The screening process also ensures that the user service is consistent with the goals of integration and standardization. The ITS JPO will make the appropriate changes to the draft user service to ensure that its scope is consistent with the other user services.

f. The final step in Phase I is for the ITS JPO, with formal advice from ITS America, to determine whether or not to accept and include the completed user service into the National ITS Program Plan or the National ITS Five-Year Program Plan. Once accepted by the ITS JPO, the user service will be incorporated into the National ITS Architecture.

*Phase II*

a. The first step is for the ITS JPO to coordinate the revision of the National ITS Architecture that will satisfy the intent of the stakeholder community.

b. The second step is to develop a milestone schedule that includes a kickoff meeting and interim program review(s) to engage representatives of the stakeholder community, address the user service, and begin a formal National ITS Architecture integration effort.

At this stage, it is appropriate to invite a group of stakeholders who, where possible, will be involved in the kickoff meeting and each of the reviews to lend continuity and understanding to the overall effort and to ensure stakeholder concerns and needs are met. This will require an outreach effort prior to the kickoff meeting, again similar to the second step in Phase I.

c. The third step is to integrate the new user service into the National ITS Architecture. In addition to the technical work, the effort involves program reviews, and the possibility of outreach meetings with selected members of the stakeholder community.

d. The fourth step is to render a final report to the stakeholder community representatives by the ITS JPO. This is a brief oral report highlighting the changes and indicating that the integration effort is complete.

e. The final step is to post the changed National ITS Architecture on the ITS JPO and National ITS Architecture websites and to release the next version of the National ITS Architecture on CD–ROM, if appropriate.

There will be an outreach effort to announce the change and new version of the National ITS Architecture through the same media used previously. Phase II of the ITS JPO integration activities should be accomplished within 6 to 9 months, depending upon the detail and complexity of the new user service.

**Authority:** 23 U.S.C. 101, 106, 109 ,133, 315, and 508; sec 5206(e), Pub. L. 105–178,112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

Issued on: July 12, 2001.

**Christine M. Johnson,**

*Program Manager, Operations Director, ITS Joint Program Office.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2000–7744; Notice 2]**

### General Motors Corporation; Denial of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, determined that certain headlamps on 1999 Buick Century and Buick Regal models do not meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' and filed the report required by 49 CFR part 573, notifying the agency of the noncompliance. GM 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** (65 FR 49632) on August 14, 2000. Opportunity was afforded for public comment until September 13, 2000. One comment was received from Advocates for Highway and Auto Safety (Advocates).

GM manufactured 201,472 Buick Century and Buick Regal models between October 1998 and June 1999, some of whose headlamps do not meet the photometric requirements in FMVSS No. 108 for test points above the horizontal (intended for overhead sign illumination). To evaluate the noncompliance, GM randomly collected 10 pairs of lamps from production and photometrically tested them. Additionally, GM tested the same 10 pairs of lamps using accurately-rated bulbs. These are bulbs that have their filaments positioned within strict tolerances. In large scale bulb production, the filament positions vary slightly and, therefore, can produce varying photometric output. The photometric output of a lamp using an accurately-rated bulb is intended to closely represent the output that was intended in its design, and not that which would occur in a mass produced headlamp as sold on motor vehicles.

The test results indicate that five test points (production bulbs) and three test points (accurately-rated bulbs), respectively, failed to meet the minimum candela requirements. The test results also indicate that the amount of light below the minimum required was generally less than 10 percent at all noncomplying test points. However, seven failures at certain test points that were greater than 16 percent below the minimum, with the maximum variation being 24.4 percent (at 1.5 degrees up) with a production bulb. Transport Canada conducted tests on headlamps used on the same types of vehicles, and found that all the test points in question met the requirements. GM believes that these results show the noncomplying results were related to manufacturing variations and were present in only a portion of the lamps.

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

> The test points at issue are all above the horizon and are intended to measure illumination of overhead signs. They do not represent areas of the beam that illuminate the road surface, and the headlamps still fulfill applicable Federal Motor Vehicle Safety Standard 108 requirements regarding road illumination.
>
> For years the rule of thumb has been that a 25 percent difference in light intensity is not significant to most people for certain lighting conditions.
>
> GM has not received any complaints from owners of the subject vehicles about their ability to see overhead signs.
>
> GM is not aware of any accidents, injuries, owner complaints or field reports related to this condition for these vehicles.

GM also cites a number of inconsequentiality applications that the agency has granted in the past as support for granting its application. Those cited were submitted by GM [59 FR 65428; December 19, 1994], Subaru of America, [56 FR 59971; November 26, 1991], and Hella, Inc. [55 FR 37602; September 12, 1990]. GM also cites a University of Michigan Transportation Research Institute (UMTRI) report entitled ''Just Noticeable Differences for Low-Beam Headlamp Intensities'' (UMTRI–97–4, February 1997).

In the only public comment received, Advocates stated its ''strongest opposition to NHTSA granting a finding of inconsequential noncompliance for the GM headlamps which are the subject of this notice.'' Advocates first points out that it believes GM's purported lack of complaints about inadequate headlamp illumination has ''no merit whatever.'' It believes that it is unlikely that drivers would attribute

their driving errors or crashes to a faulty beam. Further, it believes it unlikely that an investigating officer at a crash scene would consider the characteristics of the beam pattern as the causal factor. It goes on to say that crashes may have occurred as a result of the noncompliance of which GM is not aware.

Advocates also discusses the importance of overhead lighting. It states that:

> It is especially crucial for adequate levels of lighting to fall on the surfaces of high-mounted retroreflectorized traffic control devices which advise of vehicle maneuvers, speed limit changes, warnings of hazardous conditions, and destination information to ensure driver confidence and safety in executing the moment-to-moment driving task.

Advocates refers to the amendment of FMVSS No. 108 on January 12, 1993 [58 FR 3856] which added minimum photometric requirements for headlamps for illumination of overhead signs. Advocates reiterates the agency's rationale for this rulemaking, that some manufacturers were introducing headlamps in the 1980s and 1990s which widely departed from the traditional U.S. beam pattern. These headlamps were providing inadequate light above the horizontal to illuminate overhead signs.

We have reviewed the application and disagree with GM that the noncompliances are inconsequential to motor vehicle safety. As Advocates correctly noted in its comment, the sole purpose of the 1993 final rule was to establish photometric minima above the horizon so that headlamps would sufficiently illuminate overhead signs. Without any test point minima specified, some manufacturers were designing headlamps that provided very little light above the horizon. Because States were choosing retroreflectorized overhead signs rather than the more expensive self-illuminated ones, the agency determined that it should address the increasing need for illumination of overhead reflectorized signs.

In setting these minima, the agency expected the industry to design its headlamps to ensure that production variability would not result in noncompliances. GM's own compliance tests show failures that are as much as 24.4 percent below the required minima. Each of the ten headlamps GM tested had noncomplying test points, with all but two having failures that were greater than 14.1 percent below the minimum requirement. This testing indicates that there may be a serious flaw in the design and/or production of these lamps.

Although GM states that Transport Canada tested and found all lamps to be compliant, the company did not provide any substantiating data, or even the number of headlamps tested by Transport Canada. The agency contacted Transport Canada and obtained the test data on the subject vehicles. Initially, there were four failures at the relevant test points. The failures were resolved by reaiming the headlamps one quarter degree, an adjustment allowed by the standard. After reaiming, Transport Canada found the lamps to be in compliance at the four test points where they had previously failed. Although these four lamps were found to be in compliance, the need to reaim and the marginal compliance at others shows that the design of the lamps was marginal.

A January 1991 study conducted by UMTRI (UMTRI–91–3) recommended certain minimum intensity levels for test points above the horizontal that are intended to illuminate signs. UMTRI divided its recommendations for minima between three types of retroreflectorized signs: enclosed lens, encapsulated lens, and microprismatic, each respectively more reflective than the previous. The first two are most relevant, as microprismatic signs comprised only about three percent of the current signs at that time. UMTRI concluded that, for a test point 1.5 degrees up, the minimum intensities for the enclosed and encapsulated lens signs were 700 and 250 candela (cd), respectively. The standard currently requires a minimum of 200 cd. In setting this level, the agency expected manufacturers to factor in a certain level of design variability to assure compliance. GM's poorest performing lamp provided about 150 cd at this test point. The agency finds this unacceptable. As Advocates pointed out in its comments, there are many critical maneuvers that must be undertaken in low light situations, and to not provide sufficient light to illuminate signs is a detriment to motor vehicle safety.

GM cites a number of the agency's previous grants of inconsequentiality applications that were based upon our conclusion that a change in luminous intensity of approximately 25 percent must occur before the human eye can discern a difference. GM also cited an UMTRI report [UMTRI–97–4; February 1997] to support its position.

We believe that these past agency actions and the 1997 UMTRI report do not support GM's conclusion. The previous actions and the UMTRI report all deal with an observer's ability to see a headlamp or a signal light, not the ability to see the light reflected back from headlamp-illuminated signs or other reflectors. The inconsequential applications which GM cites all involved signal lighting with deficiencies in photometric requirements. In all cases, the agency was confident that the noncompliant signal lights would still be visible to nearby drivers. Because signal lighting is not intended to provide roadway illumination to the driver, a less than 25 percent reduction in light output at any particular test point is less critical.

Regarding the UMTRI study on just-noticeable differences for lower-beam headlamps, the research and findings are mostly analogous to those of the signal lighting research. UMTRI's study was designed to evaluate the just-noticeable differences for glare intensities of oncoming headlamps. Like the signal light research, it was performed from the point of view of a driver observing differences in headlamp intensities. We are not persuaded by GM's contentions about the meaning of this research. In its report, UMTRI states

> The applications of (just noticeable differences) derived from judgments about the subjective brightnesses of lamps viewed directly seems less of a leap in the case of signal lamp functions, and of those aspects of headlamps that involve direct viewing (primarily discomfort glare), than in the case of headlamp functions that involve the illumination of objects. The primary reason for caution in extending the current results to illuminated objects is that the range of luminances of such objects (e.g., a pedestrian at 100 meters illuminated by headlamps at night) will be much lower than the luminances of the headlamps themselves. The [research] can therefore be used more confidently to justify applying the 25 percent limit for inconsequential noncompliance to a photometric test point that specifies a maximum for glare protection than to one that specifies a minimum for seeing light. Further work on the effects of changes in lamp intensity on the visibility of illuminated objects is desirable to clarify more completely the issue of inconsequential noncompliance for headlamps.

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. Accordingly, its application is hereby denied, and it must proceed to notify and remedy as required by statute.

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

Issued on: July 17, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

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**BILLING CODE 4910–59–P**

## 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