



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0099; 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) 2012–2020 Tesla motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Tesla filed a noncompliance report dated September 24, 2020. Tesla subsequently petitioned NHTSA on September 25, 2020, and later provided supplemental information on October 23, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Tesla’s petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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 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, S.E., 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, S.E., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm 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 docket. 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).

SUPPLEMENTARY INFORMATION:

I. Overview:

Tesla has determined that certain MY 2012–2020 Tesla Model S, Tesla Model X, Tesla Model 3, and Tesla Model Y motor vehicles do not fully comply with the requirements of paragraph S5.2.1 (Table 1) of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). Tesla filed a noncompliance report dated September 24, 2020, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*. Tesla subsequently petitioned NHTSA on September 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 556, *Exemption for Inconsequential Defect or Noncompliance*. Tesla also provided supplemental information related to the petition on October 23, 2020

This notice of receipt of Tesla’s petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Motor Vehicles Involved:

Approximately 612,065 MY 2012–2020 Tesla Model S, Tesla Model X, Tesla Model 3, and Tesla Model Y motor vehicles, manufactured between December 1, 2011, and August 31, 2020, are potentially involved.

III. Noncompliance:

Tesla explains that the noncompliance is that the subject motor vehicles are equipped with speedometers that can be switched by the operator to display the vehicle’s speed in units of either miles per hour (MPH) or kilometers-per-hour (km/h) and therefore, do not meet the requirements set forth in paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101.

IV. Rule Requirements:

Paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101 includes the requirements relevant to this petition. Each passenger car, multipurpose passenger vehicle, truck, and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 of FMVSS No. 101 must meet the requirements for the location, identification, color, and illumination of that control, telltale, or indicator. Each control, telltale, and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. Specifically, the speedometer must only allow the speed to be displayed in “MPH, or MPH and km/h.”

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.

In support of its petition, Tesla offers the following reasoning:

1. All affected vehicles are originally configured to display speed in mph and are delivered for first sale in the United States market in a compliant state. Because distance is most commonly measured in the United States in Imperial units (including mph), the majority of owners will continue to operate their vehicle using the factory-configured unit displayed (i.e., with the speed displayed in mph) and are unlikely to ever attempt to change to metric units.
2. Only through driver interaction within the display settings menu can the unit of measurement be changed from miles to kilometers. This change must be done intentionally and cannot be accomplished inadvertently.
3. When the display is set to kilometers, the indicated vehicle speed in km/h is 1.6 times greater than the speed in mph. As a result, if a vehicle operator changes the display to indicate km/h and later forgets or neglects to change the display back to

mph, they (or a subsequent operator) would be more likely to travel at a slower speed rather than a faster speed. Moreover, because the operator will be able to easily recognize that the vehicle is moving at a lower speed than intended, they will likely adjust their vehicle speed to match road and traffic conditions.

4. If the vehicle operator has set the display to kilometers, all functions relying on, or otherwise tied to, the speed limit (e.g., Traffic Aware Cruise Control and Speed Assist) will convert mapped data from mph to km/h, resulting in the vehicle speed automatically matching the appropriate speed limit even though the display is km/h.
5. If the vehicle operator needs to change the display back from km/h to mph, the method for doing so can be easily located in the display menu and is not buried in sub-menus.
6. If the operator nevertheless has difficulty finding the menu to change the unit setting within the center display, instructions are available in the Owner's Manual. For example, in the chapter on Controls in the Model 3 Owner's Manual, there are instructions on how to navigate the menu and an explanation that within the "Display" menu, there is a "Distance" toggle that allows operators to "Choose to display miles or kilometers for range, speed, energy, trip meters, map searches, and navigation routes."
7. On September 1, 2020, factory firmware release 2020.28.102.2 was introduced in production, updating the speedometer units to display km/h and mph when the display distance is set to kilometers. The change was also included in firmware release 2020.36.11, which began rolling out to field vehicles on or about September 16, 2020, so all vehicles accepting the update (and future updates) will receive compliant speedometer units. Tesla expects a majority of vehicles will

have the update completed within a few weeks and expects nearly all vehicles to have completed the update within 6 months.

8. To date, Tesla has not received any reports of loss of control, collision, injury or fatality, property damage, or fire related to this issue.
9. Finally, Tesla notes that NHTSA has recently granted two petitions for inconsequential treatment involving speedometer unit display noncompliances, both of which involved a km/h display that did not also display mph. *See, e.g., Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 85 FR 39675 (July 1, 2020); BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 80 FR 61884 (Oct. 14, 2015).* Because this issue is identical to the noncompliances in those cases, NHTSA should grant this petition for the same reasons.
10. In Tesla's supplemental materials they stated that the display setting has been corrected in production, as of September 1, 2020. Tesla states that more than 75 percent of the affected U.S. vehicles have accepted the firmware update released on September 16, 2020.

Tesla concludes by again contending 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.

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)

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Director, Office of Vehicle Safety Compliance.

[FR Doc. 2021-01088 Filed: 1/15/2021 8:45 am; Publication Date: 1/19/2021]