

inconsequential to motor vehicle safety. Accordingly, Coupled Products' appeal of NHTSA's decision on inconsequential noncompliance is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: May 25, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 05-10784 Filed 6-1-05; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21270; Notice 1]

#### Mercedes-Benz USA LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Mercedes-Benz USA LLC (Mercedes) has determined that the designated seating capacity placards for certain vehicles that it produced in 2004 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, "Tire selection and rims." Mercedes has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mercedes has petitioned 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 Mercedes' 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.

Affected are a total of approximately 1,576 SLK class vehicles produced between March 24, 2004 and December 15, 2004. S4.3(b) of FMVSS No. 110 requires that a "placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the \* \* \* [d]esignated seating capacity \* \* \* ." The noncompliant vehicles have placards stating that the seating capacity is four, when in fact the seating capacity is two.

Mercedes believes that the noncompliance is inconsequential to motor vehicle safety and that no

corrective action is warranted. Mercedes states:

\* \* \* most, if not all, consumers will look at the number of seats in the vehicle and the number of safety belts to determine its capacity, rather than looking at the tire information placard. Because the SLK Roadster is a two-seater vehicle with no rear seat, it is immediately obvious that the seating capacity is two and not four, and that it is not possible to seat four occupants in the vehicle.

Mercedes further states:

Because it is impossible for the SLK to hold four occupants, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation pressure and recommended size designation information. All of this information is correct on the tire information placard. Moreover, the purpose of providing seating capacity information is to prevent vehicle overloading. Because the SLK holds only two occupants, it is not possible to overload the vehicle due to reliance on the tire information placard.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* July 5, 2005.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: May 25, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 05-10785 Filed 6-1-05; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-20782; Notice 2]

#### Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Dr. Ing. h.c.F Porsche AG has determined that certain vehicles that it manufactured for model years 2003, 2004 and 2005 do not comply with S4.2.2(a) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, "Theft protection." Pursuant to 49 U.S.C. 30118(d) and 30120(h), on behalf of Dr. Ing. h.c.F Porsche AG, Porsche Cars North America, Inc. (Porsche) has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on April 11, 2005, in the **Federal Register** (70 FR 18459). NHTSA received no comments.

Approximately 28,949 model year 2003, 2004, and 2005 Porsche Cayenne, Cayenne S and Cayenne Turbo vehicles are affected. S4.2.2(a) of FMVSS No. 114 requires that

\* \* \* provided that steering is prevented upon the key's removal, each vehicle \* \* \* [which has an automatic transmission with a "park" position] may permit key removal when electrical failure of this [key-locking] system \* \* \* occurs or may have a device which, when activated, permits key removal.

In the affected vehicles, the steering does not lock when the ignition key is removed from the ignition switch using the optionally provided device that permits key removal in the event of electrical system failure or when the transmission is not in the "park" position.

Porsche believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Porsche states the following in its petition:

The ignition key/transmission interlock requirements of S4.2 were promulgated in Docket 1–21 (Notice 9 published in May 30, 1990). In that notice there was no provision for an emergency operation system to permit ignition key removal when the transmission is not in “Park” position. In response to several automobile manufacturer petitions for reconsideration, the agency published Notice 10 (March 26, 1991) to supplement S4.2 by the addition of S4.2.1 and S4.2.2 that did permit an emergency operation system to be located behind an opaque cover that could only be removed via the use of a tool. The use of the emergency operation system allows the removal of the ignition key when the transmission is not in “Park.” The emergency operation system would also permit moving the shift lever out of “Park” position after removal of the ignition key. The use of the emergency operation system was dependent upon the steering system being locked whenever the ignition key is removed.

Some manufacturers again filed petitions for reconsideration to the Notice 10 amendment which the agency responded [to] in Notice 11 (January 17, 1992). Notice 11 amended S4.2.2(a) to permit ignition key removal even if the transmission were not in “Park” if there is an electrical failure of the vehicle without activation of the emergency operating system. When the vehicle’s electrical system was behaving normally, removal of the ignition key in transmission positions other than “Park” would only be permissible via the emergency operation system. Ignition key removal in transmission shift positions other than “Park” required, as before, that the steering system would lock.

The requirement that the steering be locked when the ignition key is removed was debated in both Notice 10 and 11 “to ensure that Standard No. 114’s theft protection aspects are not jeopardized.” Nothing in the record indicates that this requirement was based on a need to prevent personal or property damage.

Porsche states that it believes the noncompliance is inconsequential to motor vehicle safety because the steering lock function when the vehicle is without electrical power and the ignition key is removed has no safety implication because the vehicle is immobilized. Porsche explains:

In the Cayenne models at issue here the removal of the ignition key using the emergency operation system is a vehicle security function to prevent the vehicle from being driven by simply jump-starting the vehicle, due to the fact that the vehicle is equipped with an immobilizer that prevents starting of the vehicle without the electronically coded ignition key. The key-code is recorded in the engine control module and cannot be electrically bypassed.

The agency agrees with Porsche. NHTSA issued an interpretation letter to an unnamed person on September 24, 2004, which stated in pertinent part as follows:

The engine control module immobilizer described in your letter satisfies the

requirements of S4.2(b) because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system. When the engine control module is locked, the vehicle is not capable of forward self-mobility because it is incapable of moving forward under its own power.

Theft protection of vehicles is addressed under S4.2 of the standard. Section 4.2(b) can be met by preventing either steering or forward self-mobility. Therefore, an equivalent level of theft protection is provided by “either steering or forward self-mobility.”

NHTSA amended FMVSS No. 114 in 1990 to require that vehicles with an automatic transmission and a “park” position be shifted to “park” or become locked in park before the key can be removed to reduce incidents of vehicle rollaway. S4.2.2(a) was added in 1991 to permit key removal when an electrical failure occurred and the transmission could not be manually shifted into park, provided that steering was prevented for theft protection. The forward self-mobility feature does not prevent vehicle rollaway by itself. However, the parking brake used in combination with the forward self-mobility feature will prevent rollaway.

NHTSA recently granted two petitions for the same noncompliance based on the same rationale (Bentley Motors, Inc. and Volkswagen of America, Inc., both at 69 FR 67211, November 16, 2004).

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Porsche’s petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: May 25, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 05–10786 Filed 6–1–05; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This document provides notice of the availability of Application Packages for the 2006 Tax Counseling for the Elderly (TCE) Program.

**DATES:** Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2006 Tax Counseling for the Elderly (TCE) Program is August 1, 2005.

**ADDRESSES:** Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, SE:W:CAR:SPEC:FO:OA, Building C–4, Room 168. Applications can also be submitted electronically through the IRS E-grants System by logging on to [www.egrants.irs.gov](http://www.egrants.irs.gov).

**FOR FURTHER INFORMATION CONTACT:** Mrs. Lynn Tyler, SE:W:CAR:SPEC:FO:OA, Building C–4, Room 168, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

**SUPPLEMENTARY INFORMATION:** Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2006 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.