

line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Ford provided about its device.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the Mercury Mariner vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency

before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: November 20, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0182, Notice 1]

#### Mercedes-Benz, U.S.A. LLC; Receipt of Application for Extension of a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 108

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of receipt of application for a temporary exemption.

**SUMMARY:** In accordance with the procedures of 49 CFR 555.6(b), Mercedes-Benz, U.S.A. LLC ("MBUSA"), on behalf of its parent corporation Daimler AG ("Daimler") has applied for a renewal of a temporary exemption from S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108. The basis of the application is to continue the development and field evaluation of new motor vehicle safety feature providing a level of safety at least equal to that of the standard. We are publishing this notice of receipt of the application in accordance with the requirements of 49 CFR 555.7(a), and have made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than December 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820; E-mail: ari.scott@dot.gov.

#### I. Background

In June of 2005, MBUSA petitioned the agency on behalf of its parent corporation, DaimlerChrysler AG,<sup>1</sup> seeking a temporary exemption from S5.5.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108. In short, S5.5.10 specifies that with certain

exceptions not applicable to this petition, all lamps, including stop lamps must be wired to be steady-burning.<sup>2</sup> In order to develop and evaluate an innovative brake signaling system in the United States, MBUSA sought a temporary exemption from the "steady-burning" requirement as it applies to stop lamps. At the time of the original petition, the system was available in Europe on the S-class, CL-class, and SL-class Mercedes vehicles. MBUSA states that the system enhances the emergency braking signal by flashing three stop lamps required by FMVSS No. 108 during strong deceleration. In addition, after emergency braking, the system automatically activates the hazard warning lights of the stopped vehicle until it starts to move again or the lights are manually switched off. The petitioner states that this signaling system reduces the following drivers' reaction time by attracting their attention, and also enhances visibility of the stopped vehicle, thus helping to reduce the incidence and severity of rear end collisions.

NHTSA granted MBUSA's petition for exemption on January 30, 2006.<sup>3</sup> The exemption was for a two-year period.<sup>4</sup> In granting MBUSA's request in the original grant, NHTSA made several determinations. The agency stated that MBUSA had met the requirements to receive an exemption under 49 CFR Part 555(b), which permits exemptions from the Federal Motor Vehicle Safety Standards on the basis that the exemption would make easier the development or field evaluation of safety equipment. Specifically, the agency stated that based on information provided by MBUSA, it appeared the proposed brake lamp system provided at least an equivalent level of safety to those that comply with FMVSS No. 108. Furthermore, NHTSA decided that granting the requested would be in the public interest, because the new field data obtained through this temporary exemption would enable the agency to make more informed decisions regarding the effect of flashing brake

<sup>2</sup> See S5.5.10 of 49 CFR 571.108. Turn signal lamps, hazard warning signal lamps, school bus warning lamps must be wired to flash. Headlamps and side marker lamps may be wired to flash for signaling purposes. Motorcycle headlamps may be wired to modulate.

<sup>3</sup> 71 FR 4961.

<sup>4</sup> We note that under 49 CFR 555.8(e), "if an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal."

<sup>1</sup> Due to corporate changes since the previous petition was received, the parent company of MBUSA is now Daimler AG.

signaling systems on motor vehicle safety.

It should be noted that prior to the original petition for exemption, NHTSA had previously denied petitioner's request to permanently amend FMVSS No. 108 to allow flashing brake signaling systems. Among the reasons for the denial was the need for additional data on safety benefits of flashing brake lamps. The petitioner argues that granting this temporary exemption would allow them to provide the information NHTSA found lacking.

In this petition, MBUSA requests that the exemption be extended for an additional two years. The reason given is that MBUSA needs the renewal to further evaluate whether benefits can be realized through the allowance of emergency brake lights on passenger vehicles in the United States. MBUSA cited data gleaned from its trials in the United States and in Germany that indicates that the emergency braking system may help to prevent some crashes. Although the samples used were very limited, MBUSA states that a renewal of the exemption will allow significantly more data to be collected and analyzed.

Between February 2006 and August 2007, MBUSA sold approximately 2870 vehicles with the modified brake lamps. In accordance with the requirements of 49 CFR 555.6(b)(5), MBUSA will not sell more than 2,500 exempted vehicles in any twelve-month period within the two-year exemption period. For addition details, please see the MBUSA petition at <http://www.regulations.gov>, Docket No. NHTSA-2005-22653. The following (Parts II-VIII) summarizes MBUSA's petition in relevant part.

## II. Question as to Whether the Current Request for a Renewal of the Petition Was Received 60 Days Prior to the Expiration of the Current Exemption

In its request for renewal of the temporary exemption granted in the 2006 notice, the petitioner argued that although the 2006 notice stated that "[t]he exemption from S5.5.10 of FMVSS No. 108 is effective from January 23, 2006 until January 23, 2008," because the notice was not published in the **Federal Register** until January 30, 2006, the term of the exemption should be interpreted to run until January 30, 2008. Therefore, under 49 CFR Part 555.8(e), because this petition for renewal was submitted December 3, 2006,<sup>5</sup> the exemption

<sup>5</sup> As the petitioner states, because the day 60 days prior to January 30 falls on the weekend (Saturday, December 1), the period should be deemed to run from the following Monday, which is December 3, 2006.

should not terminate until the Administrator grants or denies the application for renewal.

Having examined the **Federal Register** notice, we agree that the petition for renewal was submitted within the required time period for the exemption to continue until NHTSA reaches a final decision. In the grant notice, we stated that we were granting the exemption for a period of "twenty-four months." While the notice stated that the period ran from January 23, 2006 through January 23, 2008, we believe that these dates were erroneous. We note that 49 CFR 555.7(f) states that "unless a *later* effective date is specified in the notice of the grant, a temporary exemption is effective upon publication of the notice in the **Federal Register** and exempts vehicles manufactured on and after the effective date." [emphasis added] Because the January 23 date stated in the text of the notice was earlier than the date of publication in the **Federal Register**, pursuant to § 555.7(f), the petition was effective only as of January 30, 2006. Accordingly, the twenty-four month period of the exemption commenced from that date, and given the new petition, will not expire until the Administrator grants or denies this new petition.

## III. Description of the New Motor Vehicle Safety Feature

The petitioner states that its brake signaling system provides two innovative safety-enhancing features.

First, three stop lamps required by FMVSS No. 108 flash at a frequency of 5 Hz in the event of strong deceleration. This occurs if the velocity is >50 km/h (31 mph) and at least one of the following conditions is met:

1. Deceleration is >7 m/s<sup>2</sup>; or
2. The brake assist function is active;

or

3. The Electronic Stability Program (ESP) control unit detects a panic braking operation.

The petitioner states that the activation criteria ensures that the enhanced brake signals are only activated when truly needed. Thus, the brake lights will flash only in severe braking situations, and will flash at a relatively high frequency that allows for fast recognition. Further, using the panic brake signal from the ESP control unit as a trigger would activate the system only when the achievable deceleration is substantially smaller than the demanded one. Thus, the stop lamps would not flash in routine situations.

Second, after emergency braking, the system automatically activates the hazard warning lights of the stopped

vehicle until it starts to move again, or the lights are manually switched off.

## IV. Petitioner's Statement Concerning Benefits of the New Motor Vehicle Safety Feature

The petitioner states that the brake signaling system provides important safety enhancements not found in a vehicle equipped with a traditional brake signaling system. First, the flashing system reduces the following driver's reaction time and encourages maximum deceleration of following vehicles. The petitioner expects especially strong benefits during adverse weather conditions and for inattentive drivers. Second, the activation of hazard warning lamps on the stopped vehicle also enhances vehicle recognition after it came to a complete stop. The petitioner believes that together, these features will help to reduce rear end collisions and improve safety.

The petitioner is aware of the agency's longstanding restriction on flashing stop lamps, in the interest of standardized, instantly recognizable lighting functions. However, MBUSA believes its system will be easily recognizable, and would not interfere with NHTSA's objectives.

## V. The Petitioner's Research and Testing Done Prior to the Current Exemption

In its original petition submitted in 2005, the petitioner offered information on driver behavior studies that would help to determine if the proposed brake light system can significantly reduce driver reaction times. One study that MBUSA used was a driver braking behavior study to understand how often rapid deceleration braking occurs in the United States. The study followed 96 subjects using 15 Mercedes-Benz vehicles equipped with a driver behavior and vehicle dynamics recorder. The study indicated that one emergency braking maneuver occurred for every 2,291 miles driven. The study also suggested that, based on the criteria described in the previous section, only 23 out of 100,000 braking maneuvers would activate the flashing stop lamps. The petitioner concluded that the flashing brake light will occur rarely, which will help to avoid "optical pollution" and enhance the effectiveness of the brake light system.<sup>6</sup>

The petitioner stated that the study showed that flashing brake lights reduce driver reaction time by an average of 0.2 seconds, which is a reduction sufficient

<sup>6</sup> Driver behavior research is described in Attachment A of the petition.

to meaningfully reduce the number and/or severity of rear end collisions. MBUSA argues that even higher reduction in reaction time would occur under real-world driving conditions, where drivers are less focused on the driving task and subject to more sources of distraction. The study also showed positive effects from the flashing brake light signal under adverse weather conditions and in distraction situations. Finally, the test subjects expressed a preference for flashing brake lights when compared to other brake light symbols. In addition, the petitioner also referred to a Japanese study showing that short, flashing intervals are more effective than slower intervals, as well as more effective than enlarging the area of the lamp.

#### VI. Additional Planned Research and Research Done During the Period of the Current Exemption

The petitioner states that the plan for monitoring the experience of these vehicles focused on both dealer inputs and insurance claims. However, to date, the petitioner states that it has only acquired a limited amount of data. Data from one insurance company, representing about 20% of the modified vehicles in the U.S. has been obtained. This information, while based on very limited data, showed some improvement in the crash ratio of the experimental vehicles. Additionally, Daimler has been able to collect data from the German Federal Statistical Office. According to the petition, the data indicate a decrease of rear impacts compared to other Mercedes-Benz passenger cars.

Finally, the petitioner notes a recent Department of Transportation study of rear-end crashes in an effort to help develop improvements in this field.<sup>7</sup> MBUSA states that while the agency is studying the issue on its own, the information the petitioner collects will be a valuable supplement to the agency's efforts.

#### VII. Petitioner's Statement Concerning How a Temporary Exemption Facilitate the Development and Field Evaluation of a New Motor Vehicle Safety Feature

The petitioner states that it intends to monitor the exempted vehicles and study the effectiveness of the brake signaling system. First, MBUSA will gather information about rear-end collisions of vehicles equipped with the system. This information will be combined with the parallel results from

the European fleet and, according to the petitioner, may prove to be valuable in evaluating the anticipated safety benefits of the new brake light system. Second, the test fleet may enable MBUSA to evaluate acceptance of the flashing stop lamps among the American public.

#### VIII. Petitioner's Statement Concerning Why Granting the Petition for Exemption Is in the Public Interest

As indicated above, the petitioner argues that granting the requested exemption from FMVSS 108 would enable it to continue developing and evaluating its innovative brake signaling system, thus contributing substantially to ongoing efforts to consider the effectiveness of enhanced lighting systems in reducing rear-end crashes. MBUSA believes that the system will help to significantly reduce following driver reaction times, thus reducing rear end collisions.

The petitioner also noted that rear end collisions are a significant traffic safety concern, particularly in dense traffic areas, and an important cause of rear end collisions is a following driver's failure to detect that a leading vehicle has performed an emergency braking action. MBUSA believes that an enhanced braking signal that alerts following drivers to urgent braking situations has the potential to significantly enhance safety.

#### IX. How You May Comment on This Petition

We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* DOT Docket Management Facility, M-30, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal Holidays.
- *Fax:* 1-(202)-493-2251

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

*Docket:* For access to the docket in order to read background documents or comments received, go to <http://www.regulations.gov> at any time or to M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8.

Issued on: November 19, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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<sup>7</sup> "Analysis of Rear-End Crashes and Near-Crashes in the 100-Car Naturalistic Driving Study to Support Rear-Signaling Countermeasure Development," DOT HS 810 8145, October 2007.