2 light sources, 2 ballasts and a wiring harness with relay and fuse.

*Responsibility and Reports*, dated February 10, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Panda Power has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 21, 2010 in the **Federal Register** (75 FR 80110). Comments were received from Daniel Stern Lighting Consultancy and Michael F. Turpen. To view the petition, all supporting documents, and the comments, log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2010-0166."

**FOR FURTHER INFORMATION CONTACT:** For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-7002.

**Lighting Kits Involved:** Affected are approximately 1,851 headlamp kits that Panda Power sold during 2007, 2008 and 2009. All of the affected HID headlamp kits were manufactured by Guangzhou Kingwoodcar Company, LTD, Guangzhou City, China.

**Summary of Panda Power's Analyses:** Panda Power did not describe the noncompliances in detail, instead it deferred to the agency's concern that the subject HID headlamp kits may not comply with one or more of the regulations enforced by the agency. This concern was described as an apparent noncompliance in a letter NHTSA sent to Panda Power dated September 2, 2009. The letter was sent to Panda Power as part of a National Highway Traffic Safety Administration (NHTSA) Office of Vehicle Safety Compliance Office Activity.<sup>3</sup>

In their petition, Panda Power argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons: (1) The HID headlamp kits were originally intended for sale to the agricultural community to be placed on tractors and combines, for off-road vehicles, and for exhibition purposes; (2) the HID bulbs that were sold with the kits in 2007 and 2008 are likely burned out by now and no longer functioning; and (3) Panda Power no longer sells the HID headlamp kits.

<sup>3</sup> Office Activity Number: OA-108-090606G.

Supported by the above stated reasons, Panda Power believes that although the HID headlamp kits do not meet the required dimensional and electrical specifications of FMVSS No. 108, the noncompliance is inconsequential to motor vehicle safety and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

#### Discussion

##### Requirement Background

Paragraph S7.7 of FMVSS No. 108 requires in pertinent part:

*S7.7 Replaceable light sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements: (See a,b,c,d,e, and f)

A new motor vehicle must have a headlighting system that includes upper beams and lower beams. Among other things, the headlamps must provide light within a specified range of intensity in certain areas, and not provide light above specified levels in other areas. In general, vehicle manufacturers use one of a number of standard replaceable light sources to achieve the regulatory requirements, although alternatively they may devise or arrange for development of a new light source for a new vehicle. For each of these types of light sources, the dimensions and electrical specifications are furnished to NHTSA under 49 CFR Part 564. The vehicle manufacturer certifies that the vehicle with a particular light source meets FMVSSs, including FMVSS No. 108.

Each headlamp and item of associated equipment (such as a light source commonly referred to as a headlamp bulb) manufactured to replace any lamp or item of associated equipment must be designed to conform to FMVSS No. 108. Each replaceable light source must be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to 49 CFR Part 564. In addition, NHTSA's regulations require that the base of the replaceable light source be marked with the bulb marking designation, that the replaceable light source meet lighting performance requirements and, if a ballast is required, additional requirements must be met.

Headlamp replaceable light sources have standard designations. NHTSA's regulations use terms for the various types of headlamp bulbs, such as HB1

and HB2. (Bulb manufacturers tend to use corresponding ANSI trade numbers such as 9004, as well). Each type of replaceable light source is unique in dimensional and electrical design so as not to be interchangeable with another type of replaceable light source. Every replaceable light source must be designed to conform to the marking, dimensional, and electrical specifications applicable to the type of replaceable light source that it replaces. For instance, the replacement light source must have the same (within a tolerance) luminous flux (a measure of light output) as the light source it replaces. When the light source is mounted in a headlamp for that type of light source, the lamp must discharge light in specified directions and intensity levels, to satisfy the same requirements of the standard. If it were otherwise, among other things, the wrong light sources could be placed in headlamps and the light output would be incorrect or improper.

NHTSA'S Analyses: Panda Power argues that the noncompliance is inconsequential to motor vehicle safety, primarily, because the kits were originally intended for sale to the agricultural community and to be placed on tractors and combines, or for off-road vehicles, or for exhibition purposes. NHTSA reviewed the Office Activity file for the original investigation with Panda Power. Excerpts from Panda Powers Web site, dated June 24, 2009, clearly indicate that these items are intended for motor vehicle headlamps. The site displays pictures of numerous passenger cars (e.g., Mercedes Benz, Lexus, Toyota, and Mitsubishi), references other motor vehicles (e.g., BMW), provides a link to Sylvania's replacement bulb guide for motor vehicles, and provides pictures of beam patterns as seen on roadways. It also provides troubleshooting tips for installations on motor vehicles containing daytime running lamps and how to stop lamp flicker when hitting bumps in the road. Because of this information, we find that Panda Powers claim that they sold these items for non-road use to be disingenuous.

Panda Power further states that its products are likely no longer functioning. Regardless of the quality of Panda Power's products, the Motor Vehicle Safety Act requires that manufacturers (defined to include importers) of noncompliant equipment must notify purchasers of the noncompliance (pursuant to 49 U.S.C. 30119) and provide a free remedy (pursuant to 49 U.S.C. 30120). If a free remedy cannot be provided then

repurchase should be initiated in a reasonable time frame.

Panda Power also argues that because it stopped selling the HID conversion kits, it should not be required to conduct a recall and remedy campaign. Among other things, 49 U.S.C. 30112(a) prohibits the importation and sale of noncompliant equipment and Panda Power is compelled to discontinue this practice to prevent further violations of 49 U.S.C. 30112(a), and not as a waiver from the recall and remedy requirements. NHTSA'S Response to Comments: NHTSA received comments from two parties. Both of these parties recommend denying Panda Power's petition.

Daniel J. Stern of the Daniel Stern Lighting Consultancy provided a substantive, practical, and technical argument regarding the effects on headlamp performance when replacing standardized headlamp replaceable light sources with HID conversion kits. Mr. Stern stated that installing HID light sources into headlamps that were designed to accept tungsten-halogen light sources would create an enormous increase in glare light directed towards other road users, and reduce the driver's distance visual acuity due to increased foreground illumination. Mr. Stern also stated that the noncompliance created by Panda Power's HID kits appear to be systemic, pervasive, and substantial, creating a significant safety risk to the motoring public.

Michael F. Turpen, a private citizen, examined archives of Panda Power's Web site using [www.waybackmachine.org](http://www.waybackmachine.org) (a Web site maintained by the Internet Archive, a 501(3)(c) non-profit corporation). He referenced archived pages of Panda Power's Web site that showed its HID Conversion kits installed on motor vehicles, photos of headlamp output on streets in residential neighborhoods, and banners that indicate "offering HID kits for any vehicle."

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Panda Power has not met its burden of persuasion that the FMVSS No. 108 noncompliances identified in Panda Power's Noncompliance Information Report does not present a significant safety risk resulting from increases in glare when its HID headlamp conversion kits are used in headlamps that were not designed for this type of light source. Therefore, NHTSA does not agree with Panda Power that this specific noncompliance is inconsequential to motor vehicle safety. Accordingly, Panda Power's petition is hereby denied, and the Panda Power must notify owners, purchasers and

dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

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

Issued On: June 19, 2013.

**Nancy Lummen Lewis,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0006; Notice 1]

#### General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of Petition.

**SUMMARY:** General Motors, LLC (GM)<sup>1</sup> has determined that certain model year (MY) 2007 through 2013 GM trucks and multipurpose passenger vehicles (MPVs) manufactured from June 19, 2006, through December 6, 2012 do not fully comply with paragraph S4.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 Kilograms or less*. GM has filed an appropriate report dated December 19, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), GM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's petition 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 petition.

**Vehicles Involved:** Affected are approximately 5,690: MY 2007 through 2013 Chevrolet Silverado trucks, Suburban MPVs and Tahoe MPVs; MY 2007 through 2013 GMC Sierra trucks; MY 2012 GMC Yukon MPVs; and MY 2007, 2009, 2011, 2012 and 2013 Yukon XL MPV's. The affected vehicles were

<sup>1</sup> General Motors, LLC is a manufacturer of motor vehicles and is registered under the laws of the state of Michigan.