

systems would help eliminate this hazard, and provide a safer working environment.

Seven commenters identified themselves as owners of small towing companies that use rechargeable wireless temporary stop, turn, and tail lighting systems when conducting temporary emergency tows. These commenters echoed the comments above, noting that use of the wireless systems allows operators to clear accident scenes from roadways faster and thereby increases tow operator safety.

Four additional commenters supported TowMate's application, noting the same benefits as the other commenters.

Discussion

Prior to August 2005, section 393.23 of the FMCSRs was titled "Lighting devices to be electric," and stated "Lighting devices shall be electric, except that red liquid-burning lanterns may be used on the end of loads in the nature of poles, pipes, and ladders projecting to the rear of the motor vehicle." In a final rule published on August 15, 2005, FMCSA amended section 393.23 of the FMCSRs to incorporate terminology which is more consistent with current industry standards and practices (70 FR 48008). Specifically, the title of section 393.23 was revised to read "Power supply for lamps," the reference to red liquid-burning lanterns was removed as obsolete, and—as it relates to the subject exemption application—the rule was amended to permit the use of battery powered lamps on projecting loads. With respect to the use of battery powered lamps, the August 2005 rule states "With the exception of *temporary* lamps used on projecting loads, lamps are required to be powered through the electrical system of the commercial motor vehicle." [Emphasis added].

Motor vehicles transporting loads which extend more than 4 feet beyond the rear of the motor vehicle, or which have tailboards or tailgates extending more than 4 feet beyond the body, are required to mark those projections when the vehicle is operated during the hours when headlamps are required. Specifically, each side of the projecting load is required to be marked with one red side marker lamp, visible from the side, located to indicate the maximum overhang, and the rear of the projecting load is required to be marked with two red lamps, visible from the rear, one at each side, and two red reflectors visible from the rear, one at each side, located so as to indicate the maximum width of the projection. By expressly permitting

battery powered lamps on projecting loads via the August 2005 final rule, the Agency has directly acknowledged the viability of lighting systems powered by sources other than the vehicle's electrical system in limited applications where the lamps required by the regulations are temporary in nature due to the specific vehicle operation.

Section 393.17 of the FMCSRs prescribes the lighting requirements for vehicles engaged in driveaway-towaway operations. A vehicle combination consisting of a tow vehicle pulling a wrecked or disabled vehicle is considered a driveaway-towaway operation, and the combination needs to be equipped with the lighting devices specified in section 393.17. Specifically with respect to the rear of the rearmost towed vehicle in such a combination, section 393.17(b)(2) requires at least two tail lamps, two stop lamps, two turn signals, two clearance lamps, and two reflectors, one of each type at each side. In addition, if any vehicle in the combination is 80 inches or more in overall width, there must be three identification lamps on the rear. Similar to the temporary lamps required on the rear of projecting loads, the required lamps on the rear of a wrecked or disabled vehicle being transported to a motor carrier's terminal or facility for repairs are temporary in nature.

FMCSA Decision

FMCSA has evaluated the comments received in support of TowMate's application. The Agency agrees that permitting the use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations will reduce the time tow operators spend at the side of the road connecting wired lighting systems between vehicles, thereby reducing their risk of injury and increasing safety. The Agency believes that use of the rechargeable wireless lighting systems will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. This decision is consistent with the amendment made in the August 2005 final rule to allow battery powered lamps on the rear of projecting loads.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a two-year period, beginning February 9, 2016 and ending February 9, 2018. During the temporary exemption period, motor carriers will be allowed to use rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting

power supply requirements of 49 CFR 393.23 during temporary towing operations, provided the requirements of 49 CFR 393.17(b)(2) are met. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers using rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: January 29, 2016.

T.F. Scott Darling, III,
Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0134; Notice 2]

General Motors LLC, Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: General Motors LLC, (GM) has determined that certain model year 2014

Chevrolet Silverado and GMC Sierra trucks manufactured between January 29, 2013, and October 28, 2013, do not fully comply with paragraph S5.3.1(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*, and paragraph S3.1.4.1 of FMVSS No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*. GM filed a report dated October 31, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. GM then petitioned NHTSA in accordance with 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5307, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. GM's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, GM 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 February 24, 2014, in the **Federal Register** (79 FR 10226). Four individuals and the Advocates for Highway and Auto Safety (Advocates) provided comments to the receipt notice. To view the petition, the comments, and all supporting documents, 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-2013-0134."

II. Vehicles Involved: Affected are approximately 200,921 model year 2014 Chevrolet Silverado and GMC Sierra trucks manufactured between January 29, 2013, and October 28, 2013.

III. Noncompliance: GM explains that the noncompliance is that under certain circumstances when an owner uses the steering wheel controls to browse and select songs to play from an external device (*i.e.*, MP3 player) that is plugged into one of the vehicle's USB ports, the instrument cluster may reset. When the instrument cluster resets the analog gauges and identifications, the PRNDM [shift position] indicator, and the cruise control telltale, if illuminated, will briefly extinguish. In addition, some of

the instrument cluster telltales may also illuminate briefly during a bulb check without the condition the telltale is designed to indicate being present.

IV. Rule Text: Paragraph S5.3.1 of FMVSS No. 101 states specifically:

S5.3.1 Timing of illumination

...

(e) A telltale must not emit light except when identifying the malfunction or vehicle condition it is designed to indicate, or during a bulb check.

Paragraph S3.1.4. of FMVSS No. 102 states specifically:

S3.1.4 Identification of shift positions and of shift position sequence.

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted; or

(b) The transmission is not in park. . . .

V. Summary of GM's Analyses: GM states that the subject noncompliance is unlikely to occur in that all of the following conditions have to exist: The driver must operate a media device inserted into one of the vehicle's USB ports in a very specific way; the redundant steering wheel controls must be used to select a song; the driver must then search for a particular song by depressing the left arrow on the right spoke of the steering wheel, then select "audio" using the steering wheel controls, then select "browse" using the steering wheel controls, then scroll to a particular song using the steering wheel control, then select a song to play. If the driver selects "browse" using the steering wheel controls to select a second song, the subject condition may occur, but only if the total information in titles of the buffered songs exceeds 2000 bytes.

GM believes that the condition is short-lived as disruption of the PRNDM is said to persist for one and one half seconds, and the telltale bulb check is said to persist for approximately five seconds. GM cited a 1979 interpretation to Ford in which NHTSA acknowledged that a short-lived inability to view telltales does not necessarily warrant manufacturers correcting the condition.¹ NHTSA is quoted as stating, "This means that the tell-tales and their identification need not be visible to the driver when the tell-tales are struck by direct sunlight. Since conditions such as

these are typically short-lived, the NHTSA does not believe that the length of time the driver may be unable to view the tell-tales is significant enough to warrant requiring the manufacturer to prevent their occurrence."

GM states that the noncompliance that is the subject of the petition has little effect on the normal operation of the vehicle. GM states that when the operation of the instrument panel is briefly affected by the noncompliance, none of the other vehicle operations are affected; any underlying messages remain in place and will continue to be displayed after the instrument panel resets; other operations, like cruise control, are unaffected by the noncompliance (only the displays on the instrument panel are briefly affected by the condition); and if the noncompliance were to occur, it is unlikely the brief disruption of the PRNDM will affect the driver.

Lastly, GM states that NHTSA has previously granted petitions for a determination of inconsequential noncompliance, finding no risk to motor vehicle safety, where the sequence of events causing the noncompliant condition is exceptionally rare. GM states that these granted petitions allow specific telltales to extinguish for a limited period of time while the vehicle is being operated.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to be exempt from providing recall notification of the 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.

NHTSA's Decision

NHTSA'S Analysis: NHTSA has reviewed GM's justification for an inconsequential noncompliance determination and agrees that the specific noncompliance addressed is inconsequential to motor vehicle safety.

GM states its belief that the subject condition is unlikely to occur due to the series of events that must take place before the instrument cluster resets. GM explains that the driver must operate a USB media device by using the steering wheel controls to search for a song, select "audio", select "browse", and select another song to play while the total information in titles of the buffered songs exceeds 2000 bytes for the condition to occur.

GM states that the condition is short-lived with the disruption of the PRNDM illumination lasting approximately one and one half seconds and the telltale

¹ A copy of this letter is attached to GM's petition and is available in the docket at www.regulations.gov, Docket No. NHTSA-2013-0134-0001.

bulb check lasting approximately five seconds. According to GM, the condition will have little effect on the normal operation of the vehicle as no underlying systems are affected by the failure.

After receipt of GM's petition, NHTSA requested more information regarding the subject noncompliance. GM submitted videos showing that when the condition occurs any existing warning lights extinguish, the indicators (gauges) drop to zero, and operation of the entire instrument panel is interrupted. Specifically, any illuminated telltales extinguish for approximately one and one half seconds before a bulb check that lasts approximately five seconds is initiated. At the conclusion of the bulb check, any previously illuminated telltales will illuminate and remain illuminated.

NHTSA agrees with GM that if the instrument panel reset were to happen it would only be a momentary condition, the instrument panel telltales and indicators would extinguish and return to normal very quickly, with little, if any, impact to the driver.

GM mentioned two previous petitions that the agency granted due to the loss or failure of telltale indications. In the first petition, *General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance*, 56 FR 33323 (July 19, 1991), the noncompliance would only manifest itself when the headlight high beams were turned on and the cigar lighter was activated. In this situation the required high beam telltale could dim or extinguish altogether for a short period of time while the cigar lighter was being powered. The petition was granted because the agency determined there was no consequence to motor vehicle safety attached to the extinguishment of the high beam telltale.

In the second petition, submitted by Nissan, *Nissan North America, Incorporated, Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 59090, (Sept. 25, 2013), under rare circumstances the transmission gear selected was not always displayed correctly as required. The petition was granted because it was only possible for the gear indication to extinguish when the engine was inactive and the vehicle was inoperable. Upon reactivating the engine the gear indicator displayed the correct gear.

Five commenters (four individuals and the Advocates for Highway and Auto Safety) provided comments about GM's petition when NHTSA issued the notice of receipt in the **Federal Register**.

One individual stated that "there is no such potential product recall as

'inconsequential' " and that "all product recalls must be effectively enforced against the vehicle manufacturer." We note that the Motor Vehicle Safety Act requires the Secretary of Transportation to provide the vehicle manufacturers an opportunity to submit information, views, and arguments showing that a noncompliance does not impact motor vehicle safety. NHTSA is then required to consider information and arguments submitted and make a determination whether the noncompliance is, or is not, inconsequential to motor vehicle safety. If NHTSA determines that the subject noncompliance has no consequence to motor vehicle safety, the manufacturer is exempted from notification and remedy requirements of 49 U.S.C. 30118 and 30120.

The second individual commenter believes that GM should conduct a recall because the touch screen is not covered by the vehicle's warranty. The agency feels that this comment is not relevant because the steering wheel controls (rather than the touch screen on the center console) are the controls that must be used for the subject noncompliance to occur.

The two remaining individuals that provided comments believe that anything causing a distraction to the occupants of a motor vehicle under operation should be recalled. One of the commenters expressed that using a USB music device would be distracting and the other believes that the cluster becoming inoperable, even for a second, is enough time to distract the driver and cause an accident.

After reviewing the video provided by GM, the agency believes that a reset of the instrument panel would be corrected quickly within seconds, before the driver would be distracted, or realize what was happening.

The Advocates for Highway and Auto Safety does not specifically support the granting or denial of GM's petition, but believes that the existence of such a malfunction raises serious questions regarding vehicle design which can lead to this kind of situation.

Finally, GM stated that a Service Update Bulletin was issued to update the software of all IP clusters whenever any service to the affected vehicles is done at the dealership. The agency understands that GM's action to update the IP cluster software on these vehicles as they are brought in for regular service should reduce considerably the number of affected vehicles.

NHTSA'S Decision: In consideration of the foregoing, NHTSA has decided that GM has met its burden of persuasion that the FMVSS No. 101 and FMVSS No. 102 noncompliance in the

affected vehicles is inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby granted and GM is not obligated to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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 the subject noncompliant vehicles that GM no longer controlled at the time it determined that the noncompliance existed. 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 GM 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.

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0035; Notice 2]

McLaren Automotive, Inc. (McLaren), Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: McLaren has determined that certain model year (MY) 2012-2015 MP4 12-C Spider and Coupe passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems*. McLaren filed a report dated February 18, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. McLaren then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject