

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

[Docket No. NHTSA 03-15067]

RIN 2127-AI71

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Final rule.

SUMMARY: In May 2000, we published a rule to require advanced air bags in light vehicles. The requirements of that rule are being phased in during two stages, the first of which extends from September 1, 2003 to August 31, 2006. In September 2002, in response to petitions for rulemaking, we published a notice of proposed rulemaking (NPRM) to address two of the issues raised by petitioners. All other issues were denied. In January 2003, we issued a final rule that addressed the first of the remaining issues, namely the new phase-in requirements for vehicle manufacturers other than limited line manufacturers. This final rule addresses the issue of how to treat limited line manufacturers during the course of the first phase-in. We have decided to expand the definition of a limited line manufacturer to a manufacturer that produces no more than three vehicle lines. Additionally, NHTSA has decided to provide limited line manufacturers with an additional year to comply with the new advanced air bag requirements. Since the limited line manufacturer option is based on the premise that the manufacturer may need to use the option because it is unable to meet the phase-in requirement, no credit for early compliance will be allowed towards the 100 percent production requirement for the third year (*i.e.*, the final year for limited line manufacturers) of the phase-in.

DATES: *Effective Date:* The amendments made in this rule are effective July 7, 2003.

Petitions: Petitions for reconsideration must be received by June 19, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration,

400 Seventh Street, SW., Washington, DC, 20590:

For technical issues: Mr. Louis Molino, Office of Crashworthiness Standards, NVS-112, telephone (202) 366-2264, facsimile (202) 493-2739.

For legal issues: Ms. Rebecca MacPherson, Office of the Chief Counsel, NCC-112, telephone (202) 366-2992, facsimile (202) 366-3820.

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I. Background

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00-7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection*, to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

The rule will be phased in during two stages. The first stage phase-in requires vehicle manufacturers to focus on minimizing the risk of air bag-related injury, particularly for children and small adults, while preserving the current level of protection. The second phase-in requires vehicle manufacturers to improve the current level of protection provided by air bags by conducting the belted barrier tests for the 50th percentile adult male dummy at a higher test speed.

During the first stage phase-in, from September 1, 2003 to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks, primarily by either automatically turning off the air bag when young children are present or deploying the air bag more benignly so that it is much less likely to cause serious or fatal injury to out-of-position occupants.¹

As initially adopted, the rule would have required that the majority of vehicle manufacturers meet the following phase-in requirements: 9/1/03 to 8/31/04—35 percent; 9/1/04 to 8/31/05—65 percent; 9/1/05 to 9/1/06—100 percent, with manufacturers allowed to

¹ The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS.

use credits for early compliance. Effective September 1, 2006, all vehicle manufacturers must comply with the phase-one requirements, regardless of whether they are subject to the phase-in; credits for early compliance are not permitted. As discussed in more detail below, the requirements for the first year of the phase-in has subsequently been changed to 20 percent. No changes have been made regarding the second and third years of the phase-in. Nor have any changes been made regarding the second phase-in, which commences September 1, 2007.

In the May 2000 final rule, limited line manufacturers, *i.e.*, those producing no more than two vehicle lines for sale in the United States, were offered the alternative of meeting the phase-in requirements or of opting out of the advanced air bag requirements for the first year of the phase-ins as long as 100 percent of the vehicles produced for the U.S. market were fully compliant in the second year of the phase-ins and thereafter. Final stage manufacturers of vehicles built in two or more stages, and manufacturers that produce no more than 5,000 vehicles per year globally were exempted from the phase-in requirements altogether.²

On August 19, 2002, Porsche submitted a petition for rulemaking, requesting changes to the limited line manufacturer alternative compliance schedule. Porsche currently produces two carlines for the U.S. market, the Boxster and the Carrera 911. However, it plans to introduce a third carline, the Cayenne, for model year 2004. Thus, Porsche will not be able to take advantage of the current limited line manufacturer exemption from the first year of the phase-ins. According to Porsche, small limited-line manufacturers have difficulties finding technology suppliers interested in providing the manufacturers with the systems needed to comply with the advanced air bag requirements. Porsche noted it was in a particularly unique position because it does not have a larger parent company that is willing to assume its production as part of its fleet for the purpose of meeting the phase-in schedule. Porsche requested the agency consider adding an additional "carline" definition specific to S14 of FMVSS No. 208 to provide manufacturers that sell two or fewer carlines in the U.S. the flexibility to comply at the 100 percent

² The criteria for small volume manufacturers was changed in a final rule published December 18, 2001 (66 FR 65376, Docket No. NHTSA-01-11110). A manufacturer now qualifies for the exemption from the phase-ins if it manufactures no more than 5,000 vehicles for the U.S. market per year.

level starting in the third year of the respective phase-ins.

At the time NHTSA received Porsche's petition, the agency had largely completed drafting a document responding to petitions for rulemaking from the Alliance of Automobile Manufacturers, Toyota, and DaimlerChrysler requesting several changes in the advanced air bag final rule, including a change to the first phase-in schedule. That document was published in the **Federal Register** on September 24, 2002 (67 FR 59800, Docket No. NHTSA 02-13393; Notice 1).

In that document, we proposed to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003 through August 31, 2004, from 35 percent to 20 percent. We stated that the proposed change reflected the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We also stated that we had tentatively concluded that a reduction in the first year's phase-in requirement from 35 percent to 20 percent struck a reasonable balance between ensuring that the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested.

In light of our proposal to adjust the phase-in schedule, we decided to address the recently submitted Porsche petition and stated that we were considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers. In that document, we stated that we believed the specific concerns cited by Porsche related more to its size than to the number of carlines it sells.

We otherwise denied the petitions or, as to certain requests, dismissed them because the agency had subsequently considered or was considering the same requests in the context of another rulemaking proceeding.³ On January 31, 2003, NHTSA published a final rule adopting the new phase-in schedule as proposed (68 FR 4961, Docket No. NHTSA 03-14270). The sole remaining

issue related to the September 2002 notice is Porsche's petition regarding limited line manufacturers.

II. Porsche's Comments

Porsche was the only party to comment on the issue of possible adjustments in the alternative phase-in requirements available to limited line manufacturers raised by NHTSA in the September 2002 NPRM. That company suggested a revised approach for addressing the issues it had raised in its petition. Porsche opined that it could be difficult to devise a FMVSS No. 208-specific definition of "carline" that would be easily enforceable and not overly-broad, a concern raised by NHTSA in the September, 2002 NPRM. Porsche also noted that it believed its problems with suppliers of advanced air bag technologies was more the result of its relatively small size than the fact that it produced a small number of carlines. Accordingly, Porsche proposed a new phase-in option based solely on a manufacturer's status as a relatively small, largely independent company and its production volume.

Porsche commented that its position among vehicle manufacturers is unique. According to Porsche, it is the only small independent car company selling more than a few hundred vehicles in the United States. Porsche's 2001 global production was approximately 56,000 units. Its next largest independent competitor is BMW, with annual sales of almost 1 million units. Porsche claimed that all other small manufacturers could either avoid the phase-in altogether because they produced less than 5,000 vehicles annually per year or because a larger, parent corporation owned sufficient interest in them as to allow them to phase-in their vehicles under the parent corporation. Thus, Porsche maintained, it was the only small company that would be required to meet the phase-in requirements.

Porsche urged NHTSA to adopt a new category of manufacturers who would be relieved of any responsibility to meet the new, advanced air bag requirements before September 1, 2006. The proposed category would apply to "independent low volume manufacturers" and would be based on worldwide production volume and manufacturer status. It recommended NHTSA limit the proposed category to manufacturers who produce no more than 100,000 vehicles per year and who are predominantly independent (*i.e.*, has less than 10% of its equity controlled by another manufacturer, a company owned by another manufacturer, or a manufacturer holding company).

III. Agency Decision

We have decided against the approach proffered by Porsche in its comments to the September 2002 NPRM. We believe such an approach effectively increases the size of a small volume manufacturer provided in FMVSS No. 208 by up to a factor of 20. Notwithstanding Porsche's relatively small size compared to other manufacturers, it is still substantially larger than those manufacturers for whom NHTSA determined compliance before the statutorily-mandated date would pose an unreasonable hardship. While we acknowledge that Porsche may have some difficulty engaging suppliers, we also note that the examples of supplier disinterest that were provided with the petition for rulemaking indicated that the disinterest was based, in part, on an unwillingness by Porsche to provide financial and design support.

Nevertheless, we have decided to provide relief that we believe is sufficient to address the legitimate concerns of a manufacturer that produces only a few carlines. Our original intent in providing a limited line manufacturer category was to accommodate the needs of those manufacturers who, because of the limited types of vehicles they produce, would have little or no design flexibility if required to meet the phase-in schedule applicable to other manufacturers. Certification of a single carline could result in a de facto phase-in requirement that far exceeded the one set for larger, more diverse manufacturers. This disparity is particularly great given the recent reduction in the phase-in percentage for the first year of the phase-in. If one assumes a roughly equal sales distribution among the two carlines originally contemplated by FMVSS No. 208, a limited line manufacturer would have to certify approximately 50% of its vehicles during the first year of the phase-in, while other manufacturers would only have to certify 20%. Given the reduction in phase-in percentages for larger, more diverse manufacturers, we believe it is appropriate to expand both the definition of and the limitations on limited line manufacturers.

First, we have decided to amend the definition of a limited line manufacturer for purposes of the first phase-in only, to a manufacturer that produces three or fewer carlines, as that term is defined in 49 CFR 583.4, for sale or distribution in the United States. NHTSA's initial decision to allow only two carlines to qualify as a limited line manufacturer was based on a desire to address the

³ While some commenters objected to NHTSA's denial of other petitions, or certain requests within the petitions, no new petitions have been submitted and NHTSA's regulations do not require the agency to reconsider its denials of petitions. Accordingly, those issues were not further addressed in the January 2003 final rule and will not be addressed here.

needs of manufacturers of only a few carlines. Accordingly, we do not believe expanding the allowable number of carlines by one is inconsistent with the agency's initial intent.

Second, we have decided to exclude a limited line manufacturer from the first two years of the first phase-in, with full compliance required in the third year. Without this relief, a limited line manufacturer would have to achieve 100% compliance by the second year of the phase-in, a point at which other manufacturers need only certify 65% of their fleet. NHTSA has determined that this constitutes too great a burden for limited line manufacturers.

Accordingly, we have decided it is appropriate to provide relief for the first two years of the phase-in, after which a limited line manufacturer would be required to ensure that each of its carlines is fully compliant.

Since the limited line manufacturer option is based on a premise that the manufacturer may need to use the option because it is unable to meet the newly relaxed phase-in requirements, no credits for early compliance will be allowed. NHTSA believes that such added relief is not justified, since a limited line manufacturer that was able to take advantage of early credits could probably comply with the relaxed phase-in requirements. As was the case previously, a limited line manufacturer may choose to meet the phase-in requirements applicable to other manufacturers and take advantage of early credits to meet the 100% compliance requirements for the third year.

NHTSA notes that the amended limited line manufacturer option is limited to the first advanced air bag phase-in. There is no reason to believe at this time that Porsche, or any other limited line manufacturer, will have trouble meeting the requirements of the second phase-in. We also note that two of Porsche's three carlines may be equipped with a manual air bag on-off switch under S4.5.4 of FMVSS No. 208. Should Porsche install such a switch, a responsible adult would be able to suppress the passenger air bag whenever a small child was seated in the passenger seat.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule was not reviewed under E.O. 12866, "Regulatory Planning and

Review." This action is not "significant" under the Department of Transportation's regulatory policies and procedures.

This rule amends the limited line manufacturer option for the first advanced air bag phase-in. However, the rule does not change the requirements for vehicles equipped with advanced air bags. Readers who are interested in the costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment (FEA) for the May 2000 final rule. The estimated benefits compared to pre-model year 1998 (pre-depowered air bags) in that rule for the suppression technologies were estimated to be 93 fatalities and 151 AIS 3-5 injuries. These benefits can be considered to accrue over the 20-25 year lifetime of one model year's fleet. As noted in the NPRM, the reduction in the phase-in schedule for the model year 2004 fleet from 35 percent to 20 percent could result in the potential loss in benefits over the lifetime of the model year 2004 fleet of 14 lives and 23 AIS 3-5 injuries.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. A Regulatory Flexibility Analysis was prepared for the May 2000 final rule as part of the FEA. This action will not have a significant economic impact on small businesses because the only change it makes to the May 2000 final rule is to reduce the percentage of vehicles that must comply with that rule during the first and second year of the phase-in. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this amendment should only slightly affect the price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a

federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform 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). While the May 2000 final rule is likely to result in over \$100 million of annual expenditures by the private sector, the only effect of today's amendment will be to reduce the percentage of vehicles that must comply with that rule during the first year of the phase-in. Accordingly, this rule will not mandate any expenditure by State, local or tribal governments, or by the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 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. Section 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.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not establish any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal

Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR chapter V 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.

■ 2. Section 571.208 is amended by revising S14.1(b) to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

S14.1 Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.

(b) Manufacturers that sell three or fewer carlines, as that term is defined at

49 CFR 585.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2005 shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

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Issued: April 25, 2003.

Jeffrey W. Runge,
Administrator.

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