



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0064; Notice 1]

Volkswagen Group of America, 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: Volkswagen Group of America, Inc. (Volkswagen) has determined that certain model year (MY) 2018-2024 Audi SQ5, MY 2021-2024 Audi SQ5 Sportback, MY 2018-2024 Audi Q5, and MY2021-2024 Audi Q5 Sportback do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-Operated Window, Partition, and Roof Panel Systems*. Volkswagen filed a noncompliance report dated August 9, 2024, and subsequently petitioned NHTSA (the “Agency”) on August 30, 2024, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Volkswagen’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 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 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 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: Kamna Ralhan, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-6443.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen determined that certain MY 2018-2024 Audi SQ5, MY 2021-2024 Audi SQ5 Sportback, MY 2018-2024 Audi Q5, and MY 2021-2024 Audi Q5 Sportback do not fully comply with paragraph S6(a) of FMVSS No. 118, *Power-Operated Window, Partition, And Roof Panel Systems*. (49 CFR 571.118).

Volkswagen filed a noncompliance report dated August 9, 2024, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Volkswagen petitioned NHTSA on August 30, 2024, 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*.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Volkswagen reports that approximately 460,169 of the following vehicles, manufactured between November 9, 2016, to June 28, 2024, are potentially involved:

- MY 2018-2024 Audi SQ5
- MY 2021-2024 Audi SQ5 Sportback
- MY 2018-2024 Audi Q5
- MY 2021-2024 Audi Q5 Sportback

III. Relevant FMVSS Requirements: Paragraph S6(a) FMVSS No. 118 includes the requirements relevant to this petition. It requires that the actuation devices used to close power-

operated windows must not begin to close an open window during a specific prescribed test. The test requires that a 20mm radius steel ball exerting 135 Newtons of force or less to any portion of the window actuation device cannot cause the window to actuate.

IV. Noncompliance: Volkswagen found during internal testing that the switch for the driver's side window could actuate when tested in accordance with the conditions outlined in FMVSS No. 118 S6(a). Volkswagen found that the plastic material around the switch was able to flex enough to allow the 20mm radius steel ball to come into contact with and actuate the switch using 129.55 Newtons of force, causing the window to close.

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

Volkswagen opens its petition by providing some background on the requirements and the testing conditions in question. Volkswagen states that the purpose of these requirements is to "minimize the likelihood of death or injury from accidental operation of power operated windows" caused by accidental kneeling or leaning on the power window switch. Volkswagen claims that the steel ball test required by paragraph S6 FMVSS No. 118 was enacted by NHTSA in 2004 to create a baseline measurement of safety from the accidental closure of windows; however, the requirements of paragraph S6 do not apply if the automatic reversal requirements of paragraph S5 of FMVSS No. 118 are met.

Volkswagen claims that the type of switch installed in the subject vehicles are recognized by NHTSA to be significantly less dangerous than the switches that the steel ball test was designed to protect against in 2004. Volkswagen explains that the subject vehicles use a pull-to-close switch recessed into the control panel, rather than the "rocker" or "toggle" switches that are flush with the control panel surface. To illustrate the recognized difference in risk, Volkswagen

cites the FMVSS No. 118 final rule, in which NHTSA stated that the switch design is related to injuries where the vehicle occupants unintentionally close power windows by leaning against or kneeling or standing on power window switches. Volkswagen further explains that NHTSA recognized that virtually all of the vehicles involved in such injuries had “rocker” and “toggle” switches, which are more prone to accidental actuation than switches that must be lifted to close the window. The pull-to-close switches are considered resistant to inadvertent closure because incidental contact with those switches will not readily cause a window to close, rather, it may cause a window to open.

Volkswagen notes that while the functionality and risk of accidental closure are different than the “rocker” or “toggle,” pull-to-close switches are still subject to the steel ball test required by paragraph S6 FMVSS No. 118.

Volkswagen claims that this noncompliance is inconsequential to motor vehicle safety for eight reasons:

1. The subject vehicles are equipped with pull-to-close window switches. Volkswagen states that, as already established by NHTSA’s statements in the FMVSS No. 118 final rule, these switches are inherently resistant to accidental closure as accidental contact with these switches would cause the window to open, rather than close.
2. Volkswagen states that, in addition to pull-to-close switches, the subject vehicles have door paneling specifically designed to make accidental closure even more unlikely. Volkswagen explains that the switches themselves are in a concave recession of the door handle and are surrounded by plastic and leather components. Volkswagen claims that these two features are recognized by NHTSA to limit the “situations in which contact with the switch could occur in a manner that would cause the window to close.” Volkswagen believes the reason this is safer as elbows or knees would need to “be small enough to fit within the concave portion of the door,

- within the recessed portion of the armrest, and within the distance between the switch and mirror control knob” to touch the controls, much less open the window.
3. Volkswagen’s testing and simulations could not identify a real-world scenario in which an accidental closure was likely to occur. Volkswagen hypothesized two scenarios where accidental contact with the switch could occur, but because of the design reasons stated above, Volkswagen believes either scenario would cause the window to open rather than close. Volkswagen provides some illustrations of the simulated scenarios in its petition where unintended contact with the switches could occur; essentially either scenario would require a child under the age of 3 weighing over 30.3 pounds to hit the switches at a particular angle in order to accidentally open the windows.
 4. Volkswagen claims its testing found that increasing the size of the 20mm steel ball required by the test by even a millimeter would require an amount of force to lift the switch up exceeding the 135 Newtons specified by the test conditions in paragraph S6 of FMVSS No. 118. This means that in a real-world scenario, anything larger than 20mm would not activate the window switch with less than 135 Newtons of force.
 5. Volkswagen states that the switches in the subject vehicles comply with paragraph S4 of FMVSS No. 118 – in this case, meaning that the ignition key would need to be in the vehicle for the windows to operate. Volkswagen asserts that the purpose of this is to ensure that an occupant, presumably an adult, would be in the vehicle and would be able to supervise any child occupants. Also, the ignition, and by extension the window, is disabled after the driver opens the driver’s side door and exits the vehicle (as per S4(e) of FMVSS No. 118). Volkswagen states that “for a child under three to actuate the window in a manner described above, they would need to be unattended, unrestrained, the vehicle ignition would have to be active, and the driver would have

- to have exited without using the front two doors.” Therefore, Volkswagen contends, the conditions for accidentally opening the window are exceedingly improbable.
6. Volkswagen cites two granted petitions for noncompliance, one for Volkswagen in 1995 (60 FR 48197, Sept. 18, 1995), and one for Mitsubishi from 1999 (64 FR 1650, Jan. 11, 1999) to show that NHTSA has previously granted similar inconsequential noncompliance petitions. According to Volkswagen, NHTSA found that it was unlikely for an adult driver or passenger to exit the vehicle in a manner that would evade the requirements put in place by paragraph S4 of FMVSS No. 118, and thereby leave an unsupervised child alone in the vehicle to potentially activate the power windows. Either the driver of the vehicles would have to exit the vehicle in an unlikely manner or there would still be an adult in the vehicle to supervise any children at risk of accidentally operating the window.
 7. Volkswagen states that the subject vehicles are equipped with a UN ECE R-21 compliant Automatic Reversal System (ARS). While this automatic reversal system’s deflection rod ratio does not exactly align with paragraph S5 of FMVSS No. 118 ARS requirements, Volkswagen says NHTSA “has acknowledged the safety effectiveness of any ARS, even those not specifically compliant to safety regulations.”
 8. Volkswagen states that is unaware of any reports of injuries, complaints, or field reports related to this issue for any of the 500,000 Audi Q5 vehicles sold in the North American market or in any other market.

Volkswagen 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, 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 Volkswagen 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 Volkswagen 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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