

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0038; Notice 1]

#### Porsche Cars North 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:** Porsche Cars North America, Inc., (“Porsche”), has determined that certain model year (MY) 2017–2021 Porsche Panamera, MY 2019–2021 Porsche Cayenne, and MY 2020–2021 Porsche Taycan motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems*. Porsche filed an original noncompliance report dated March 10, 2021.

Subsequently, Porsche petitioned NHTSA on April 1, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Porsche’s petition.

**DATES:** Send comments on or before September 15, 2021.

**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 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 a.m. to 5 p.m. except for Federal holidays.

- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at [https://](https://www.regulations.gov/)

[www.regulations.gov/](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).

**FOR FURTHER INFORMATION CONTACT:** Vince Williams, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-2319.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Porsche has determined that certain MY 2017–2021 Porsche Panamera, MY 2019–2021 Porsche Cayenne, and MY 2020–2021 Porsche Taycan motor vehicles do not fully comply with the requirements of paragraph S5.5.5(d)(5) of FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). Porsche filed a noncompliance report dated March 10, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Porsche

subsequently petitioned NHTSA on April 1, 2021, 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 Porsche’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. Vehicles Involved

Approximately 80,666 of the following MY 2017–2021 Porsche motor vehicles manufactured between October 23, 2016, and February 9, 2021, are potentially involved:

- MY 2017–2021 Panamera 4
  - MY 2017–2021 Panamera
  - MY 2017–2021 Panamera 4 S
  - MY 2017–2020 Panamera Turbo
  - MY 2017–2020 Panamera 4 S
- Executive
- MY 2017–2020 Panamera Turbo
- Executive Hybrid
- MY 2018–2021 Panamera 4 Hybrid
  - MY 2018–2020 Panamera Turbo S Hybrid
- MY 2018–2021 Panamera 4
- Executive Hybrid
- MY 2018–2020 Panamera 4 Hybrid
- Executive Hybrid Executive
- MY 2018–2020 Panamera Turbo S Hybrid Executive
  - MY 2018–2020 Panamera 4 Sport Turismo
  - MY 2018–2020 Panamera 4 S Sport Turismo
- MY 2018–2020 Panamera 4 Hybrid Sport Turismo
  - MY 2018–2020 Panamera Turbo Sport Turismo
  - MY 2018–2020 Panamera Turbo S Hybrid Sport Turismo
  - MY 2019–2021 Panamera GTS
  - MY 2020 Panamera GTS Sport Turismo
  - MY 2019–2021 Cayenne
  - MY 2019–2021 Cayenne S
  - MY 2019–2021 Cayenne Hybrid
  - MY 2019–2021 Cayenne Turbo
  - MY 2020 Panamera 10 Year Special Model
  - MY 2020 Panamera 4 10 Year Special Model
  - MY 2020–2021 Taycan 4S
  - MY 2020 Taycan Top S
  - MY 2020 Taycan Top
  - MY 2020 Panamera 4 Hybrid 10 Year Special Model
  - MY 2020 Cayenne Turbo S Hybrid
  - MY 2020–2021 Cayenne Coupe
  - MY 2020–2021 Cayenne S Coupe

- MY 2020–2021 Cayenne Hybrid Coupe
- MY 2020–2021 Cayenne Turbo Coupe
- MY 2020 Cayenne Turbo S Hybrid Coupe
- MY 2021 Taycan
- MY 2021 Taycan Turbo S
- MY 2021 Taycan Turbo
- MY 2021 Panamera Turbo S
- MY 2021 Panamera 4S Hybrid
- MY 2021 Cayenne GTS
- MY 2021 Cayenne GTS Coupe

### III. Noncompliance

Porsche explains that the noncompliance is that the subject vehicles are equipped with brake wear indicators that do not meet the minimum lettering height requirements, as specified in paragraph S5.5.5(d)(5) of FMVSS No. 135. Specifically, the lettering height for the brake wear indicators range in height from 1.7 mm to 2.2 mm, when the required minimum height is 3.2 mm.

### IV. Rule Requirements

Paragraph S5.5.5(d)(5) of FMVSS No. 135 includes the requirements relevant to this petition. Each visual indicator shall display a word or words in accordance with the requirements of FMVSS No. 101 (49 CFR 571.101) and FMVSS No. 135, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm ( $\frac{1}{8}$  inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by FMVSS No. 101 and FMVSS No. 135 may be provided for purposes of clarity. If a separate indicator is provided to indicate brake lining wear-out as specified in S5.5.1(d), the words “Brake Wear” shall be used.

### V. Summary of Porsche’s Petition

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

In support of its petition, Porsche submitted the following reasoning:

1. *Multi-Function Display*: In addition to the brake wear indicator required by FMVSS No. 135, the Porsche vehicles also have a multi-functional display that provides brake wear information. Information about brake wear is

provided in this display, which is readily visible to drivers, on the subject vehicles. Although the brake wear message can be confirmed and then suppressed by the vehicle operator at the next ignition cycle, doing so would necessarily require the operator to read and understand the message. Therefore, it can be assured that the need to check the vehicle’s brake lining wear has been received. The brake wear message is presented in a display that expresses the need to change the brake pads, with continued driving possible/permitted.

2. *Conspicuous, Accurate Information*: The brake wear warning symbol is the correct color as required by paragraph S5.5.5 of FMVSS No. 135. The warning symbol lettering is red, and the lettering and background are of contrasting colors. This makes the symbol conspicuous to the driver, as does its readily visible position immediately adjacent to fuel, temperature, and other critical vehicle data displays. The information provided by the brake wear symbol is also correct; the brake lining wear detection ability of the vehicle is entirely functional and completely unaffected by the lettering size issue.

3. *Uniform Height*: All letters in the brake wear warning indicator are capitalized, so the height is preserved across the width of the words “brake” and “wear,” making the words are more easily seen and read.

4. *Owner’s Manual*: Information about the brake wear warning symbol is displayed in the owner’s manual, which ensures that vehicle owners understand the symbol despite the smaller size of the lettering. For instance, the Panamera owner’s manual explains the symbol and notifies the vehicle owner to have the brake pads replaced immediately.

5. *Labeling*: This type of labeling noncompliance is precisely the type that NHTSA generally finds more appropriate for a determination of inconsequentiality. *See*, Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 85 FR 62365, 62366 (Oct. 2, 2020), where NHTSA states “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.” (Emphasis in original).

6. *Issue Corrected*: The noncompliance issue has been corrected in production vehicles and all vehicles

currently being produced meet applicable lettering height requirements.

7. *NHTSA Precedent*: Finally, and most significantly, NHTSA precedent supports granting this petition. The described noncompliance is very similar to others that NHTSA has found to be inconsequential to motor vehicle safety. *See* 81 FR 92964 (Dec. 20, 2016) (grant of inconsequentiality petition to General Motors for parking brake indicator labeling below the required size, where corresponding driver information was provided in the instrument cluster); 67 FR 72026 (Dec. 3, 2002) (grant of inconsequentiality petition to Mercedes-Benz, U.S.A., Inc., where some letters in brake indicator warning were smaller than the required size, but additional messaging was provided in a message center).

Porsche concludes 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 Porsche 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 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)

**Otto G. Matheke, III,**

*Director, Office of Vehicle Safety Compliance.*

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