

indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 20, 2000.P='02'≤

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

Issued on: February 14, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6161; Notice 2]

Mercedes-Benz U.S.A., Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz U.S.A., Inc. (MBUSA) has determined that 1,482 of its 1999 model year vehicles were equipped with convex passenger-side mirrors that did not meet certain labeling requirements contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 111, "Rearview Mirrors," 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.

A notice of receipt of the application was published in the **Federal Register** (64 FR 48892) on September 8, 1999. Opportunity was afforded for public comment until October 8, 1999. One comment was received from JCW Consulting (JCW) in favor of granting the application.

If a vehicle has a convex passenger-side mirror, paragraph S5.4.2 of FMVSS No. 111 requires that it have the words "Objects in Mirror Are Closer Than They Appear" permanently and

indelibly marked at the lower edge of the mirror's reflective surface.

From April 5 through April 9, 1999, MBUSA sold and/or distributed 1,482 C-Class, E-Class, and E-Class Wagons that contain a typographical error in the text of the warning label required in paragraph S5.4.2. The text on the subject vehicles' mirrors reads "Objects in Mirror Closer Than They Appear." The word "Are" is not clearly printed or visible.

MBUSA supports its application for inconsequential noncompliance with the following statements:P='04'≤

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for the following reasons. FMVSS 111 sets forth requirements for the performance and location of rearview mirrors to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear. Provisions regarding the use of a convex side view mirror were added by the National Highway Traffic Safety Administration (NHTSA or the Agency) in an 1982 rulemaking. 47 FR 38698 (1982). The final rule specifically allowed the use of convex passenger side outside mirrors. "Convex mirrors" are defined as "a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere." See *Id.* at 38700, codified at 49 CFR 571.111 S4. NHTSA determined that allowing the installation of a convex mirror on the passenger side of vehicles could confer a substantial safety benefit in that such mirrors tend to provide a wider field of vision than ordinary flat or plane mirrors. Such a view could be highly desirable in maneuvers such as moving to the right into an adjacent lane. *Id.* at 38699.

NHTSA also recognized, however, that there were inherent drawbacks to the use of convex mirrors as well. One of the more significant drawbacks was that images of an object viewed in a convex mirror tend to be smaller than those of the same object viewed in a plane mirror. Consequently, drivers used to plane mirrors may erroneously assume that vehicles situated immediately behind the driver and to the right may be further away than anticipated. Such an erroneous perception may cause the driver to move to the right and change lanes before it is actually safe to do so. In order to address this concern, and at the suggestion of several automobile manufacturers, NHTSA required that a warning be permanently etched into all convex passenger side view mirrors.

In the case of MBUSA's affected vehicles, the etched warning provides that "Objects in

Mirror Closer Than They Appear." The missing word "Are" is contrary to the exact wording of the warning required by FMVSS 111. The cause of this error was traced to a defective stencil used in the laser printer which etches the warnings onto mirrors. MBUSA believes that the stencil defect, which caused the laser printer to inadvertently leave the word "Are" from the warning, was caused by dirt or some other cosmetic flaw in the stencil. This situation apparently was not immediately noticed by MBUSA's supplier's quality control department.P='04'≤

In effect, MBUSA argued that the grammatical error does not alter or obscure the required message. Hence, MBUSA urged that this noncompliance be found inconsequential.

In the one public comment that was received, JCW states that "the buyer of a Mercedes vehicle tends to be a very informed and discerning automotive consumer" and it would be unlikely that he or she would be confused by such an omission in the label's wording.

We have reviewed the application and agree with Mercedes that the noncompliance is inconsequential to motor vehicle safety. The label still conveys the message intended by the standard, and, although grammatically incorrect, it is still easily understood. For this reason, it is unlikely that a driver will be confused by the missing word in the label.

In consideration of the foregoing, we do not deem this noncompliance to be a serious safety problem warranting notification and remedy. Accordingly, we have decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Therefore, its application is granted and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance as required by 49 U.S.C. 30120.P='04'≤

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

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Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

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