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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

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By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0031; Notice 2]

Automobili Lamborghini S.p.A., Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Automobili Lamborghini S.p.A. (Automobili Lamborghini) has determined that certain model year (MY) 20152012;2020 Lamborghini Huracan motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Automobili Lamborghini filed a noncompliance report dated March 4, 2020, and subsequently petitioned NHTSA on March 25, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces and explains the denial of Automobili Lamborghini's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5304, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Automobili Lamborghini has determined that certain MY 20152012;2020 Lamborghini Huracan motor vehicles do not fully comply with the requirements of paragraph S10.18.9.2 of FMVSS No. 108, *Lamps,*

Reflective Devices, and Associated Equipment (49 CFR 571.108). Automobili Lamborghini filed a noncompliance report dated March 4, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on March 25, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Automobili Lamborghini's petition was published with a 30-day public comment period, on July 15, 2020, in the **Federal Register** (85 FR 42979). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2020-0031."

II. Vehicles Involved

Approximately 4,727 MY 20152012;2020 Lamborghini Huracan motor vehicles manufactured between July 30, 2014, and February 26, 2020, are potentially involved.

III. Noncompliance

Automobili Lamborghini explains that the noncompliance is that the subject vehicles are equipped with headlamp assemblies that do not fully meet the requirements in paragraph S10.18.9.2 of FMVSS No. 108. Specifically, it is possible to adjust the horizontal aim of the lower beam because the beam horizontal adjustment screw is not covered by a blanking cap, and the headlamp is not otherwise equipped with a horizontal vehicle headlamp aiming device (VHAD).

IV. Rule Requirements

Paragraph S10.18.9.2 of FMVSS No. 108 includes the requirements relevant to this petition. The standard requires that the headlamp not be adjustable in terms of horizontal aim unless the headlamp is equipped with a horizontal VHAD.

V. Summary of Automobili Lamborghini's Petition

The following views and arguments presented in this section, "V. Summary of Automobili Lamborghini's Petition," are the views and arguments provided by Automobili Lamborghini and do not reflect the views of the Agency.

Automobili Lamborghini describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Automobili Lamborghini states that "[t]he horizontal aim adjustment of the subject beams is possible, due to the absence of a blanking cap over the beam horizontal adjustment screw." Customers with advanced technical knowledge can reach the horizontal adjustment screw by demounting the luggage compartment liner and make the horizontal adjustment themselves. However, Automobili Lamborghini argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. "First, the adjustment screw is hidden by the luggage liner when the vehicle's hood is open, so the screw is not visible."
2. "Second, the Owner's Manual does not identify this screw, so no vehicle owner would ever need to try to search for and adjust the screw in question."
3. "The only possibility to reach the adjustment screw without removing the luggage liner is through a small hole in the luggage liner using a long screwdriver, but without any possibility to see it and without any indication [of] how to do it."
4. "Automobili Lamborghini is unaware of any accidents, injuries, or customer complaints related to the horizontal aim adjustment of the subject beams."
5. The issue was corrected in production during calendar week 15 (fifteen) of 2020.

Automobili Lamborghini concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and asking that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, be granted.

VI. Public Comment

NHTSA received one comment from the general public which was outside the scope of this petition.

VII. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.¹

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which the recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries as evidence that the issue is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.³

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also do not justify granting an inconsequentiality petition.⁴ Similarly, mere assertions that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance are unpersuasive. The percentage of potential occupants that could be adversely affected by a noncompliance is not relevant to whether the noncompliance poses an inconsequential risk to safety. Rather, NHTSA focuses on the consequence to an occupant who is exposed to the consequence of that noncompliance.⁵ The Safety Act is preventive, and

manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall. *See, e.g., United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977). Indeed, the very purpose of a recall is to protect individuals from risk. *Id.*

NHTSA has evaluated the merits of Automobili Lamborghini's petition and has decided to deny the petition.

The purpose of a blanking cap on the horizontal adjustment screw is to prevent adjustment of the horizontal aim in cases where there are no references or scales relative to the longitudinal axis of the vehicle. Such references or scales are necessary to assume correct aim for the purposes of repeatable photometric testing and proper on-vehicle aim. The obvious possible safety risk associated with a headlamp that is missing a blanking cap is that someone could locate and improperly adjust the lower beam horizontal adjustment mechanism either intentionally or inadvertently. Improper horizontal aim, in turn, can pose one or more of the following safety risks, which can lead to a crash: Glare to other motorists/road users, reduced visibility on one of the sides of the road, and reduced down-road visibility.

In the vehicles subject to the petition, the location of the horizontal adjustment screw is near the vertical adjustment screw, and both can be accessed through a small hole in the luggage liner. While the Agency does not disagree with Lamborghini that the horizontal adjustment screw itself is not visible, it does not find this argument compelling because the screw can be accessed using a long screwdriver via a hole in the luggage liner and potentially be confused with the vertical adjustment screw. The Agency also does not find compelling Lamborghini's argument that there is no information in the owner's manual that documents the location of the horizontal adjustment screw, because the horizontal screw is located both in close proximity to the vertical adjustment screw, and where the vertical adjustment access point would typically be located in vehicles. Accordingly, it is possible for the horizontal adjustment screw to be mistaken for the vertical adjustment screw, resulting in an improper adjustment of the horizontal adjustment screw—which, as noted above, poses several safety risks.

NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Automobili Lamborghini has not met its burden of persuasion that the subject FMVSS No.

108 noncompliance is inconsequential to motor vehicle safety. Accordingly, Automobili Lamborghini's petition is hereby denied and Automobili Lamborghini is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of a currently approved information collection found in existing Bank Secrecy Act regulations. Specifically, the regulations prohibit covered financial institutions from maintaining correspondent accounts for or on behalf of a foreign shell bank. The regulations require that a covered financial institution take reasonable steps to ensure that any correspondent account that it maintains in the United States for a foreign bank is not used by the foreign bank to indirectly provide banking services to a foreign shell bank. The regulations also mandate that a covered financial institution maintaining correspondent accounts in the United States for foreign banks retain records in the United States identifying: The owners of each such foreign bank whose shares are not publicly traded, unless the foreign bank files a Form FR-Y with the Federal Reserve Board identifying the current owners of the foreign bank; and the name and address of a person who resides in the United States who is authorized to serve as each such foreign bank's agent for service of legal process for records regarding each such

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

⁴ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

⁵ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).