



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0094; Notice 2]

Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Porsche Cars North America, Inc. has determined that certain model year (MY) 2018 Porsche 911 GT3 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Porsche filed a noncompliance report dated July 24, 2019. Porsche subsequently petitioned NHTSA on August 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Porsche's petition for inconsequential noncompliance.

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: Porsche has determined that certain MY 2018 Porsche 911 GT3 motor vehicles do not fully comply with Paragraph S8.1.4 and Table I-a of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*. (49 CFR 571.108). Porsche filed a noncompliance report dated July 24, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and*

Reports. Porsche subsequently petitioned NHTSA on August 20, 2019, 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 Porsche's petition was published with a 30-day public comment period, on January 3, 2020, in the **Federal Register** (85 FR 412). No comments were 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-2019-0094."

II. Vehicles Involved: Approximately 2,610 MY 2018 Porsche 911 GT3 motor vehicles, manufactured between August 30, 2017, and December 21, 2018, are potentially involved.

III. Noncompliance: Porsche explains that the noncompliance is that the subject vehicles are equipped with rear reflex reflectors that do not meet the height requirements as specified in paragraph S8.1.4 and Table I-a of FMVSS No. 108. Specifically, the rear reflex reflectors are mounted approximately 0.20 inches below the required 15 inches above the road surface. The actual height above the road surface is approximately 14.8 inches.

IV. Rule Requirements: Paragraph S8.1.4 and Table I-a of FMVSS No. 108 includes the requirements relevant to this petition. The reflective devices should not be mounted less than 15 inches and no more than 60 inches in height.

V. Summary of Porsche's Petition: The following views and arguments presented in this section are the views and arguments provided by Porsche. They do not reflect the views of the Agency.

Porsche described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety.

Porsche submitted the following views and arguments in support of its petition¹:

1. The installation height requirements of reflex reflectors as defined by paragraph S8.1.4 of FMVSS No. 108 are intended to assure a sufficient luminous intensity of the reflex reflectors towards the source of illumination. Although the rear reflex reflectors' installation height falls slightly below the specified minimum height by 0.20 inches (5 mm), Porsche has confirmed that the rear reflex reflectors meet or exceed all applicable FMVSS requirements regarding the luminous intensity performance as stated under §571.108, S14 and all other relevant requirements of FMVSS No. 108 of paragraphs S8.1 and S8.2. Porsche provided a copy of the photometric test results for the rear reflex reflectors, which Porsche believes shows that the installation height does not affect the performance of the luminous intensity of the rear reflex reflectors or the visibility of the subject vehicles.
2. Porsche is unaware of any accidents, injuries, warranty claims or customer complaints related to the slight shortfall of the rear reflex reflectors' installation height. The absence of indicant data supports the conclusion that the minimal deviation in mounting height does not affect the performance of the rear reflectors or the visibility of the subject vehicles.
3. Porsche notes that NHTSA has previously granted a similar petition.² In that petition, Harley-Davidson Motor Company, Inc. described the noncompliance with FMVSS No. 108 where the rear reflex reflectors were mounted an average of 0.3 inches to 0.7 inches

¹ See Docket Number "NHTSA-2019-0094-001"

² See 79 FR 69558, November 21, 2014

below the required 15-inch height. NHTSA determined that this noncompliance, where the deviation from the specified height was even greater than in the present case, was inconsequential to motor vehicle safety based primarily on the lack of reduction in conspicuity as compared to compliant vehicles. Porsche suggests that its noncompliant vehicles are also equally conspicuous.

4. The purpose of the FMVSS No. 108 reflex reflector requirement is to prevent crashes by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of the road, and the height requirement is intended "to ensure adequate reflex reflector performance relative to headlamps that would illuminate them."³ Porsche stated that the photometry performance of the reflex reflectors in the subject vehicles well exceeds the minimum performance standards outlined in FMVSS No. 108, Table XVI. Based on the photometry performance of the reflectors in the subject vehicles, and the fact that the vehicles meet or exceed the requirements of paragraphs S8.1 and S8.2 of FMVSS No. 108, with regard to reflection performance, Porsche believes the vehicles satisfy the safety objectives of the standard.
5. The noncompliance issue has been corrected in production vehicles and all vehicles currently being produced meet applicable mounting height requirements.
6. The mounting height of the reflex reflectors complies with the minimum height requirements of the United Nations ECE regulations. Those regulations specify a minimum mounting height of 250 mm (9.84 inches) for rear retro-reflectors. *See* UN R48, §6.14.4.2. The reflex reflectors in the subject Porsche vehicles, with a mounting height of 14.8 inches, are well within this requirement.

³ *See* 82 FR 24204, May 25, 2017

Porsche concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and 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, should be granted.

In response to a request from NHTSA for clarification, Porsche specified the dimensions of the noncompliant reflex reflector as being 110.119 mm by 35.375mm (4.34 by 1.39 inches). Porsche also clarified that the 0.2-inch deviation from the minimum required mounting height is relative to the “center of the item” (centroid of the functional reflective area). Porsche also provided a PowerPoint presentation that included detailed test data which showed the results of several photometric analyses performed on the subject reflex reflectors which included partially masking the reflex reflector to artificially shift the centroid thereby raising the mounting height.

VI. NHTSA’s Analysis: The primary function of a reflex reflector is to reduce crashes by permitting early detection of a motor vehicle that is approaching an intersection or parked by the side of the road. While NHTSA recognizes the importance of this function to safety, each petition is evaluated on its own merits. In some cases, the marginal nature of a noncompliance might be one factor in analyzing if a noncompliance is inconsequential to safety. In this case, Porsche showed the results of several photometric analyses performed on the subject reflex reflectors which included partially masking the reflex reflector to shift its mounting center. The test data showed passing photometric results when the photometric performance of the reflex reflector was measured for all partially masked scenarios which set the center point at or above the minimum required 15 inches. Given the specific circumstances of this case, the Agency finds the petitioner’s study helpful in assessing the safety risk of this non-compliance. NHTSA has concluded that the test data provided by Porsche is sufficient to grant this petition. The

purpose of the mounting height is to aid in the visibility of the reflex reflector from other road users' line of sight. While the centroid of the reflex reflector is mounted below the minimum height, the size of the subject reflex reflector is large enough to ensure that there is a sufficient surface area of the reflex reflector above the minimum required height to meet the photometry requirements by more than double the minimum requirement. Thus, the size of the reflex reflector compensates for its mounting height and achieves the safety need to aid in visibility.

Porsche additionally cited a prior NHTSA ruling for a similar noncompliance granting inconsequentiality to Harley-Davidson Motor Company, Inc. for a reflex reflector mounted at an average of 0.3" to 0.7" below the required 15" height.⁴ *See* 79 FR 69558, November 21, 2014. The aforementioned petition concerned a similar noncompliance for a reflex reflector that was mounted 0.3" to 0.7" below the minimum mounting height vs 0.2". NHTSA believes Porsche has provided compelling information supporting the grant of its petition. Specifically, we found Porsche's analysis by masking a portion of the reflex reflector to demonstrate the performance of the remaining unmasked portion of the reflex reflector that met the mounting height requirement especially compelling.

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 a *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.⁵

⁴ *See* 79 FR 69558, November 21, 2014.

⁵ *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).

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.⁶ NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."⁷ "[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work."⁸

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁹ Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is

⁶ 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).

⁷ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁸ *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").

⁹ 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).

exposed to the consequence of that noncompliance.¹⁰ These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Porsche has met its burden of persuasion that the FMVSS No. 108 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Porsche's petition is hereby granted and Porsche is exempted from the obligation to provide notification of and remedy for the subject noncompliance in the affected vehicles 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, the granting of this petition only applies to the subject vehicles that Porsche no longer controlled at the time it determined that the noncompliance existed. However, this decision 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 Porsche 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)

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¹⁰ 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).