

Why Dailey Needs an Exemption

Dailey requested an exemption for five "special reel hauling" trailers that it was unable to complete before March 1, 1998, because of changes requested by its customer, Pacific Gas & Electric Co., (PG&E) during construction of the trailers. On March 1, 1998, an amendment to Federal Motor Vehicle Safety Standard No. 121 *Air Brake Systems* became effective, requiring these trailers to be equipped with an anti-lock brake system. According to the company, there is no after market kit available to convert the air-over-hydraulic brake system to meet the new requirements of S5.1.6.

Why Compliance Would Cause Dailey Substantial Economic Hardship

Since there is no aftermarket kit available to convert the trailers to a conforming brake system, Dailey would be unable to sell them absent an exemption. It has \$250,000 of its operating capital tied up in the trailers, and would have to absorb the loss. This figure is almost equal to its combined net income for the years 1996 and 1997, \$252,519.

How Dailey Tried in Good Faith To Comply With Standard No. 121

Dailey's total trailer production in the 12-month period preceding the filing of its application was 43. It was also the final-stage manufacturer and certifier of 938 "chassis with bodies." Other than the five trailers for which it requests exemption, its trailers manufactured since March 1, 1998, comply with Standard No. 121.

Why an Exemption for Dailey Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey believes that it would be in the public interest "to keep from imposing a hardship, that could adversely affect employment, on a company that has been successfully building truck body equipment for over 50 years." Because only five trailers will be exempted, the risk to the public will be small. The trailers were manufactured to conform with regulations that existed at the time production was scheduled.

Our Finding That Compliance Would Cause Substantial Economic Hardship to a Manufacturer That Has Tried in Good Faith To Comply With Standard No. 121

If we denied Dailey's application, the company would be unable to sell the five trailers. We assume that some of the \$250,000 of its operating capital tied up in the vehicles would not be totally lost

as Dailey indicates, but, in large part, could be reclaimed over time by sales of components of the trailers as replacement parts. Nevertheless, it is evident that the company's net income has been marginal in recent years, and that recoupment of \$250,000 plus profit from the sales of the five trailers would make an immediate and material improvement in its income statements. These trailers represent over 10 percent of its annual trailer production.

With the exception of these trailers, Dailey's vehicles are complying with Standard No. 121. These trailers also would have complied had not the customer ordered changes during their production. Dailey has sought, but not found, a means of bringing them into conformity.

Our Finding That an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Dailey argued that an exemption would be in the public interest as avoiding an adverse effect upon employment. We agree that full employment is in the public interest, and also conclude that the fact that the vehicles are intended for work-performing use by a public utility is also a factor in favor of an exemption. The presence of five reel-hauling trailers on the public roads will not have a discernable effect on motor vehicle safety. Further, the trailers will be certified as meeting all other applicable Federal motor vehicle safety standards.

For the reasons discussed in the two sections above, it is hereby found that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard from which it has requested exemption. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of motor vehicle safety.

Accordingly, Dailey Body Company is hereby granted NHTSA Temporary Exemption No. 99-6, from S5.1.6 of 49 CFR 571.121 *Air Brake Systems*, to cover the manufacture for sale, sale, offer for sale, introduction into interstate commerce, and delivery for introduction in interstate commerce, of five reel-hauling trailers manufactured for Pacific Gas & Electric Co., said exemption to expire when the last of the acts stated above occurs with respect to the last trailer exempted by this notice, or August 1, 1999, whichever first occurs.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98-3343; Notice 2]

Mercedes-Benz U.S. International, Inc.; Grant of Application for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Mercedes-Benz U.S. International, Inc., of Vance, Alabama ("MBUSI"), applied for a temporary exemption from five Federal motor vehicle safety standards on behalf of the Mercedes-Benz M Class vehicle. The basis of the application was that, in the absence of an exemption, MBUSI would be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted vehicle. The company asked for an exemption of 2 years.

We published notice of receipt of the application on February 2, 1998, and afforded an opportunity for comment (63 FR 5415), receiving two of them. James C. Walker of JCW Consulting, Ann Arbor, Michigan, supported MBUSI. Advocates for Highway and Auto Safety ("Advocates") opposed granting the requested exemptions for the reasons set forth below. Subsequently, MBUSI submitted a rebuttal of Advocates' comments. We also asked MBUSI to submit a photo of the M Class showing its nighttime illumination from the side, and later requested information pertaining both to German and U.S. tourist delivery programs.

Under the authority of 49 U.S.C. 30113(b)(3)(iv), as implemented by 49 CFR 555.6(d), we may exempt motor vehicles, on a temporary basis of up to 2 years, from compliance with a Federal motor vehicle safety standard upon a finding that "(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles" (We must also find that the exemption is in the public interest and consistent with objectives of traffic safety). The exemption covers up to 2,500 vehicles for any 12-month period that it is in effect.

MBUSI manufactures the Mercedes-Benz M Class sport utility vehicle. It has developed a version of the M Class for

export which is manufactured to European specifications. It proposes to sell a limited number of these vehicles to "European citizens" who "are either visiting or temporarily assigned to work in the United States." This program is similar to those in which a vehicle conforming to U.S. specifications is sold to Americans from various factories in Europe. MBUSI relates that its planned program is similar to one established by General Motors for which we granted GM's petition on August 18, 1988 (53 FR 31411).

MBUSI originally stated that it was developing procedures that will ensure that the vehicles will, in fact, "be exported within a one year time frame, or at the conclusion of a diplomatic assignment, whichever is applicable." Advocates contested the efficacy of such procedures, saying that it is inevitable that some exempted vehicles will be sold and operated on American roads. MBUSI stated that it will retain title along with other shipping documents until the vehicle is exported, thereby rendering subsequent sale impossible. In addition, each European owner will be required to place a deposit on the vehicle to ensure export, refundable at that time. The vehicles will have European VINs so that it will not be possible to register them in any of the states. In February 1999, MBUSI informed us that it had reached a tentative agreement with the Alabama Department of Motor Vehicles that all exempted vehicles that are sold will be fitted with non-renewable registration plates that expire at the end of the next month following delivery, i.e., an exempted vehicle delivered on July 15 will bear plates that expire on August 31. NHTSA is satisfied that MBUSI has met Advocates' objections on this issue.

In MBUSI's view, it requires partial exemptions from five Federal motor vehicle safety standards if it is not to be prevented from selling the M Class. These are set forth below.

1. *Standard No. 101, Controls and Displays.* The European specification M Class brake indicator warning light depicts the ISO brake symbol, rather than the word "BRAKE" as required by Table II of Standard No. 101 (this is also a requirement imposed by Standard No. 105 *Hydraulic Brake Systems*).

MBUSI does not believe that this noncompliance degrades the safety of the vehicle. The ISO symbol is well known to the Europeans who will own and drive the M Class. On the other hand, the word "BRAKE" could be confusing to operators with a limited command of English.

Advocates opposed granting an exemption from this requirement on the

basis that NHTSA rejected the use of ISO symbols in a recent rulemaking as "inferior in design and comprehension to U.S. symbols. 61 FR 27039, 27041 (May 30, 1996)." The agency did not adopt certain ISO symbols for vehicles intended for sale in the United States to inhabitants of this country. But it fails to see the relevance of this fact to vehicles that will be sold to drivers who are inhabitants of countries where the ISO symbol is required, and to whom the meaning should be clear. MBUSI commented that the sale of the exempted vehicles will occur in Europe, with delivery only in the United States, so that there is no means by which other persons can purchase a European M Class in the United States. NHTSA concludes that use of the ISO symbol by MBUSI ought to provide protection to European drivers at least equal to the protection provided drivers of American cars though use of the word "BRAKE" in Standard No. 101.

2. *Standard No. 108, Lamps, Reflective Devices and Associated Equipment.* There are two requirements of Standard No. 108 from which MBUSI requests relief.

A. *Front and rear side marker lamps and reflectors.* Table II of Standard No. 108 requires vehicles such as the M Class to be equipped with front and rear side marker lamps and reflectors. The M Class will not be equipped with these items.

Although the M Class vehicles will lack side marker lamps and reflectors, they will be equipped with other lighting equipment not required by Standard No. 108, such as side turn signal repeaters. In addition, they will be equipped with front and rear fog lamps. Vehicles destined for Scandinavian countries will be equipped with daytime running lamps. In summary, the combined addition of these devices will, in MBUSI's opinion, add to the visibility of exempted vehicles.

Advocates opposes any exemption from side marker requirements, saying that these are lamps and reflectors which are intended "to provide constant alerting information to other motorists and to pedestrians of the presence of a motor vehicle under conditions of adverse visibility." It does not regard daytime running lamps and turn signals as an acceptable substitute for markers that delineate the side.

Neither do fog lamps, in Advocates' view, serve as an acceptable substitute, because they are used infrequently, and can even be disengaged. Their use, according to Advocates, can increase the risks to highway safety "because they

are often misaimed, resulting in blinding levels of glare."

NHTSA has considered these views, and reviewed its 1988 grant of an exemption to General Motors (GM) from the side marker lamp and headlamp photometric requirements for a similar tourist delivery program (53 FR 31411). In granting GM's petition, the agency observed:

Although the safety benefits of side marker lamps and reflectors will not be realized there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be benefitted. Side turn signal lamps, daytime running lamps, * * * and red rear fog lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. (p. 31412).

Thus, there is a precedent for granting MBUSI's request from the side marker requirements. The M Class has much the same auxiliary lighting equipment. Moreover, the rear lamp cluster wraps around the side of the vehicle while the front lamp cluster is oriented so that, it, too, is visible from the side. NHTSA asked MBUSI to provide a photograph taken in the dark, showing the side of the vehicle with the headlamps on. This photograph clearly shows that the light from these front and rear lamps allows them to serve as surrogate front and rear side marker lamps, even though the light provided by the headlamp housing wraparound is white rather than amber. In our view, this provides an equivalent level of safety, bearing in mind also that the vehicles will be operated on American roads a limited amount of time (60 days at most), and that the company expects to sell only a small number of them (in an informal conversation, fewer than 100 annually).

B. *Certain headlamp photometrics.* The M Class headlamps are designed to meet the European photometric specifications of ECE R8 rather than those of Standard No. 108. The exempted M Class would not meet the minimum candela prescribed by Standard No. 108 for the upper beam. This affects eight test points. At these points, only 20 percent to 44.9 percent of the minimum required would be reached. With respect to the lower beam, there are two test points that fail to reach the minimum, one achieving 20.2 percent of the required figure and the other 71 percent. At test point 10U-90U, the maximum candela established by Standard No. 108 is exceeded by 270.4 percent.

MBUSI relates that the "continental European low beam pattern puts less light into the eyes of oncoming drivers * * * thereby reducing the glare experienced by oncoming drivers." Although the headlamps do not project

as much light down the road as U.S. headlamps, there are differing opinions "as to which set of photometric requirements offers the optimum compromise in satisfying competing safety objectives." Some countries permit both European and U.S. specification headlamps, but there are no data from these countries suggesting that one type is over or under represented in crashes.

With respect to the upper beam, MBUSI states that the lamps do meet the minimum for test point HV, but not the minima at 9 degrees right and left and 12 degrees right and left. Because the European owners will be accustomed to the forward illumination characteristics of European beam patterns, "the lighting on these vehicles should provide 'equivalent safety' for these drivers.

* * *

Advocates disagree with these arguments. In its view, "the low beam illumination pattern, in particular, is clearly inadequate for even minimum illumination of post- and overhead-mounted U.S. retroreflective traffic control devices, especially signs." As a result, "it would not be tolerable for the agency to permit the operation of thousands of vehicles with substandard headlamps in the U.S. nighttime environment, regardless of the operating familiarity with the beam patterns and illumination characteristics of such headlamps by foreign nationals residing temporarily in the U.S." In rebuttal, MBUSI submitted that this deviation from the standard will not cause any adverse impacts to motor vehicle safety. Since Advocates has not cited "any information indicating any potential for drivers accustomed to this lighting to have a greater likelihood of accidents, there is no basis to suggest this difference is significant for brief operation in the United States."

Again, we would like to emphasize that we are not making a judgment about the relative equivalence of the U.S. and European beam patterns for vehicles manufactured for use on roads in the United States. We have consistently expressed doubts about the adequacy of the light provided by the European headlamp beam pattern for highway signs and down-the-road lighting. However, MBUSI is not asking us to make a judgment about the relative merits of the European headlamp beam for drivers of vehicles manufactured for use in the United States. Instead, the question is solely whether this beam pattern offers equivalent safety for the driver of a vehicle not manufactured for use in the United States, i.e., European drivers who are familiar with the European beam pattern. In these narrow

circumstances we have concluded that, given the continental driving experience of the European M Class purchasers, no safety risk is presented by allowing a limited number of M Class vehicles to be operated for a limited period of time on American roads.

3. *Standard No. 111, Rear View Mirrors.* The passenger side convex rear view mirror will not contain the warning required by S5.4.2 for American-market cars that "Objects in Mirror Are Closer Than They Appear."

According to MBUSI, the European drivers will be familiar with outside convex mirrors because they are used throughout Europe without a legend inscribed, and no safety value is added by requiring the legend to be etched into the mirror.

Advocates expressed general opposition to this request, without specific comment. Given that the exempted mirrors will provide an even larger unobstructed field of view without the legend, and that European drivers are used to convex mirrors without the warning, we have concluded that these mirrors will provide an overall level of safety at least equal to that of passenger side exterior rearview mirrors which comply with Standard No. 111.

4. *Standard No. 120, Tires for Vehicles Other Than Passenger Cars.* The M Class exempted vehicles will not carry a tire information label as required by S5.3 of Standard No. 120.

However, there will be a European tire pressure information label adjacent to the fuel filler opening, the location for many European vehicles. Since Europeans are accustomed to that location for the tire information label, there is no safety value added by placing the label in the locations required under the standard. In addition, according to MBUSI, "since the vehicle will be permanently exported for use in Europe, the tire information label must contain the information required by European standards."

During the comment period, we asked MBUSI to provide a copy of the tire information label mentioned in its application. MBUSI did so on February 24, 1998, with the contradictory statement that "under European law, a tire placard is not required. Therefore, there are no European regulations specifying the contents of a tire placard." However, the company voluntarily provides tire pressure information on a label affixed to the fuel filler door.

Advocates opposed this exemption on general grounds, without specific comments. MBUSI commented in

rebuttal that the location of the label, near the fuel filler opening, may serve to remind drivers to check the vehicle's tires and tire inflation pressure when refueling. Our review of the label shows that it lacks the tire and rim information required by Standard No. 120. This information is required to ensure a correct match between a vehicle and its tires, and its tires and their rims. Given the fact that the vehicles are intended to be exported after no more than 60 days' use in the United States, it is unlikely that tires and rims will have to be replaced before that time. Therefore, while the vehicles are in use in the United States, the tire pressure information should provide a level of safety at least equal to that afforded by a conforming label under Standard No. 120.

5. *Standard No. 209, Seat Belt Assemblies.* The seat belts in the exempted M Class vehicles will not carry the marking required by S4.1(j) of the standard). They will, however, meet ECE R16 and bear the required approval mark. MBUSI believes that the purpose of this information is to allow the belts to be tracked in a recall campaign occurring in the United States. In this case, the vehicles will be shipped to Europe, outside the coverage of any recall campaign, or the United States part-replacement system, and the respective European label is more appropriate for these vehicles.

The information required under S4.1(j) of Standard No. 209 is the name or trademark of the manufacturer, distributor, or importer; the year of manufacture, and the model. During the comment period, we also asked MBUSI to describe the information required under ECE R16. This regulation calls for the manufacturer's name, initials or trademark, the E mark, "an approval number," and symbols indicating the types and performance characteristics of the restraint.

Advocates opposed a grant of the application for exemption from Standard No. 209 only on a general basis, without specific comment. We are satisfied that the ECE marking is sufficiently different from that of Standard No. 209 that, were a recall or replacement required during the period the exempted vehicle is being operated in the United States, the belts could be readily identified. We believe that MBUSI's procedures to ensure timely export will aid in locating exempted vehicles in the United States in the event of a recall. In sum, the information furnished under ECE R16 should provide a level of safety to European owners of M Class vehicles at

least equal to that provided to American owners by S4.1(j).

The Public Interest and Safety

MBUSI argued that the exemption "would be helpful in improving the trade deficit currently being suffered by the United States," possessing the potential to expand into other lines. The owners of exempted M Class vehicles will contribute to local economies during their sojourn in the United States. Advocates argued that foreign tourists will continue to visit the United States and contribute to local economies if the application is denied. Although it may be in the public interest to encourage sales of products made in this country, particularly those that are exclusively made in the United States such as the M Class, this is not a factor that NHTSA considers in its regulatory decisions under the vehicle safety law.

Advocates contends that MBUSI's application "makes only superficial and conclusory assertions that the vehicles will provide safety equal to that of vehicles built to all U.S. standards." Based on our review of the MBUSI petition, as supplemented by materials submitted in response to our request, we conclude that MBUSI has adequately supported its request.

An exemption from the standards would be consistent with motor vehicle safety since the exempted vehicles possess an overall level of safety at least equal to that of nonexempted vehicles and will only be used for a limited time in the United States in any event.

Decision

In consideration of the foregoing, it is hereby found that compliance with each of the standards discussed above would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles, and that an exemption is consistent with the public interest and motor vehicle safety. Accordingly, Mercedes-Benz U.S. International, Inc., is hereby granted NHTSA Temporary Exemption No. 99-3, expiring May 1, 2001, for M Class vehicles, from: providing the word "brake" required by Table 2 of 49 CFR 571.101 Standard No. 101 *Controls and Displays*, requirements for side marker lamps and reflectors, and headlamps complying with S7 of 49 CFR 571.108 Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, S5.4.2 of 49 CFR 571.111 Standard No. 111 *Rearview Mirrors*, S5.3 of 49 CFR 571.120 Standard No. 120 *Tires for Vehicles Other Than Passenger Cars*, and S4.1(j) of 49 CFR 571.209 Standard No. 209 *Seat Belt Assemblies*.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: May 26, 1999.

Ricardo Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of a petition for modification for previously approved antitheft devices.

SUMMARY: This agency granted in part General Motors Corporation's (GM) petitions for exemption from the parts-marking requirements of the vehicle theft prevention standard on April 27, 1990, April 9, 1991 and March 26, 1992, for the Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre car lines, respectively. On August 25, 1993, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Oldsmobile Aurora car line. This notice grants in full GM's petition for modification of the previously approved antitheft device for the Aurora car line, and provides for full exemption of three car lines (Cadillac DeVille, Pontiac Bonneville, and Buick LeSabre) that were previously granted partial exemptions. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-4807. Her fax number is (202) 493-2739.

SUPPLEMENTARY INFORMATION: In April 1990, NHTSA published in the **Federal Register** a notice granting in part the

petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1991 Cadillac DeVille. The DeVille car line was equipped with the "PASS-Key" antitheft device. (See 55 FR 17854, April 27, 1990). In April 1991, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1992 Pontiac Bonneville. The Bonneville car line was equipped with the "PASS-Key" antitheft device. (See 56 FR 14413, April 9, 1991). In March 1992, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year MY 1993 Buick LeSabre. The LeSabre car line was equipped with the "PASS-Key II" antitheft device. (See 57 FR 10517, March 26, 1992). In August 1993, NHTSA published in the **Federal Register** a notice granting in full the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year 1995 Oldsmobile Aurora. The Aurora car line was equipped with the "PASS-Key II" antitheft device. (See 58 FR 44872, August 25, 1993).

The agency granted partial exemptions for the Cadillac DeVille, Pontiac Bonneville and Buick LeSabre lines at that time because the devices lacked an audible and visual alarm system. As such, the GM systems lacked, as standard equipment, an important feature that the agency has defined in its rulemaking on Part 543 as one of several attributes which contribute to the effectiveness of an antitheft device: automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk, and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key. The lack of an audible or visual warning device made the agency uncertain as to whether the device would be as effective as parts marking in deterring theft of these vehicles. Consequently, the agency believed that because of the lack of theft data and information available at that time for lines installed with antitheft