

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2024–0010; Notice 1]

Tesla, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Tesla, Inc. (“Tesla”) has determined that certain model year (MY) 2012–2023 Model S, MY 2016–2024 Model X, MY 2017–2023 Model 3, MY 2019–2024 Model Y, and MY 2024 Cybertruck Tesla vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic and Electric Brake Systems*, and FMVSS No. 135, *Light Vehicle Brake Systems*. Tesla filed a noncompliance report dated January 30, 2024, and subsequently petitioned NHTSA (the “Agency”) on February 23, 2024, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Tesla’s petition.

DATES: Send comments on or before October 28, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than

15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT’s complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Vince Williams, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–2319.

SUPPLEMENTARY INFORMATION:

I. Overview: Tesla determined that certain MY 2012–2023 Model S, MY 2016–2024 Model X, MY 2017–2023 Model 3, MY 2019–2024 Model Y, and MY 2024 Cybertruck Tesla vehicles do not fully comply with paragraph S5.3.5(a) of FMVSS No. 105 and paragraph S5.5.5(a) of FMVSS No. 135, (49 CFR 571.105 and 135).

Tesla filed a noncompliance report (Recall 24V–051) dated January 30, 2024, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Subsequently, Tesla amended its Part 573 report on February 21, 2024, and in that report informed NHTSA of its intent to file a petition for inconsequential noncompliance, as provided by 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*. On February 23, 2024, Tesla filed its petition for inconsequential noncompliance and requesting an exemption from the notice requirements in 49 U.S.C. 30118 and 30119 on the basis that the noncompliance in Recall 24V–051 is inconsequential as it relates to motor vehicle safety.

NHTSA is publishing this notice of receipt of Tesla’s petition under 49 U.S.C. 30118 and 30120. The statements included in this notice do not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 2,193,869 of the following Tesla vehicles manufactured between June 1, 2012, and January 22, 2024, were reported by the manufacturer:

- MY 2012–2023 Tesla Model S
- MY 2016–2024 Tesla Model X
- MY 2017–2023 Tesla Model 3
- MY 2019–2024 Tesla Model Y
- MY 2024 Tesla Cybertruck

III. Noncompliance: Tesla explains that the letter font size of the Brake, Park, and ABS visual warning indicators in the subject vehicles does not meet the font height requirements of paragraph S5.3.5(a) of FMVSS No. 105 and paragraph S5.5.5(a) of FMVSS No. 135. Specifically, the font height on the affected vehicles is 1.5 mm while the minimum font height requirement is 3.2 mm (1/8 inch).

IV. Rule Requirements: Paragraph S5.3.5(a) of FMVSS No. 105 and paragraph S5.5.5(a) of FMVSS No. 135 include the requirements relevant to this petition. Paragraph S5.3.5(a) of FMVSS No. 105 requires each indicator lamp to display word, words or abbreviation, in accordance with the requirements of FMVSS No. 101 and/or S5.3.5, which must have letters not less than 1/8 inch high and be legible to the driver in daylight when lighted. Words in addition to those required by FMVSS No. 101 and/or S5.3.5 and symbols may be provided for purposes of clarity. Paragraph S5.5.5(a) of FMVSS No. 135 requires that each visual indicator display a word or words in accordance with the requirements of FMVSS No. 101 and S5.5.5, which must be legible to the driver under all daytime and nighttime conditions when activated. In addition, unless otherwise specified, the words must have letters not less than 3.2 mm (1/8 inch) high and the letters and background must be of contrasting

colors, one of which is red. Words or symbols in addition to those required by FMVSS No. 101 and S5.5.5 may be provided for purposes of clarity.

V. *Summary of Tesla's Petition:* The following views and arguments presented in this section, "V. Summary of Tesla's Petition," are the views and arguments provided by Tesla. They have not been evaluated by the Agency and do not reflect the views of the Agency. Tesla describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Tesla states that the subject noncompliance was corrected in vehicle production, and vehicles in the field were also remedied. Tesla believes that "[a]ny possible safety risk, however remote, has been addressed." Tesla explains that the remedy involves increasing the font size of the Brake, Park, and ABS visual warning indicators to a minimum of 3.2 mm ($\frac{1}{8}$ inch), as required by FMVSS No. 105 and FMVSS No. 135. Additionally, the previous accompanying universal ISO symbols were removed.

Tesla states that on January 23, 2024, a software release correcting the subject noncompliance was introduced to the affected Model S, X, 3, and Y in production. On January 24, 2024, the software release correcting the noncompliance in the Cybertruck was introduced. Tesla states that the subject vehicles already in the field received the remedy as part of an over-the-air (OTA) software release for installation. The remedy was deployed to certain vehicles on January 23, 2024, and to the remaining vehicles on February 2, 2024.

Tesla reports that as of February 20, 2024, 70 percent of all subject vehicles in the field have installed the software correcting the noncompliance and all later software releases will also include the remedy. Tesla says that owners of any remaining affected vehicles that are online and have connectivity would need to accept the installation of the software release, or any later software release, on their vehicle. Tesla explains that this can be done immediately via the owner's Tesla smartphone application or on the vehicle user interface touchscreen. However, Tesla contends that even if an owner does not install the software release or any later version, the performance of the vehicle's brake system and park function remains unaffected by the subject noncompliance. According to Tesla, both systems continue to operate safely and as designed. Tesla also states that while it understands not dispositive in considering a petition for inconsequential noncompliance, Tesla

is not aware of any crashes, injuries, or deaths that may be related to the noncompliance.

Tesla asserts that the Brake, Park, and ABS visual warning indicators remain easily perceptible despite the subject noncompliance because they are positioned prominently and dynamically within the driver's direct field of vision on the instrument cluster alongside other vehicle data and control displays. Tesla adds that they also feature descriptive text and universal ISO symbols commonly used in motor vehicles manufactured for sale in the United States. The text in the indicators is capitalized for improved visibility and readability with compliant colors and contrast against the background. Tesla believes that the functionality of these indicators remains unaffected when wear or failure of the brake, park, and ABS systems is detected, regardless of the letter font size. Tesla adds that owners of the subject vehicles are familiar with the Brake, Park, and ABS visual warning indicators, as they are self-explanatory and explained in the owner's manual provided with the vehicle.

Tesla contends that NHTSA has established that its "only criteria" in assessing a petition for a decision of inconsequential noncompliance is determining if the noncompliance is inconsequential to safety.¹ Tesla states that if the noncompliance is found to be inconsequential to motor vehicle safety, "then any perceived benefit of notifying affected vehicle owners is not relevant to assessing the merits of the petition." Tesla believes that because the subject noncompliance has been remedied and there is no "actual or theoretical safety risk," the subject noncompliance is inconsequential to safety and NHTSA should grant Tesla's petition.

Moreover, Tesla argues that the subject noncompliance aligns with the type of labeling noncompliance that NHTSA finds appropriate for a determination of inconsequentiality.² Tesla states that the following NHTSA

¹ On page 5 of its petition, Tesla refers to 49 U.S.C. 30118(d), 49 CFR part 556.7, and *Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance*, 88 FR 61006 (Sept. 13, 2023).

² On page 5 of its petition, Tesla refers to a NHTSA's October 2, 2020, determination on a petition submitted by Porsche Cars North America, Inc., in which Tesla quotes NHTSA as stating "We note that the noncompliance at issue concerns a failure to meet a performance requirement. The burden of establishing the inconsequentiality of a failure to comply with performance requirement in a standard—as opposed to a *labeling* requirement—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential." (emphasis in original).

decisions on petitions for similar noncompliances support its belief that the subject noncompliance is inconsequential:

1. Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 88 FR 61006 (Sept. 6, 2023). Tesla states that in this case, NHTSA found that "brake wear indicators that do not meet the minimum lettering height requirements but that use correct coloring and symbols and are prominently positioned with the driver's direct field of vision do not have an adverse effect on vehicle safety."

2. General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 79 FR 9041 (Feb. 14, 2014). Tesla states that NHTSA found "that Park Brake indicators that are displayed using ISO symbols instead of the symbols required by FMVSS No. 101 and FMVSS No. 135 have no effect on brake performance, are illuminated as required and are described in the owner's manual, and drivers recognize and understand them."

3. General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (December 20, 2016) Tesla states that NHTSA found "that park brake indicators that do not meet the minimum letter height requirements as specified in FMVSS No. 135 are more pronounced by all capitalized letters and continue to be legible, conspicuously located, and illuminated with a contrasting background as required."

Tesla argues that the subject noncompliance is similar to the visual warning indicators at issue in these granted petitions because they "illuminate as required, are prominently positioned within the driver's direct field of vision, and use universal ISO symbols that are easily recognizable." Furthermore, Tesla asserts that "while the text of the indicators does not meet the minimum height requirements of FMVSS No. 105 and FMVSS No. 135, the text is easily legible, since each letter is capitalized and uniform in height, and the colors are compliant and in contrast to the background of the text."

Tesla adds that it is only petitioning for an exemption from the notification requirements of 49 U.S.C 30118 and 30119 and not the remedy requirements of 49 U.S.C 30119 and 30120 because the subject noncompliance has been remedied and the remedy is available for any remaining affected vehicle owners to install. Tesla states that "[a]s specified in the Safety Act, the only factor that NHTSA may use to evaluate

the merits of a petition for inconsequentiality is determining whether the noncompliance itself is inconsequential to safety.” Tesla states this statute requires NHTSA to “base its decision on the petition squarely upon the inconsequential nature of the noncompliance. Any perceived benefit of issuing Part 577 letters via first-class mail to affected vehicle owners has no bearing on whether the noncompliance has an impact on motor vehicle safety and is not relevant to assessing the merits of this petition.”

Tesla concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, should be granted.

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, any decision on this petition only applies to the subject vehicles that Tesla no longer controlled at the time it determined that the noncompliance existed. However, any decision on 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 Tesla 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)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA-2024-0152]

Pipeline Safety: Proposed Project-Specific Waiver of the Build America, Buy America Act Requirements for Certain Products Used by Philadelphia Gas Works

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to waive the Build America, Buy America (BABA) Act’s domestic preference requirements for certain products that Philadelphia Gas Works (PGW) needs for its Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) grant project. The proposed waiver would exempt the following products used in PGW’s project from BABA requirements on the basis of nonavailability: electro-fusion tapping tees, anodeless risers, transition fittings, locking valves, magnesium anodes, service adapters, curb valves, caps, couplings, and stiffeners. In accordance with section 70914(c) of BABA, PHMSA is seeking public comments on the proposed waiver.

DATES: Comments must be received by October 15, 2024.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. PHMSA-2024-0152, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading “Confidential Business Information,” all submissions received, including any personal information provided, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review the U.S. Department of Transportation’s complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brandon Hollingshead, PHMSA Office of the Chief Counsel, 202-366-4400, or via email at brandon.hollingshead@dot.gov. Office hours for PHMSA are from 8:30 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this Notice, all comments received on this Notice, and all background material may be viewed online at <http://www.regulations.gov> using the docket number listed above. Electronic retrieval help and guidelines are also available at <http://www.regulations.gov>. An electronic copy of this document also may be downloaded from the Office of the Federal Register’s website at www.FederalRegister.gov and the

Government Publishing Office’s website at: www.GovInfo.gov.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential”; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this Notice. Submissions containing CBI should be sent to: Mr. Brandon Hollingshead, PHMSA, 1200 New Jersey Avenue SE, E26-316, Washington, DC 20590. Any comment submissions that PHMSA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

The NGDISM program was authorized by the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58). The program provides Federal funding to municipal- or community-owned natural gas utilities (not including for-profit entities) to repair, rehabilitate, or replace their natural gas distribution pipeline systems or portions thereof, or to acquire equipment to (1) reduce incidents and fatalities and (2) avoid economic losses. The IIJA appropriates \$200 million per year for each of Fiscal Years (FY) 2022 through 2026 for the NGDISM program (\$1 billion in total). The IIJA provides that 2 percent of this amount shall be used to pay the administrative expenses of the NGDISM program. Accordingly, the total amount expected to be awarded as grant funding over the five-year period is \$980,000,000. In FY2022, PHMSA awarded approximately \$196 million to 37 municipal- and community-owned natural gas utilities across the nation to