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June 3, 2020

## **VIA Overnight Mail**

The Honorable James C. Owens  
Acting Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E.  
West Building, 41-304  
Washington, D.C. 20590

Re: Petition for Determination of Inconsequential Noncompliance – Mercedes-Benz

Dear Administrator Owens:

Pursuant to 49 U.S.C. § 30118(d) and 49 C.F.R. Part 556, Mercedes-Benz AG and Mercedes-Benz USA, LLC (collectively, “Mercedes-Benz”), submit the two enclosed petitions for determination of inconsequential noncompliance.

In the first petition, Mercedes-Benz petitions the agency for a determination that a deviation from the field of view requirements for a single test object in FMVSS 111 is inconsequential to motor vehicle safety. In the second petition, Mercedes-Benz petitions the agency for a determination that when the “car wash mode” feature is activated in certain vehicles, the ability to automatically close the sun roof does not create an enhanced safety risk under FMVSS 118.

Mercedes-Benz requests that the agency relieve it from the notice and remedy requirements under the Vehicle Safety Act for both of these issues.

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Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline Glassman". The signature is written in a cursive style with a large, looping initial "J".

Jacqueline Glassman

Enclosures

**Petition for Inconsequential Noncompliance**  
**NHTSA Recall 20V-264**

Mercedes-Benz AG (“MBAG”) and Mercedes-Benz USA, LLC (“MBUSA”) (collectively, “Mercedes-Benz”), submit this petition for inconsequential noncompliance pursuant to the Vehicle Safety Act, 49 U.S.C. § 30118(d) and 49 U.S.C. § 30120(h), and the related regulations at 49 C.F.R. 556. MBAG is a joint stock company headquartered in Germany, and MBUSA is a Delaware limited liability company with its principal place of business at One Mercedes-Benz Drive, Sandy Springs, Georgia 30328. Mercedes-Benz requests that the agency grant its petition exempting it from the notice and remedy requirements of the Vehicle Safety Act on the ground that the noncompliance described below is inconsequential to motor vehicle safety.

In certain Model Year 2020 GLS-Class vehicles (X167 Platform), when the vehicle’s “car wash mode” is activated by using the central touch display or the display in the center console, the sunroof may close automatically, contrary to the requirements applicable to actuation devices in FMVSS 118, Power-operated window, partition, and roof panel systems. This condition does not give rise to an increased safety risk for two reasons. First, the car wash mode must initially be activated on the vehicle for the condition to occur. Second, once activated, there is a multi-step process required to activate the car wash mode so that there is little to no risk of the sunroof closing inadvertently. Finally, even if the car wash mode were to be inadvertently activated, the sunroof includes an auto-reverse feature that would stop it from closing upon detecting an object or person in its path. The power windows are not affected by the condition.

**Background**

FMVSS 118, S6 sets performance requirements intended to mitigate against the potential for injury when a window or sunroof is inadvertently activated and a child entrapped inside. Under the standard, the operating controls may not allow a window, sunroof or partition to close when a test sphere (simulating a child’s knee) is pressed against the control. Due to a deviation in the software development process, when car wash mode is activated in the affected vehicles, the sunroof will begin to close automatically instead of remaining open. As a result, the actuation devices used to engage car wash mode do not meet the inadvertent activation provisions of FMVSS 118, S6(a)(1).

On May 4, 2020, MBAG determined that a total of 22 Model Year 2020 GLS 580 vehicles do not meet the requirements of FMVSS 118, S6(a)(1). Mercedes-Benz submitted a Noncompliance Information Report on May 11, 2020 for the vehicles are affected by this condition. *See* NHTSA Recall 20V-264, attached. Mercedes-Benz is not aware of any reports or complaints about the issue from the field and it has corrected the condition in production.

**Analysis**

Manufacturers may be exempted from the notification and remedy provisions of the Safety Act if NHTSA determines that the noncompliance is inconsequential to motor vehicle safety. *See* 49 U.S.C. §§ 30118(d), 30120(h). The basis upon which NHTSA evaluates an inconsequentiality petition is “whether the occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle.” *See*

**Petition for Inconsequential Noncompliance**  
**NHTSA Recall 20V-264**

69 Fed. Reg. 19897, 19900 (April 14, 2004). This matter is appropriate for a decision that the noncompliance is inconsequential to motor vehicle safety as it does not present any increased risk to vehicle occupants.

FMVSS 118 is intended to reduce the likelihood of injuries that may arise due to the accidental operation of power operated windows, sunroofs and other moveable partitions. The particular provision at issue here, S6(a), is focused on preventing the inadvertent movement of powered windows, partitions and roof panels if a child inadvertently leans on or against the actuation device. The provisions were intended to simulate a child's knee pressing against the actuation device at a particular level of force to ensure that it does not close. By its terms, the standard applies to vertically mounted switches, including those located in the vehicle's console or central touch display as in this case. The provisions relevant to this petition are:

S6 Actuation Devices. Except as provided in paragraph S6(b), actuation devices in the occupant compartments of vehicles used to close power-operated windows, partitions, and roof panels must meet the following requirements:

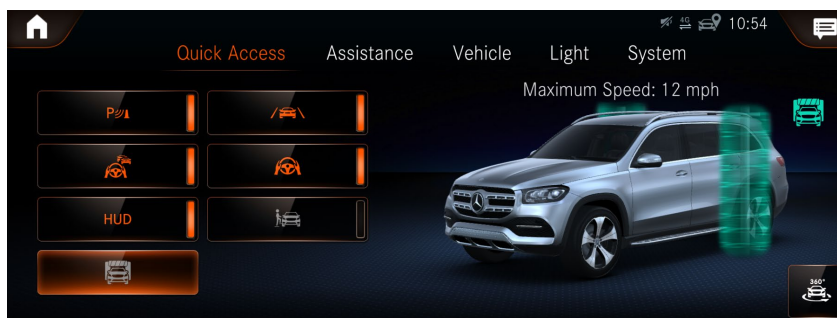
- (a) An actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested as follows:
  - (1) Using a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of 20 mm  $\pm$ 0.2 mm, place the surface of the sphere against any portion of the actuation device.
  - (2) Apply a force not to exceed 135 Newtons (30 pounds) through the geometric center of the sphere. This force may be applied at any angle with respect to the actuation device.

Due to their specific operating parameters, even though the buttons used to activate car wash mode do not meet the performance requirement of S6(a), the condition does not create an increased safety risk. As an initial matter, the car wash mode feature must first be activated by the user. Car wash mode is not automatically enabled unless and until the operator activates the feature by affirmatively accepting the option and turning the feature on. Thus, unless car wash mode is already active within the vehicle, the condition described above cannot occur. An image of the screen where the user accepts car wash mode is provided below:

Once the vehicle has initialized car wash mode, the feature can only be activated through a series of steps using either the vehicle's central touch display or from a touchpad located in the center console. Activating car wash mode is a multi-step process and the process varies depending on the current menu contained on the display screen. For example, if car wash mode has been programmed by the user inside the "favorites" menu, then a series of two touches is needed to activate car wash mode. In all other cases, the operator would first need to change the display screen to the vehicle menu first and from there, navigate to the car wash mode icon. In either case, car wash mode will not become active unless each of these steps is executed in the corresponding order. Because of the complexity involved in navigating through the required sequence of events there is an extremely low likelihood of the car wash mode being inadvertently activated in the first place.

**Petition for Inconsequential Noncompliance**  
**NHTSA Recall 20V-264**

An image of the layout of the central display is provided below:



Further, the sunroofs in the subject vehicles contain an auto-reverse feature. Upon detecting an object or obstruction inside the sunroof, it will automatically stop and reverse course and fully retract. While the sunroofs do not meet the requirements of S5, they are certified to the European standard UN-R-21. The European standard incorporates many of the performance features included in the automatic reversal function contained in FMVSS 118, S5. The sunroofs in the subject vehicles will automatically reverse prior to exerting 100 Newtons of pinch force, and consistent with the options provided at S5.2, the sunroof will either retract to a position at least as wide as the initial position before closing or will allow a 200 mm rod to be inserted in the gap.

The agency has previously granted petitions for inconsequential treatment for FMVSS 118 involving similar circumstances and vehicle features. NHTSA granted a petition by General Motors involving a noncompliance with FMVSSs 118, S4(e) where for 60 seconds after the vehicles are started, an issue with the sunroof module would allow the sunroof to close via the control button if the engine is turned off and a front door is opened. In that instance, in order to activate the sunroof, a series of specific steps must be taken in order and the steps must be completed within a 60 second time frame. *See* Decision Granting Petition for Inconsequential Noncompliance by General Motors 73 Fed. Reg. 22459 (April 25, 2008). In granting the petition, the agency found that the potential for entrapment in a power operated sunroof presented less of a risk of entrapment than power operated windows because, in general, sunroofs are less physically accessible than power operated windows. The decision also focused on the presence of an auto-reverse feature which would reverse the movement of the sunroof before it exerted a pressure of 100 Newtons. In granting the motion, the agency noted the presence of this auto-reverse feature as one that would further reduce the risk of entrapment.

Much like the conditions present in the General Motors vehicles, the noncompliance in the car wash mode feature of the subject vehicles similarly does not create an increased safety risk. Assuming that the function has been initialized by the operator, a series of specific and coordinated steps must occur in order to activate car wash mode. If those steps are not carried out in the precise order required then the car wash mode program will not be activated. Even in the unlikely event that the car wash mode function is inadvertently activated, there is no enhanced risk of injury because of the sunroof auto-reverse feature.

**Petition for Inconsequential Noncompliance**  
**NHTSA Recall 20V-264**

Based on the above information, Mercedes-Benz requests that the agency exempt it from the notification and remedy provisions under the Safety Act.



Mercedes-Benz USA, LLC.

## Vehicle Report

NHTSA ID: 20V264 Transaction ID: 20-00855-24517-10 (Original Report)

Required fields indicated with \*

<b>Manufacturer: Mercedes-Benz USA, LLC.</b>	
13470 International Parkway Jacksonville FL 32218	<a href="#">Bibi Anali</a> 741-9608,

This is a Noncompliance Report. Filing a petition pursuant to [49 CFR 556](#)

Vehicle Information	
<b>Mercedes-Benz GLS 580 2020</b>	
* <b>Model Yr. Start:</b> 2020	* <b>Model Yr. End:</b> 2020
* <b>Make:</b> Mercedes-Benz	<b>Type:</b> LIGHT VEHICLES
* <b>Model:</b> GLS 580	<b>Body Style:</b> SUV
	<b>Powertrain:</b> GAS
<b>Production Dates</b>	<b>Descriptive Information:</b>
Begin: 02/08/2019	MY20 Mercedes-Benz GLS-Class 22 vehicles The recall population was determined through production records. Vehicles outside of the recall population have a sunroof control unit equipped with software that conforms to the standards set forth in FMVSS 118, S6(a)(1).
End: 09/20/2019	
<b>VIN Range(s):</b>	Begin: End:

<b>Number potentially involved:</b> 22	<b>Estimated percentage of involved with defect:</b> 100%
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Defect / Noncompliance Description	
For this Defect/Noncompliance:	
<p><b>* Describe the defect or noncompliance:</b> Mercedes-Benz AG ("MBAG"), the manufacturer of Mercedes-Benz vehicles, has determined that on certain Model Year 2020 GLS-class vehicles (X167 platform), the sunroof control unit software may not meet current production specifications. If the vehicle's "car wash mode" is activated, the sunroof may close automatically. The car-wash-mode is activated via the central touch display or the touchpad in the center console. However, closing the sunroof using this feature may not comply with the test procedures specified in Using the actuation device test procedure in Federal Motor Vehicle Safety Standard ("FMVSS") Standard 118, S6(a)(1) "Power-operated window, partition, and roof panel systems." As a result, it may allow the sunroof to automatically close which is contrary to the requirements of the FMVSS.</p> <p><b>If a noncompliance, provide the applicable FMVSS:</b> 118 - Power-operated window systems</p> <p><b>If applicable, provide any further FMVSS affected:</b></p> <p><b>Describe the cause:</b> Due to a deviation in the development process, the affected vehicles are inadvertently equipped with a software version of the sunroof control unit that includes an automatic closing function of the sunroof when the car-wash-mode is activated.</p>	<p><b>* Describe the safety risk:</b> This condition does not pose an increased safety risk because there is a multi-step process to activate the carwash mode. Additionally, the sunroof incorporates an auto-reverse feature which would prevent an occupant from being entrapped in the sunroof. As the condition does not pose a safety risk, MBAG intends to submit a petition for inconsequential noncompliance.</p> <p><b>Identify any warning which can precede or occur:</b> The customer will not receive an advance warning due to the nature of the failure mechanism.</p>

**This Recall affects all vehicles.**

If applicable, identify the manufacturer of the defective or noncompliant component. If the manufacturer of the component is unknown, provide the information for the company that supplied the subject component.

Component manufacturer	Company Contact Information
Company Information	
<b>Company Name:</b>	<b>First Name:</b>
<b>Country:</b>	<b>Last Name:</b>
<b>Address 1:</b>	<b>Position:</b>
<b>Address 2:</b>	<b>Email:</b>
<b>City:</b>	<b>Phone:</b>
<b>State:</b>	
<b>Zip/Postal Code:</b>	

Involved Components
If the defect or noncompliance involves a specific component(s), identify that component(s) below.

Chronology of Defect / Noncompliance Determination
<p><b>Provide the chronology of events leading up to the defect decision or test data for the noncompliance decision.:</b> In May, 2019, Mercedes-Benz AG found that there was a deviation in the software-development process which allowed the sunroof to be closed automatically through operation of the car wash mode via touchpad. This operation was inconsistent with the design intent. A plant action was initiated to reflash the software. In June, 2019, it was determined that certain vehicles may have been released from the plant without the software reflash. Therefore initial investigations were launched immediately to identify the affected vehicle population and where these vehicles are located. Through summer and early autumn MBAG conducted a review of the circumstances under which the sunroof could be closed and determined that there was no safety risk due to the automatic reverse feature and because multiple steps were required to initiate the car wash mode so there was no risk of the sunroof closing inadvertently. Subsequently, in November, 2019, the question was raised whether the ability to close the sunroof in the car wash mode was consistent with the circumstances under which the sunroof could be operated. A review of legal and regulatory provisions ensued into 2020, and on May 4, 2020, Mercedes-Benz determined that, while there is no safety risk associated with linking sunroof operation to the car wash mode, that the operation of sunroof as a consequence of the activation of the car wash mode via the central touch display or the touchpad of the center console might be considered a noncompliance. After evaluating the requirements of FMVSS 118, MBAG determined that while there was a technical noncompliance, it does not present a safety risk. As such, MBAG decided to report a noncompliance with a request for inconsequential treatment.</p>

**Identify the Remedy**

**Describe the defect/noncompliance remedy program, including the manufacturer's plan for reimbursement.**

MBAG intends to submit a petition for inconsequential noncompliance for NHTSA review.

**Describe what distinguishes the remedy component from the recalled component.**

Sunroof control unit software according to specification

**Identify and describe how and when the recall condition was corrected in production.**

A change of the development process ensures that this issue can no longer occur from June 17, 2019 onwards.

**Identify the Recall Schedule**

**Describe the recall schedule for notifications.:**

Dealers will be notified of the pending voluntary recall campaign on May 18, 2020. Owners will be notified of the voluntary recall campaign approximately one week after launch to the dealers on July 10, 2020. A copy of all communications will be provided when available.

**Planned Dealer Notification Begin Date:** 05/18/2020

**Planned Dealer Notification End Date:**

**Planned Owner Notification Begin Date:** 07/10/2020

**Planned Owner Notification End Date:**

**Manufacturer's identification code for this recall (if applicable):**

Please be reminded that owner notification letters must be mailed no more than 60 days from submission of this report.

**Manufacturer Comments to NHTSA Staff**

For any questions, please contact Gregory Gunther at [gregory.gunther@mbusa.com](mailto:gregory.gunther@mbusa.com)

**Document Upload**

There are 1 documents associated with this report.



# Part 573 Safety Recall Report

# 20V-264

**Manufacturer Name :** Mercedes-Benz USA, LLC.**Submission Date :** MAY 11, 2020**NHTSA Recall No. :** 20V-264**Manufacturer Recall No. :** NR**Manufacturer Information :**

Manufacturer Name : Mercedes-Benz USA, LLC.

Address : 13470 International Parkway  
Jacksonville FL 32218

Company phone : 1-877-496-3691

**Population :**

Number of potentially involved : 22

Estimated percentage with defect : 100 %

**Vehicle Information :**

Vehicle 1 : 2020-2020 Mercedes-Benz GLS 580

Vehicle Type : LIGHT VEHICLES

Body Style : SUV

Power Train : GAS

Descriptive Information : MY20 Mercedes-Benz GLS-Class 22 vehicles

The recall population was determined through production records. Vehicles outside of the recall population have a sunroof control unit equipped with software that conforms to the standards set forth in FMVSS 118, S6(a)(1).

Production Dates : FEB 08, 2019 - SEP 20, 2019

VIN Range 1 : Begin :

NR

End : NR

 Not sequential**Description of Noncompliance :**

**Description of the Noncompliance :** Mercedes-Benz AG ("MBAG"), the manufacturer of Mercedes-Benz vehicles, has determined that on certain Model Year 2020 GLS-class vehicles (X167 platform), the sunroof control unit software may not meet current production specifications. If the vehicle's "car wash mode" is activated, the sunroof may close automatically. The car-wash-mode is activated via the central touch display or the touchpad in the center console. However, closing the sunroof using this feature may not comply with the test procedures specified in Using the actuation device test procedure in Federal Motor Vehicle Safety Standard ("FMVSS") Standard 118, S6(a)(1) "Power-operated window, partition, and roof panel systems." As a result, it may allow the sunroof to automatically close which is contrary to the requirements of the FMVSS.

FMVSS 1 : 118 - Power-operated window systems

FMVSS 2 : NR

**Description of the Safety Risk :** This condition does not pose an increased safety risk because there is a multi-step process to activate the carwash mode. Additionally, the sunroof incorporates an auto-reverse feature which would prevent an occupant from

being entrapped in the sunroof. As the condition does not pose a safety risk, MBAG intends to submit a petition for inconsequential noncompliance.

**Description of the Cause :** Due to a deviation in the development process, the affected vehicles are inadvertently equipped with a software version of the sunroof control unit that includes an automatic closing function of the sunroof when the car-wash-mode is activated.

**Identification of Any Warning that can Occur :** The customer will not receive an advance warning due to the nature of the failure mechanism.

## Involved Components :

Component Name 1 : NR  
Component Description : NR  
Component Part Number : NR

## Supplier Identification :

### Component Manufacturer

Name : NR  
Address : NR  
NR  
Country : NR

## Chronology :

In May, 2019, Mercedes-Benz AG found that there was a deviation in the software-development process which allowed the sunroof to be closed automatically through operation of the car wash mode via touchpad. This operation was inconsistent with the design intent. A plant action was initiated to reflash the software.

In June, 2019, it was determined that certain vehicles may have been released from the plant without the software reflash. Therefore initial investigations were launched immediately to identify the affected vehicle population and where these vehicles are located.

Through summer and early autumn MBAG conducted a review of the circumstances under which the sunroof could be closed and determined that there was no safety risk due to the automatic reverse feature and because multiple steps were required to initiate the car wash mode so there was no risk of the sunroof closing inadvertently.

Subsequently, in November, 2019, the question was raised whether the ability to close the sunroof in the car wash mode was consistent with the circumstances under which the sunroof could be operated.

A review of legal and regulatory provisions ensued into 2020, and on May 4, 2020, Mercedes-Benz determined that, while there is no safety risk associated with linking sunroof operation to the car wash mode, that the operation of sunroof as a consequence of the activation of the car wash mode via the central touch display or the touchpad of the center console might be considered a noncompliance.

After evaluating the requirements of FMVSS 118, MBAG determined that while there was a technical noncompliance, it does not present a safety risk. As such, MBAG decided to report a noncompliance with a request for inconsequential treatment.

### Description of Remedy :

Description of Remedy Program : MBAG intends to submit a petition for inconsequential noncompliance for NHTSA review.

How Remedy Component Differs from Recalled Component : Sunroof control unit software according to specification

Identify How/When Recall Condition was Corrected in Production : A change of the development process ensures that this issue can no longer occur from June 17, 2019 onwards.

### Recall Schedule :

Description of Recall Schedule : Dealers will be notified of the pending voluntary recall campaign on May 18, 2020. Owners will be notified of the voluntary recall campaign approximately one week after launch to the dealers on July 10, 2020. A copy of all communications will be provided when available.

Planned Dealer Notification Date : MAY 18, 2020 - NR

Planned Owner Notification Date : JUL 10, 2020 - NR

\* NR - Not Reported