



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0065; 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) 2017 - 2023 Tesla Model 3 and MY 2020 - 2023 Model Y motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Tesla filed a noncompliance report dated July 24, 2024, and subsequently petitioned NHTSA (the “Agency”) on August 16, 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 [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](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](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:** Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7479.

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** Tesla determined that certain MY 2017 - 2023 Model 3 and MY 2020 - 2023 Model Y motor vehicles do not fully comply with paragraphs S7.3.13.1 and S7.1.2.13 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*. (49 CFR 571.108).

Tesla filed a noncompliance report dated July 24, 2024, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Tesla petitioned NHTSA on August 16, 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 Tesla'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:** Approximately 6,025 MY 2017 - 2023 Model 3 and MY 2020 - 2023 Model Y, manufactured between November 9, 2017, and July 31, 2023, were reported by the manufacturer.

**III. Rule Requirements:** Paragraphs S7.3.13.1 and S7.1.2.13 of FMVSS No. 108 include the requirements relevant to this petition. Paragraphs S7.3.13.1 and S7.1.2.13 of FMVSS No. 108 require that each stop lamp be designed to conform to the photometry requirements of Table IX and Table VII, respectively. Table IX and Table VII provide the minimum and maximum allowed stop lamp and rear turn signal lamp photometric intensity values for the number of lamp compartments or individual lamps, the type of vehicle it is installed on, and the lamp color.

Table IX and VII each limit the stop and rear turn signal photometric intensity to 300 cd, 360 cd and 420 cd, for one, two and three lighted sections respectively.<sup>1</sup>

**IV. Noncompliance:** Tesla explains that the subject vehicles may have been equipped with stop and rear turn signal lamps, as part of the left-hand rear combination lamp, that have a photometric intensity of 321.47 cd (candela), exceeding the maximum photometric intensity of 300 cd allowed by FMVSS No. 108 S7.3.13 and S7.1.2.13.

**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 was notified by Transport Canada on January 6, 2024, of a noncompliance with Canadian Motor Vehicle Safety Standard (CMVSS) No. 108 in the left-hand rear combination lamp of a 2019 Tesla Model 3. A Transport Canada contracted test laboratory tested the lamp and found that the stop lamp and turn signal lamp, part of the rear combination lamp, exceeded the photometric limits of CMVSS No. 108. After independently testing other left-hand rear combination lamps, Tesla concluded that the test sample is the only left-hand rear combination lamp that Transport Canada's contracted test laboratory, Tesla, or Tesla's supplier has tested that exceeded the photometric requirements of CMVSS/FMVSS No. 108. . Tesla then made a voluntary recall determination on July 17, 2024.

Tesla argues that the noncompliance is inconsequential to motor vehicle safety because the difference between a lamp with compliant photometric intensity and the subject lamps' noncompliant photometric intensity is indistinguishable. For the affected stop and rear turn signal lamps, Tesla states that FMVSS No. 108 requires a photometric intensity of no more than

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<sup>1</sup> Footnote (3) of Table IX and footnote (4) of Table VII state "the maximum photometric intensity must not occur over any area larger than that generated by a 0.5° radius within a solid angle defined by the test point range.

300 cd, but the subject lamps' output measured 321.47 cd at test point HV, or about seven percent higher than the maximum allowed. Tesla mentions two reports it says NHTSA has referred to in similar cases, *Driver Perception of Just-Noticeable Differences (of Automotive Signal Lamps)* (1994) and *Just Noticeable Differences for Low-Beam Headlamp Intensities* (1997), both of which Tesla says concluded that most drivers cannot distinguish differences of twenty-five percent or less in automotive lamp intensities. Because the photometric intensity of the subject lamps exceeds the requirement by seven percent, Tesla contends that, based on the findings of the two studies mentioned above, NHTSA should find that the difference between a compliant and noncompliant combination lamp is imperceptible and inconsequential to motor vehicle safety.

Tesla states that there are no complaints or reported accidents or injuries that may have been caused by this noncompliance. While Tesla acknowledges that a lack of complaints or reported accidents is not dispositive in the consideration of a petition for inconsequential noncompliance, Tesla states that this fact illustrates that field performance has not been otherwise affected by the noncompliance.

Tesla provides, in Section III of its petition, precedents that NHTSA has set by granting the following petitions for inconsequential noncompliance:

- A 1987 petition by Chrysler Corp. (52 FR 17499) for backup lamps that fell below the minimum required luminosity. Quoting the NHTSA decision – "...a deficiency of 20 [percent] in this area, spread over a population of only 800 cars, is statistically unlikely to produce even one injury over the lifetime of all the cars."
- A 1990 petition by Hella, Inc., (55 FR 37601) for taillamps with a luminosity at most 20 percent greater than the maximum luminosity allowed by regulation. Quoting NHTSA's decision – "The agency has also considered information indicating that a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps."

- A 1991 petition by Subaru of America (56 FR 59971) for side reflex reflectors measured 20 percent below the minimum required luminous intensity. Quoting the decision by NHTSA – “a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps.”
- A 2019 petition by Toyota Motor North America, Inc., (85 FR 39679) for rear reflectors that failed to meet the minimum photometry requirements by as much as 18 percent below the required minimum. Tesla states that NHTSA’s decision cited the aforementioned Hella and Subaru petitions and quotes NHTSA as stating – “imperceptible difference in illumination makes this noncompliance inconsequential to motor vehicle safety.”
- Tesla also stated, in Section III of its petition, that “[i]n 2020, NHTSA granted Nissan North America, Inc.’s petition...related to front side marker lamps that do not meet the minimum photometric intensity requirement...by 15 [percent].” Tesla cited “87 Fed. Reg. 21259” in footnote 16 of its petition in relation to this petition. NHTSA notes that the citation 87 FR 21259 was the April 11, 2022, decision notice denying Nissan’s petition for its noncompliance to the minimum required vertical gradient for headlamps.

Tesla states that the noncompliance in this case is similar to previously granted petitions for inconsequential noncompliance and distinguishable from similar petitions that were denied. Tesla provides two examples of denied petitions and argues why the petition in question is different.

- North American Subaru, Inc. filed a petition for inconsequential noncompliance in 2022 (87 FR 48764) for side reflex reflectors that were measured to be almost thirty percent below the required minimum luminosity. NHTSA denied the petition, stating “...NHTSA recognizes that the photometry criteria evaluated for reflex reflectors measured in (cd/incident ft-c) or (mcd/lux) whereas tail lamps are measured in candela (cd) and therefore it is not proper to apply the logic of the tail lamp analysis to reflect

reflectors, despite the prior grant.” Tesla states that, unlike this Subaru example, the subject noncompliant rear combination lamp is measured in cd., the signaling function is activated only in transient state, i.e., during brake application and/or indication of driver intent to change vehicle course and that the noncompliant lamp is well within the twenty-five percent threshold established in the DOT and UMTRI studies and is therefore imperceptible to most drivers.

- Mercedes-Benz USA LLC, filed a petition for inconsequential noncompliance in 2016 (81 FR 21660) for headlamps that exceeded the maximum allowed photometric intensity by as much as forty percent. Tesla states that the NHTSA decision to deny the petition was based on the headlamps being above the twenty-five percent threshold established in the DOT and UMTRI studies. The subject Tesla rear combination lamps measure only seven percent above the maximum allowed photometric intensity, rather than the forty percent in the denied Mercedes 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, 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 vehicles 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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