

NVS-210 white

JAN 09 2004

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Paul T. Eichbrecht  
Manager, Safety Standards  
General Motors Corporation  
Mail Code 480-111-S56  
30200 Mound Road  
Warren, MI 48090-9010

Dear Mr. Eichbrecht:

The purpose of this letter is to notify you that the National Highway Traffic Safety Administration has made a determination to deny your petition dated September 20, 2001. Your petition requested an exemption from the notification and remedy requirements regarding some headlamps on 1999 Buick Century and Regal vehicles. Some of the headlamps do not meet the photometric requirements of FMVSS No. 108.

Since this petition has been denied, pursuant to 49 CFR 573.5(c)(8)(iii), you must submit an amended Noncompliance Information Report no later than five (5) working days from your receipt of this letter. That Report shall include the following information: recall population, problem description, remedy, and recall schedule. If a portion of the information which is required to fully describe the recall is unknown, the Report must still be submitted on time. The remaining information is to be provided as it becomes available. Please submit the information to:

Mr. Kenneth N. Weinstein  
Associate Administrator for Enforcement  
National Highway Traffic Safety Administration  
NVS-200  
Washington, DC 20590

If you have any questions regarding your recall obligations, you may call Jonathan White at 202-366-5226.

**A copy of the Federal Register notice, providing the rationale for this determination is enclosed for your information.**

**Sincerely yours,**

Handwritten signature of Stephen R. Kratzke in black ink.

**Stephen R. Kratzke  
Associate Administrator for Rulemaking**

**Enclosure**

**DEPARTMENT OF TRANSPORTATION**  
**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

**[Docket No. NHTSA 2000-7744, Notice 4]**

**General Motors Corporation**  
**Denial of Appeal of Decision on Inconsequential Noncompliance**

General Motors Corporation (GM), of Warren, Michigan, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its application for a determination that the noncompliance of certain GM vehicles with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," be deemed inconsequential to motor vehicle safety. GM had applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 - "Motor Vehicle Safety." Notice of receipt of the original petition was published in the Federal Register on August 14, 2000, (65 FR 49632). On July 23, 2001, NHTSA published a notice in the Federal Register denying GM's petition (66 FR 38340), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

GM appealed, and notice of the appeal was published in the Federal Register on April 2, 2002 (67 FR 15669). Opportunity was afforded for public comment until May 2, 2002. The only comment received was from Advocates for Highway and Auto Safety (Advocates). Advocates restated its previous position recommending that the agency deny the application.

GM manufactured 201,472 Buick Century and Buick Regal models between October 1998 and June 1999; some of whose headlamps did not meet the minimum photometric requirements for test points above the horizontal (intended for overhead sign illumination). GM tested ten pairs of headlamps and submitted photometric data with its original petition. The

agency has reviewed this data from 2000 again and notes substantial evidence of noncompliance in this data. For the right side lamps, there was a total of 6 noncompliant test points (all upward). For the left side lamps, there was a total of 28 noncompliant test points (25 upward test points and 3 downward test points). While Standard 108 allows  $\frac{1}{4}$  degree of re-aim for each test point to account for equipment variation, the data show that the left side lamps originally failed an additional 21 test points (12 upward and 9 downward) before passing through the use of re-aim. GM unsuccessfully argued in its original petition that the test points at issue were intended to measure illumination of overhead signs and did not represent areas of the beam pattern that illuminate the road surface. GM also contended that a general "rule of thumb" implied that a 25% difference in light intensity is not significant to motor vehicle safety. The 25% rule of thumb cited by GM in its original petition has been applied to the observation of signal lamps, and not reflected light from lower beam headlamps.

In the notice denying GM's first application, the agency stated that the photometric minima above the horizon were added to headlighting performance requirements in the 1993 final rule for the purpose of ensuring that headlamps would sufficiently illuminate overhead signs. Because States were choosing to use retroreflectorized overhead signs rather than the more expensive self-illuminated ones, there was an increasing need for illumination of overhead signs. Without any test point minima specified, some manufacturers were designing headlamps that provided very little light above the horizontal. These photometric minima were established through a rulemaking proceeding. As part of that rulemaking, research by the Federal Highway Administration (FHWA) linking required sign detection distances needed to initiate proper motorist reactions to the overhead signs was considered. Based on this research, the FHWA had proposed photometric minima approximately double those that were established. In the final rule

published January 12, 1993 [58 FR 3856], the agency indicated that the rulemaking addresses a safety issue, a conclusion also supported by the Society of Automotive Engineers (SAE) Beam Pattern Task Force. Specifically, SAE J1383 "Performance Requirements for Motor Vehicles Headlamps" was modified in June of 1990 to include the same photometric minima (the SAE document lists minima for inclusive test zones instead of just test points) adopted by this agency in the 1993 final rule.

In its appeal, GM stated the following to support its petition:

GM recently obtained and tested twenty-one pairs of headlamps from used 1999 Regal and Century vehicles built between August 1998 and March 1999. The 42 headlamps all exceed the minimum photometric requirements of FMVSS 108. This was true for the sign illumination test points as well as all other test points. The weathering of the lenses over the past two to three years accounts for this change in performance.

Because overhead sign illumination is affected by the output of both headlamps, GM asked two independent lighting research experts to analyze overhead sign illumination based on the test results of [a separate] ten pairs of [new, unused] headlamps. Their report shows that the combined sum of the illumination from any combination of two of those headlamps exceeds twice the minimum illumination from each headlamp required by FMVSS 108. The system light output, therefore, exceeds the implicit functional requirement of the standard.

GM concluded that the new data indicate that customers driving these vehicles are and have been experiencing no less than the amount of overhead sign illumination that FMVSS 108 requires. On this basis, GM argued the noncompliance is inconsequential and thus, GM requested NHTSA to reverse its earlier decision.

Advocates restated its previous opposition to granting the application. In its view, the issue is not whether the lamps eventually came into compliance, but whether they were compliant at the time of manufacture and sale. It asserts that GM's rationale is mooted by GM's own admission that the lamps were noncompliant at the time of manufacture. Advocates

concludes that adoption of such a stance by the agency would render compliance with a standard contingent upon fortuitous, later in-service conditions.

After considering the arguments presented by GM, the comment of Advocates, and other relevant facts in this proceeding, we have decided to deny GM's appeal.

First, we believe that GM's argument about changed performance of the headlamps due to two or three years of weathering of the lenses is not relevant to whether the noncompliance is inconsequential to motor vehicle safety. Just as the issue of whether a vehicle complies, or does not comply, with a safety standard is determined based on the performance of the vehicle when it is new, the issue of whether a noncompliance is inconsequential to motor vehicle safety is determined based on the performance of the vehicle when it is new. However, we will consider the current performance of these headlamps in the context of whether it is appropriate to require GM to replace all of the noncompliant lamps.

Second, we do not accept GM's argument about combining values for the sign light test points on a set of lamps. GM did not present any evidence that sign light at a right side test point complements the light from a left side test point in the real world. The consultants cited by GM do not address this issue. Their report assumes that the lateral offset of the two lamps from each other is relatively small in relation to the distances at which traffic signs are typically viewed. Consequently, the report assumes that a given traffic sign will be located at only slightly different horizontal angles in relation to the left and right headlamp. However, GM did not present any data to justify this assumption in a real world testing environment, or to demonstrate that light from the right hand lamp is complementary to the intensities for sign light test points of a left hand lamp. Furthermore, the agency previously rejected the argument that other lamps can

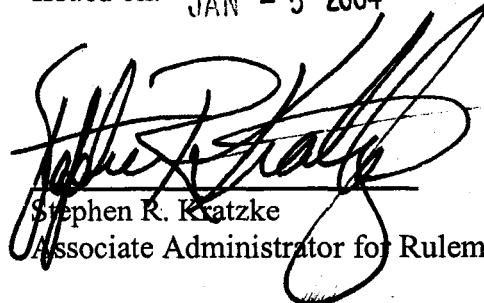
compensate for noncompliant lamps, in a denial of an inconsequentiality petition filed by Nissan in 1997.

In that denial [62 FR 63416], NHTSA rejected Nissan's argument that a bright Center High Mounted Stop Lamp (CHMSL) can compensate for a noncompliant stop lamp. The agency found that the Nissan noncompliance could lead drivers following the subject vehicles to mistake the dim stop lamps as tail lamps, increasing the risk of a crash.

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, GM's appeal is hereby denied.

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

Issued on: JAN - 5 2004



Stephen R. Kratzke  
Associate Administrator for Rulemaking

Billing Code: 4910-59-P



**GENERAL MOTORS NORTH AMERICA**  
**Safety Integration**

07-21-01

July 26, 2001

Mr. K. N. Weinstein  
Associate Administrator for Safety Assurance  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W., Room 5321  
Washington, D.C. 20590

99V-354  
(See 01V-286)

Dear Mr. Weinstein:

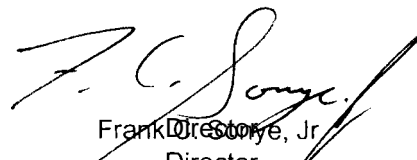
The following is a supplement to our December 17, 1999 report regarding a noncompliance involving headlamps in the 1999 Buick Century and Regal model cars. This information is submitted pursuant to the requirements of 49 CFR 573.59(c)(8)(iii).

573.5(c)(8): On January 14, 2000, GM submitted to the agency a petition for an exemption from the notice and remedy provisions of the Safety Act. Notice of the decision to deny GM's petition was published in the Federal Register on July 23, 2001.

GM is reviewing that decision and determining whether it will pursue an appeal. The agency indicated that it had no data to use in assessing whether the noncompliance made a detectable difference to drivers because a previous study of "just noticeable differences" and previous agency decisions on petitions relying on that study were not relevant to this situation. In an attempt to fill that void, GM is determining if is such data in the context of reflected light exists or if such data can be generated.

GM is also evaluating alternative field remedies and the associated service procedures. Several options are being explored due to constraints on parts availability. GM will provide an update when the service procedure and availability of parts are known, unless GM appeals and its petition is granted.

Sincerely,

  
Frank D. Sorce, Jr.  
Director  
Product Investigations

2020/ 01054

**Product Investigations**

Mail Code: 480-106-304 • 30500 Mound Road • Warren, MI 48090-9055  
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