

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-98-4980; Notice 1]

RIN 2127-AH25

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal Motor Vehicle Safety Standard on occupant crash protection, FMVSS No. 208, to provide vehicle manufacturers greater flexibility regarding the location of the telltale for air bag on-off switches in new motor vehicles. It eliminates the requirement that the telltale be located on the vehicle dashboard. Retention of that requirement is unnecessary since the standard continues to require that the telltale must be clearly visible from all front seat seating positions. This rule also adds a requirement that the telltale be located within the vehicle's interior. The rule makes the telltale location requirements in the standard consistent with those in the agency's regulation permitting the retrofitting of used vehicles with air bag on-off switches.

EFFECTIVE DATE: This rule is effective on January 14, 1999.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. Background**

This rule responds to a petition from Volkswagen of America, Inc. requesting the agency to amend Federal Motor Vehicle Safety Standard No. 208 (FMVSS No. 208) by eliminating the requirement that the telltale for air bag on-off (cutoff) switches in new motor vehicles be located on the vehicle dashboard. Elimination of this requirement would make the telltale requirements for new vehicles equipped

with an on-off switch consistent with the requirements in Part 595 for the telltales for retrofit on-off switches, i.e., switches installed in used vehicles. Part 595 exempts commercial entities from the statutory prohibition against making federally-required vehicle safety equipment inoperative for the purpose of allowing those entities to install retrofit switches.

On October 7, 1994, NHTSA published a notice of proposed rulemaking proposing to amend FMVSS No. 208 by giving manufacturers the option of installing a manual passenger-side air bag on-off switch in new vehicles that either lacked a rear seat or had a rear seat too small to accommodate a rear-facing infant restraint (59 FR 51158). The proposal was issued in response to concerns that deploying air bags can seriously injure children appropriately restrained in a rear-facing infant restraint.

In that document, NHTSA proposed requiring "a telltale light on the dashboard that is clearly visible from both the driver and front passenger seating positions and that is illuminated whenever the passenger air bag has been deactivated by means of the cutoff device." NHTSA went on to explain that it

believes that the indicator should be visible to the driver as a reminder that the passenger air bag is, or is not, functioning. NHTSA believes that the indicator should be also visible from the passenger seating position as a warning to non-infant occupants that they are not protected by their air bag.

On May 23, 1995, NHTSA issued a final rule giving vehicle manufacturers the option of installing a manual passenger-side air bag on-off switch in vehicles with either no rear seat or with a rear seat inadequate for accommodating a rear-facing infant restraint (60 FR 27233). The final rule required the on-off switch be operable by the ignition key, be separate from the ignition switch, remain deactivated until affirmatively reactivated by turning the switch, and be accompanied by the telltale that is the subject of this rule.

On November 21, 1997, NHTSA issued a final rule establishing Part 595 and allowing owners of used vehicles to have their vehicles retrofitted by commercial entities with air bag on-off switches, subject to certain conditions (62 FR 62406). Such switches are available for both driver and passenger seating positions as long as the conditions for each seating position are met by the vehicle owner and the entity that installs the switches. The switch requirements were largely patterned after the requirements for a passenger-

side switch in FMVSS No. 208.

However, in order to provide vehicle manufacturers with more flexibility in fitting a telltale light into a vehicle not originally designed to accommodate it, Part 595 did not include a requirement that the telltale for retrofit switches be installed in the vehicle dashboard. It did adopt the requirement that the telltale for a passenger-side air bag switch be clearly visible from both the driver and front passenger seat positions.

On March 23, 1998, Volkswagen of America, Inc. submitted a petition requesting the agency to initiate a rulemaking proceeding to amend FMVSS No. 208 by eliminating the requirement that the telltale for an on-off switch in a new motor vehicle be located on the vehicle dashboard. Volkswagen maintained that the current requirement is unnecessarily design restrictive and that eliminating the dashboard requirement would not be detrimental to motor vehicle safety.

NHTSA proposed eliminating that requirement in a notice of proposed rulemaking (NPRM) published on July 20, 1998 (63 FR 38795) because the agency tentatively concluded that the requirement is not necessary to ensure the telltale's visibility. The agency articulated its belief that there are other locations (e.g., the console) within the vehicle's interior in which the telltale would be sufficiently noticeable by all front seat occupants. For example, General Motors installs telltale lights above the rearview mirror for vehicles with retrofit on-off switches.

NHTSA noted that in the final rule establishing Part 595, it did not require that the telltale be located on the vehicle dashboard. Instead, it simply specified that the telltale must be visible from the driver and front passenger seating positions and that the telltale must be located within the vehicle's interior. These conditions allow, but do not require, the placement of the telltale on the vehicle dashboard.

NHTSA proposed amending FMVSS No. 208 to allow the placement of a telltale in a location other than the vehicle dashboard as long as the telltale is visible to all occupants of the front seat and is located within the vehicle's interior. This second requirement was proposed to make FMVSS No. 208 consistent with Part 595 and because NHTSA believed external conditions like rain or snow could prevent the telltale from being clearly visible at all times.

The agency sought comment on whether there would be any degradation of safety by not requiring uniformity of the telltale's location, i.e., on the vehicle dashboard.

II. Discussion of Comments and Agency Decision

NHTSA received six comments in response to its NPRM. Four of these, representing the interests of vehicle manufacturers,¹ supported the proposed change without significant comment. A comment filed by Advocates for Highway and Auto Safety (Advocates) basically supported the proposed change, but suggested that wording be added to require the telltale to remain within the driver's immediate forward field of vision. The Alliance of American Insurers (AAI) opposed the proposed change.

While Advocates agreed that a telltale could be placed somewhere within the interior of the vehicle other than the dashboard and still be clearly visible to all front seat occupants, it expressed a concern that under the proposed language there was no requirement that the telltale be within the driver's immediate forward field of vision. The agency agrees that the proposed regulatory text does not contain such a requirement. It is not persuaded, however, by Advocates' position that, under the proposed regulatory text, a location outside a driver's immediate field of vision "can distract the driver from the driving task". Advocates cited the location of sunroof operation switches as support for its position. The agency believes that situation is inapposite. The telltale is a warning light that may or may not be located immediately adjacent to the on-off switch. Accordingly, the telltale has no operational function, and its status can be checked with a quick glance. Presumably, any distractions posed by sunroof operational switches are the result of drivers trying to operate the sunroof while driving rather than the mere presence of the switch.

Nevertheless, NHTSA shares Advocates' concern that a telltale switch could theoretically be placed in a location where it is arguably clearly visible to all front seat occupants but not within the normal range of vision while operating or riding in a vehicle (e.g., near the interior overhead light or along the vehicle's A-pillar). The agency does not believe it is necessary to define specific parameters for installation to assure visibility.

Instead, NHTSA has added a definition of "clearly visible" to the regulatory text. Under the final rule, the term shall mean clearly visible within the normal range of vision throughout normal driving operations. Likewise, the

telltale should be visible regardless of ambient light conditions.² Any telltale that necessitates the driver or passenger moving out of his or her normal riding position because of the telltale's location, or that cannot be seen because of adverse ambient lighting, is not clearly visible to an occupant.

The agency expects vehicle manufacturers to use common sense and their knowledge of driving kinematics to design telltales that can be easily seen by the driver and other front seat passengers of the vehicle during normal driving operations. Should the agency determine that manufacturers are not exercising such care, the agency will commence rulemaking to return to a requirement that the telltale be located on the dashboard.

AAI objected to the proposed change in regulatory text for three reasons. NHTSA has already addressed one of its concerns, poor lighting conditions, in the previous paragraph. AAI's other concerns deal with education and driver and passenger awareness of the switch.

AAI contended that locating the telltale on the dashboard offers a safeguard not found in Part 595. This safeguard, it avers, is needed because FMVSS No. 208 does not require the extensive educational effort required under Part 595.

The agency disagrees. As an initial matter, FMVSS No. 208 does require strong warnings in the vehicle owner's manual, providing educational guidance for vehicle owners. NHTSA is also unconvinced that the location of a telltale on the dashboard rather than in some other clearly visible location actually acts as an additional safeguard. AAI asserted that for the telltale to "be a constant reminder, visible to the driver throughout the operation of the vehicle", the telltale must remain on the dashboard. NHTSA rejects this contention and directs the reader to its response to Advocates' comments.

AAI also maintains that:

[W]hile removal of the telltale to another location may still assure it's [sic] visibility, it may be easy to disregard, ignore, or more importantly, forget, if it is not within constant view along with other gauges and lights. Further, passengers are more likely to

²NHTSA has already expressed its position on "clearly visible" and adverse ambient light conditions for retrofit on-off switches in a letter to AirBag Options on June 25, 1998. In that letter the agency stated that "[u]nder Part 595, the on-off switch telltale, which must be illuminated when the air bag has been turned off, must be clearly visible. Ambient light conditions, such as bright sunlight, cannot compromise visibility. If a switch manufacturer cannot guarantee that the switch, when properly installed, is clearly visible whenever the air bag has been turned off, the manufacturer must redesign the switch to resolve this problem."

take notice of an indicator light on a dashboard rather than one located elsewhere, especially in an unfamiliar vehicle.

The agency does not believe that a warning light that is isolated from other lights is more likely to be ignored than one that is grouped among a cluster of lights. Indeed, it may be possible that a telltale that is physically separate from all other warning or operational signals is more likely to be noticed than one that is part of a cluster of lights. NHTSA believes the difference in the visibility of a telltale, especially to a passenger, on the dashboard versus that of a telltale elsewhere within the interior of the vehicle is minimal as long as the vehicle manufacturer follows the agency's requirement that the telltale be clearly visible to all front seat occupants.

Placement of a telltale in a less restricted area than the dashboard permits wider flexibility in on-off switch design. NHTSA believes that telltales designed in accordance with this final rule will not result in any adverse motor vehicle safety consequences.

III. Proposed Effective Date

Since the adoption of the proposal would relieve a restriction affecting safety, NHTSA is making this rule effective immediately. NHTSA believes a delayed effective date would serve no purpose since the proposed changes would permit, but not require a change in the location of the switch telltale.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be insignificant under the Department of Transportation's regulatory policies and procedures. NHTSA believes that this rule will not impose any additional cost on manufacturers and consumers since the rule only expands available options for the design of a telltale for factory-installed air bag on-off switches. Accordingly, the agency believes that the economic impacts of this rule are so minimal as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby

¹Comments were filed by Volkswagen, General Motors, Chrysler Corporation and the Association of International Automobile Manufacturers.

certify that this rule does not have a significant economic impact on a substantial number of small entities.

The proposed rule would affect motor vehicle manufacturers. NHTSA estimates that there are only four small manufacturers of passenger cars and light trucks in the United States. These manufacturers serve a niche market, and the agency believes that small manufacturers do not manufacture even 0.1 percent of total U.S. passenger car and light truck production per year. The agency notes that today's amendment will allow, but not require, changes to existing designs for these, as well as other, vehicle manufacturers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), there are no requirements for information collection associated with this rule.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits

and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This proposal does not meet the definition of a Federal mandate because it does not impose requirements on anyone. In addition, annual expenditures will not exceed the \$100 million threshold.

Civil Justice Reform

This rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. Paragraph S4.5.4.3 of Section 571.208 is revised to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

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S4.5.4.3 A telltale light in the interior of the vehicle shall be illuminated whenever the passenger air bag is turned off by means of the on-off switch. The telltale shall be clearly visible to occupants of all front seating positions. "Clearly visible" means within the normal range of vision throughout normal driving operations. The telltale:

- (a) Shall be yellow;
- (b) Shall have the identifying words "PASSENGER AIR BAG OFF" on the telltale or within 25 millimeters of the telltale;
- (c) Shall remain illuminated for the entire time that the air bag is "off";
- (d) Shall not be illuminated at any time when the air bag is "on"; and,
- (e) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

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Issued on January 8, 1999.

Ricardo Martinez,
Administrator.

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