



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0092; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc., (Volkswagen), has determined that certain model year (MY) 2021-2022 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021. Volkswagen petitioned NHTSA on December 13, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Volkswagen's petition.

FOR FURTHER INFORMATION CONTACT: Syed Rahaman, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-1704.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen has determined that certain MY 2021-2022 Volkswagen and Audi motor vehicles do not fully comply with paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Volkswagen petitioned NHTSA on

December 13, 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*.

Notice of receipt of Volkswagen's petition was published with a 30-day public comment period, on March 14, 2022, in the **Federal Register** (87 FR 14322). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2021-0092."

II. Vehicles Involved: Approximately 48,948 of the following vehicles, manufactured between July 30, 2020, and November 18, 2021, are potentially involved:

- MY 2022 Volkswagen Taos
- MY 2021 Volkswagen ID.4
- MY 2022 Volkswagen Golf R A8
- MY 2022 Volkswagen Golf GTI
- MY 2022 Audi S3 Sedan
- MY 2022 Audi A3 Sedan

III. Noncompliance: Volkswagen explains that the owner's manual for the subject vehicles incorrectly states the length of time the "Passenger Air Bag On" light is illuminated while the air bag is active and therefore, does not meet the requirements of paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208. Specifically, when the air bag is activated, the "Passenger Air Bag On" light will blink for 5 seconds, remain illuminated for 60 seconds, and then go out. However, the owner's manual inaccurately states that the light will remain illuminated permanently when the air bag is on.

IV. Rule Requirements: Paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208 include the requirements relevant to this petition. The owner's manual for any

vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The manufacturer is required to include in the vehicle owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion must explain the proper functioning of the advanced air bag system and provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include accurate information on (1) an explanation of how the components function together as part of the advanced passenger air bag system and (2) a discussion of the telltale light, specifying its location in the vehicle and explaining when the light is illuminated.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, "V. Summary of Volkswagen's Petition," are the views and arguments provided by Volkswagen. They do not reflect the views of the Agency. Volkswagen describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen says that although the owner's manual does not accurately state the duration of time that the "Passenger Air Bag On" light is illuminated, the light "is neither required nor regulated" by FMVSS No. 208. Volkswagen contends that although the light does not remain illuminated, the "system itself is switched on, is ready to function, and is otherwise accurately described within the owner's manual."

Volkswagen explains that the owner's manual for the subject vehicles "provides an explanation of how the system's components function together, as well as how the "Passenger Air Bag Off" light functions," as required by FMVSS No. 208. Volkswagen further explains that the owner's manual also provides "a presentation and explanation of the main components of the advanced passenger air bag system, an explanation of how the components function, and the basic requirements for proper operations, among other important relevant safety information."

Volkswagen notes that it has corrected the noncompliance for vehicles still in its control by adding a supplemental page with the accurate information into the owner's manual.

Volkswagen states that it is aware of one customer inquiry related to the subject noncompliance which has been resolved but is not aware of any accidents or injuries that have occurred as a result of the subject noncompliance.

Volkswagen concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and 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.

VI. NHTSA's Analysis:

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.¹ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

NHTSA agrees with Volkswagen that the Passenger Air Bag On indicator is not required by FMVSS No. 208. The Passenger Air Bag Off indicator is required by FMVSS No. 208 and appears to meet the requirements, i.e., it remains illuminated and its functionality is described accurately in the owner's manual.

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

² See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

As Volkswagen has stated, the vehicle itself functions as intended for both the On and Off indicators. If Volkswagen had not implemented the On indicator and had no owner's manual information for the On indicator, there would not be a noncompliance. Further, if such a situation existed, there would be no degradation to safety as it relates to the FMVSSs.

If the air bag was inactive, by either the vehicle determining air bag suppression is necessary or by the seat being unoccupied, the Off indicator would then illuminate and remain illuminated. This provides clear communication to the vehicle occupants.

The disparity between the behavior of the On indicator and the description of its operation in the vehicle owner's manual may cause confusion to owners who carefully review that document as it could lead them to the belief that the air bag is not in an On condition when in fact it is. While the existence of this disparity is a matter of concern and may have customer satisfaction consequences for the manufacturer, NHTSA does not find that a safety consequence exists in this case.

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by Volkswagen and has determined that this particular noncompliance is inconsequential to motor vehicle safety. The inaccurate owner's manual description for the non-required Passenger Air Bag On indicator is inconsequential to the safety of the vehicles listed above. This does not imply that all inaccurate owner's manual descriptions would be considered inconsequential, but rather NHTSA agrees that this particular case is inconsequential.

VII. NHTSA's Decision:

In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the subject FMVSS No. 208 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted, and Volkswagen is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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, this decision only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 Volkswagen 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)

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Director, Office of Vehicle Safety Compliance.

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