

components. Tesla stated that these measures protect the immobilizer device from exposure to the elements and limit its access by unauthorized persons. Additionally, Tesla stated that the immobilizer relies on electronic functions versus mechanical functions and therefore expects the components to last at least the life of the vehicle.

Tesla also compared the device proposed for its vehicle line with other devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard. Tesla compared the BMW 5 series and the Mercedes-Benz E-Class to its Model S vehicle line. Specifically, the agency's data show that theft rates for the BMW 5 series are 0.9044, 0.6550 and 0.4098 and for the Mercedes-Benz E-Class, 0.5898, 0.6286 and 0.9041 respectively. Using an average of 3 MYs data (2007–2009), the agency theft rate data show that the average theft rate for the BMW 5 series is 0.6564 and 0.7075 for the Mercedes-Benz E-Class, well below the median theft rate of 3.5826. Tesla also stated that its 2008–2011 roadsters are already equipped with an antitheft device as standard equipment. Agency theft rate data for the roadster vehicles using an average of the most current theft rate data available is 0.0000.

Based on the evidence submitted by Tesla, the agency believes that the antitheft device for the Model S vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Tesla has provided adequate reasons for its belief that the antitheft device for the Model S vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Tesla provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation, attracting

attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Tesla's petition for exemption for the Model S vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with the 2012 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given MY. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Tesla decides not to use the exemption for this line, it shall formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Tesla wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should

consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 10, 2012.

**Christopher J. Bonanti,**  
*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition To Modify an Exemption of a Previously Approved Antitheft Device; Porsche

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

**ACTION:** Grant of a petition to modify an exemption of a previously approved antitheft device.

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**SUMMARY:** On December 22, 1995, the National Highway Traffic Safety Administration (NHTSA) granted in full, Porsche Cars North America, Inc.'s (Porsche) petition for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard* for the Porsche Boxster vehicle line, beginning with model year (MY) 1997. On February 1, 2012, Porsche submitted a petition to modify its previously approved exemption for the Porsche Boxster vehicle line and notified the agency that all new successor models within the Boxster line will be installed with the proposed antitheft device beginning with MY 2013. NHTSA is granting Porsche's petition to modify the exemption in full, because it has determined that the modified device is also likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with the 2013 MY.

**FOR FURTHER INFORMATION CONTACT:** Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, 1200 New Jersey Avenue SE., West Building, W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

**SUPPLEMENTARY INFORMATION:** On December 22, 1995, NHTSA published in the **Federal Register** a notice granting in full, a petition from Porsche for an

exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for a vehicle line whose nameplate and model year were confidential, but subsequently provided as the Porsche Boxster vehicle line. The Boxster vehicle line has been exempted from the Theft Prevention Standard beginning with its MY 1997 vehicles (See 60 FR 66575). On February 1, 2012, Porsche submitted a petition to modify the previously approved exemption for the Boxster vehicle line. This notice grants in full Porsche's petition to modify the exemption for the Boxster vehicle line. Porsche's submission is a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in 49 CFR 543.5 and the specific content requirements of 49 CFR 543.6. Porsche's petition provided a detailed description and diagram of the identity, design and location of the components of the antitheft device proposed for installation beginning with the 2013 model year.

The current antitheft device (MYs 1997–2012) installed on the Porsche Boxster vehicle line is a passive, microprocessor-based device which includes a starter interrupt function, transponder key and a central-locking system. Porsche also offers a remote-controlled audible and visible alarm system as optional equipment to its current device.

Porsche stated that its current antitheft device is activated by removing the key from the vehicle's ignition switch/steering lock. By removing the key, the ignition switch returns the system to its normal "OFF" state where starting the engine and operation of the vehicle is prohibited. Porsche stated that the key contains a radio signal transponder which signals the control unit to allow the engine to start when the correct key is inserted into the ignition switch.

Porsche further stated that the optional alarm system on the vehicle line monitors the doors, hood, rear decklid, glove compartment or radio contact switch and if any of the areas are breached, the horn will sound and the lights will flash.

In Porsche's petition to modify its exemption for MY 2013, it stated that the Boxster vehicle line will be modified to include the antitheft device and strategies used for the Panamera vehicle line. The Panamera vehicle line has been granted a parts-marking exemption since MY 2010 (See 74 FR 18037, April 20, 2009). However, Porsche was granted a modification to its previously approved exemption for the Panamera vehicle line beginning

with its MY 2012 vehicles (See 75 FR 22174, April 27, 2010). Specifically, in its MY 2012 modification, Porsche proposed to remove the steering column lock on the Panamera line, because it considered the feature to be a redundant function that is also offered by the electronic parking brake which is installed as standard equipment on the line. The electronically activated parking brake will also be included as standard equipment on the MY 2013 Boxster line. Porsche also made special mention that the agency recently granted its MY 2012 request to modify the previously approved exemption for the 911 vehicle line for also having adopted the Panamera antitheft device and strategies (See 76 FR 69321, November 8, 2011).

For MY 2013, Porsche will install its passive, transponder-based electronic, engine-immobilizer antitheft device as standard equipment on its Porsche Boxster vehicle line. Porsche stated that the antitheft system consists of two major subsystems: a microprocessor-based immobilizer device that prevents the engine management system from functioning when the system is engaged, and a central locking and alarm system. Key components of the modified antitheft device will include an electronic ignition switch, transponder key, remote control unit, transponder, alarm/central locking control unit, key or keyless entry system, an engine control unit, electronic parking brake and an off-board antitheft strategy.

Porsche stated that the immobilizer device is automatically activated when the driver removes the key from the ignition switch assembly or the optional special keyless entry keycard exits the vehicle with the driver. The key contains a radio signal transponder which signals the control unit to allow the engine to be started. Porsche stated that as an option, a keyless entry device can be provided for the Boxster vehicle line. Porsche stated that the antitheft device will remain the same, but the ignition key is substituted with a special key that contains a radio signal transmitter similar to that in the standard ignition key. The immobilizer system is automatically activated after the engine is turned off with the optional keyless entry device. Porsche stated that only by inserting the correct key into the ignition switch or by having the special keyless entry device within the compartment of the car, will the correct signal be sent to the control unit allowing start and operation of the engine. When the key is removed from the ignition or the keyless entry key is removed from the vehicle, the device

will return to its normal "OFF" state disallowing engine start and operation.

The central locking system works in conjunction with the audible and visible alarm system. Porsche will continue to offer a central locking system as standard equipment on the Boxster vehicle line. The previously approved device offered the alarm system as optional equipment. Porsche stated that the 2013 modification for the Boxster vehicle line will include the audible and visible alarm system as standard equipment. Porsche stated that the alarm system will continue to monitor the opening of the doors, rear luggage compartment and front deck lid.

Porsche stated that the proposed central locking and alarm systems can be armed by using the ignition key, the remote control, or a door switch (with the keyless entry option). Porsche stated that when the key or remote control is used to lock the doors, the alarm is armed. With the keyless entry system, either the door switch or the remote control is used instead of a manual key. The proposed alarm system will also monitor interior movement within the vehicle through an ultrasonic sensor. If any violation of these areas is detected, the horn will sound and the lights will flash.

In Porsche's petition to modify its exemption, it stated that for 2013, the Boxster will be modified to accommodate the introduction of the electronically activated parking brake. Porsche stated that if the control unit does not receive the correct signal from the key or keyless entry system, the parking brake will remain activated and the vehicle cannot be towed away.

Porsche stated that another additional theft prevention feature to the Boxster vehicle line will be the implementation of a new off-board antitheft strategy, making it impossible to use stolen electronic control units to repair other Porsche vehicles. Porsche stated that the goal of the off-board theft protection strategy is to reduce the marketability of stolen electronic components. Porsche believes its off-board antitheft strategy is similar in concept to parts marking, and will further reduce the demand for stolen Porsche vehicle components. Specifically, Porsche explained that during the production process of the vehicle, initialization and registration of various antitheft related electronic components are recorded in a central database. Changes to these components are only possible with authorized on-line access to the central database. Porsche stated that if the components have to be repaired or replaced while authorized access to the central database is unavailable or the central database

indicates the components are unauthorized, further operation and use of the vehicle is restricted or even impossible.

In order to ensure the reliability and durability of the device, Porsche conducted tests based on its own specified standards. Porsche provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The test conducted included extreme temperature tests, voltage spike tests, reverse polarity tests, electromagnetic interference tests, vibration tests and endurance tests. Porsche stated that its antitheft device also features a built-in self-diagnostic that constantly checks for system failures. If a failure is detected, the operator receives a signal via an alarm indicator.

In its MY 2013 modification, Porsche stated that it believes its new Boxster antitheft device will prove to be even more effective in reducing and deterring theft than its antitheft devices have proven in the past. Porsche also compared its device with other devices without alarms that NHTSA has determined to be as effective in reducing and deterring motor vehicle theft. Porsche stated that similar systems without alarms, i.e., GM PASS-Key, Mercedes Benz 202 vehicle line, Porsche Boxster (Cayman) as well as earlier 911 vehicle line devices, were determined to be as effective as parts-marking. Porsche also referenced the agency's theft rate data for the Boxster vehicle line which indicates that its theft rates (MY/CY 2002–2009) are still below the median theft rate of 3.5826. The average theft rates for the Boxster vehicle line (Boxster convertible and Cayman coupe) using the most current 3 MY's theft rate data are 0.3789 and 0.7217, respectively.

The agency has evaluated Porsche's MY 2013 petition to modify the exemption for the Boxster vehicle line from the parts-marking requirements of 49 CFR part 541, and has decided to grant it. The agency believes that the proposed device will continue to provide the five types of performance listed in § 543.6(a)(3): (1) Promoting activation, (2) attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key, (3) preventing defeat or circumvention of the device by unauthorized persons, (4) preventing operation of the vehicle by unauthorized entrants and (5) ensuring the reliability and durability of the device.

If Porsche decides not to use the exemption for this line, it should

formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 10, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0041; Notice 1]

#### Hyundai Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of petition.

**SUMMARY:** Hyundai America Technical Center, Inc., on behalf of Hyundai Motor Company (collectively referred to as “Hyundai”) <sup>1</sup> has determined that certain model year 2011 and 2012 Hyundai Sonata Hybrid passenger cars, do not fully comply with paragraph S4.1.5.5.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Hyundai has filed an appropriate report dated March 8, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Hyundai submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Hyundai'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.

**Vehicles involved:** Affected are approximately 14,728 model year 2011

<sup>1</sup> Hyundai America Technical Center, Inc., is a corporation registered under the laws of the state of Michigan.

and 2012 Hyundai Sonata Hybrid vehicles produced beginning on December 2, 2010 and shipped to dealers through March 7, 2012 that are equipped with a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point.

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, these provisions only apply to the subject 14,728<sup>2</sup> vehicles that Hyundai no longer controlled at the time it determined that the noncompliance existed.

**Noncompliance:** Hyundai explains that the noncompliance is that the affected vehicles do not comply with Paragraph S4.1.5.5.2 because they are equipped with a non-folding rear seat back and a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point to allow improved assembly line procedures.

**Rule text:** Paragraph S4.1.5.5 of FMVSS No. 208 requires in pertinent part:

S4.1.5.5 Passenger cars manufactured on or after September 1, 2007.

S4.1.5.5.1 Except as provided in S4.1.5.5.2, each passenger car shall have a Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard at each rear designated seating position, except that side-facing designated seating positions shall have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2 of this standard.

S4.1.5.5.2 Any inboard designated seating position on a seat for which the entire seat back can be folded (including the head restraints and any other part of the vehicle attached to the seat back) such that no part of the seat back extends above a horizontal plane located 250 mm above the highest SRP located on the seat may meet the requirements of S4.1.5.5.1 by use of a belt incorporating a release mechanism that

<sup>2</sup> Hyundai's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Hyundai as a motor vehicles manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 14,728 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after Hyundai notified them that the subject noncompliance existed.