

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. 74-14; Notice 107]

RIN 2127 - AG61

Air Bag Deactivation

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

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its efforts to address the problem of the adverse effects of current air bag designs on children and certain adults, NHTSA is issuing this proposal to make it possible for vehicle owners to have their air bags deactivated by vehicle dealers and repair businesses. Vehicle owners may decide for themselves to have their air bags deactivated because they drive their vehicles under circumstances that resemble those in which people have already been killed by air bags or simply because of their generalized concern about air bags.

Specifically, the agency is proposing to allow dealers and repair businesses, upon written authorization of a vehicle owner or lessee, to deactivate either the passenger-side air bag, the driver-side air bag, or both. Dealers and repair businesses are statutorily prohibited from making Federally required safety equipment inoperative, but NHTSA may exempt them from the prohibition

in appropriate circumstances. In order to qualify for the exemption, the dealer or repair business would be required to provide the owner with a NHTSA information sheet describing the circumstances in which deactivation may be appropriate, based upon the comparison of the risks in those circumstances of turning the air bag off versus leaving it on. The authorization would contain a statement that the owner/lessee has received and read that sheet. The agency is proposing to require that warning labels be installed as a condition of deactivation.

Deactivating the passenger-side air bag would not be permitted if the vehicle were equipped with a manual cutoff switch for the air bag, or if the air bag were a "smart" air bag, i.e., one capable of either shutting off in appropriate circumstances or controlling its deployment so as to protect against injuring a wide range of occupants.

DATES: Comments must be received by (insert date 30 days following publication in the Federal Register). Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (Docket Room hours are 9:30 a.m.- 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

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For legal issues: Ms. Rebecca MacPherson, Office of Chief Counsel, NCC-20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

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I. Background

While air bags are providing significant overall safety benefits, NHTSA is very concerned that current designs have adverse effects in some situations. This notice proposes one of several actions that the agency is taking to mitigate these effects.

To address those effects, the agency published in the **Federal Register** (61 FR 40784) a notice of proposed rulemaking (NPRM) on August 6, 1996 to amend Standard No. 208, Occupant Crash Protection, and Standard No. 213, Child Restraint Systems. The NPRM proposed several amendments to reduce the adverse effects of air bags, especially those on children.

The agency explained that eventually, either through market forces or government regulation, it expects that "smart" passenger-side air bags will be installed in passenger cars and light trucks to mitigate these adverse effects. NHTSA proposed that vehicles lacking smart passenger-side air bags would be required to have new, attention-getting warning labels and be permitted to have a manual cutoff switch for the passenger-side air bag. Currently, only vehicles lacking a rear seat large enough to accommodate a rear-facing infant restraint are permitted to have such a switch. The agency also requested comments concerning whether it should require installation of smart air bags and, if so, on what date such a requirement should become effective. NHTSA also

requested comments on whether it should, as an alternative, set a time limit on the provision permitting manual cutoff switches in order to assure the timely introduction of smart air bags. Finally, the agency proposed to require rear-facing child seats to bear new, enhanced warning labels.

II. Scope of problem

A. Deaths and injuries

Based on data available as of November 1, 1996, NHTSA estimates that driver-side air bags have saved a net of 1,481 lives (1,500 drivers saved - 19 driver deaths caused by air bags), with 826 of those lives saved in 1995 and 1996 alone. The dramatic increase in lives saved in the last two years is due both to the increased number of air bags in vehicles and improved technology. For persons aged 13 and older, passenger-side air bags have saved a net of 164 lives to date. The number, if any, of passengers aged less than 13 saved by air bags is unknown. What is known is the loss of 31 children. Thus, the net figure for passengers of all ages could be as low as 133.

This disparity between driver and passenger air bags in the number of lives saved is due in part to the fact that there are approximately twice as many vehicles with driver air bags as there are vehicles with passenger air bags. Passenger-side air bags have only been widely available since the 1994 model year. Further, the driver seat is occupied more frequently than the front passenger

position.

As of November 15, 1996, however, 31 children have been killed as the result of air bag deployment in low speed collisions. Nine of these children were in rear-facing infant restraints. The number of deaths is steadily climbing. Ten of the 31 died in calendar year 1995 and another 17 have died so far in calendar year 1996. Additionally, eight children are known to have been seriously injured as a result of air bag deployment, five of whom were in rear-facing infant restraints. One 98-year-old adult passenger has been killed by an air bag.

Fewer drivers than passengers have been killed by air bags despite the fact that there are approximately twice as many vehicles with driver air bags as there are with both driver and passenger air bags. Nineteen drivers have been killed from air bag deployments in low to moderate speed collisions. Of these, ten were women 5'2" or under and four were 5'4" women. One 5'5" woman has also been killed. The four male drivers who were killed were at least 5'9".

One instance of a placental abruption, leading to stillbirth, has been reported; injuries to the pregnant woman were minor. Of the 19 adults killed by air bags, seven were age 64 or above. The agency notes that older drivers are more at risk than the average adult under most circumstances, regardless of type of restraint used. Over half the fatalities (10 out of 19) were in calendar years 1994 and 1995. Only two drivers are known to have been killed as a result

of air bag deployment in 1996. Most of the driver fatalities occurred in vehicles manufactured in model years 1990 and 1991. Only four drivers have been killed in vehicles manufactured after model year 1992. The apparent downward trend in driver fatalities contrasts sharply with the growth in the number of child fatalities.

For a more detailed discussion of the air bag deaths, and for tables that put those deaths in perspective and facilitate identifying the patterns associated with the occurrence of those deaths, see Appendix A of this notice.

B. Public concerns regarding those deaths and injuries

NHTSA emphasizes that the vast majority of people, both drivers and passengers, are much safer with an air bag than without. Nevertheless, the current number of deaths and serious injuries attributed to air bag deployment in low speed crashes is disturbing.

There are particular concerns about small children, short-statured women, pregnant women, and elderly individuals. In the aggregate, this group constitutes a significant percentage of the total U.S. population.

C. Other health concerns

A large number of arm injuries have also been attributed to air bag deployment, both in low speed and higher speed crashes. Additionally, numerous individuals have contacted the agency regarding their concerns that a preexisting medical condition, such

as a degenerative bone disease or hearing problem, could be aggravated by air bag deployment. The agency has no real-world data on how air bags aggravate preexisting medical conditions.

III. Overview of other agency responses to problem

On November 22, 1996, NHTSA issued a final rule amending Standard No. 208 and Standard No. 213 to require improved labeling to better ensure that drivers and other occupants are aware of the dangers posed by air bags to children who occupy the front seat. Today the agency is issuing a separate final rule extending, until September 1, 2000, the permission granted to manufacturers to install manual cutoff switches for the passenger-side air bag for vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant seats.

NHTSA has decided to terminate the rulemaking to permit all air bag vehicles to be equipped with manual cutoff switches. This decision to terminate is based on the agency's belief that informed deactivation is a technologically less-intrusive option and that manufacturing resources should not be diverted away from smart air bag technology.

Today NHTSA is also issuing an NPRM proposing to amend Standard No. 208 to permit or facilitate depowering of air bags by 20 to 35 percent across the fleet. NHTSA expects, in the near future, to issue a separate supplemental notice of proposed rulemaking (SNPRM) proposing performance requirements for smart air bags and a phase-in

schedule for requiring installation of those devices.

IV. Statutory prohibition against deactivating air bags; statutory authorization for exemption from prohibition

Manufacturers, distributors, dealers¹ and motor vehicle repair businesses² are prohibited by 49 U.S.C. §30122 from knowingly making inoperative any part of a device or element of design installed on or in a motor vehicle in compliance with an applicable Federal Motor Vehicle Safety Standard. The statute, however, allows the agency to prescribe regulations to exempt a person from the "make inoperative" provision if such an exemption is consistent with safety concerns.

V. Suggestions by public concerning air bag deactivation

In response to the August 1996 NPRM, BMW and Volvo recommended that the agency develop procedures similar to those being used in Europe for temporarily deactivating air bags. According to BMW,

(i)n Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

BMW attached to its comment copies of the approval forms and the

¹ Section 30102 defines "dealer" as "a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale."

² Section 30122(a) defines "motor vehicle repair business" as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." NHTSA has interpreted this term to include businesses that service vehicles with which there is nothing wrong by adding features or components to or otherwise customizing those vehicles.

warning label ("Front passenger airbag deactivated") that is placed in the vehicle to indicate that the air bag has been deactivated.

The "formal obligation concerning deactivation of front passenger airbag" form states that the owner of the vehicle is obliged

(N)ot to modify the airbag system in any way or alter/remove the warning label,

(T)o ensure that every front passenger in the above vehicle is aware that the front passenger airbag has been deactivated,

(T)o have the front passenger airbag reactivated by an authorized BMW service station and

(I)f selling the vehicle, to inform the new owner of the current state of the front passenger airbag and to have over all relevant documentation.

BMW's comments may be found at Docket 74-14, Notice 100, item 40.

In its comment, Volvo stated that

(i)n Europe, due to consumer requests, most manufacturers have developed new car retail service procedures for deactivation and reactivating of passenger side air bags.

This is usually accompanied by clearly visible labels stating if any measures have been taken to change the air bag readiness status. Letters are sent to customers, at regular intervals, to remind them of the system status.

Letters are also sent to new vehicle owners, when the car is sold, to inform them of this.

Volvo's comments may be found at Docket 74-14, Notice 100, item 22.

On October 28, 1996, Ms. DeeAnn DePaul of Tacoma, Washington, filed a petition for rulemaking to provide an exemption under 49 U.S.C. 30122 allowing motor vehicle dealers and repair businesses to respond to requests by vehicle owners to have their driver-side air bag deactivated. This notice grants that petition.

VI. Granting of exemptions from State safety belt use laws

for medical and psychological reasons

State safety belt use laws present a fairly analogous problem of accommodating people with special problems that may make occupant restraint use inappropriate. Virtually all States have provisions in their safety belt use laws for granting medical exemptions to persons who obtain a statement from their physician certifying their patient's medical condition and stating why safety belt use by their patient is inappropriate. Some States also provide for exemptions based on psychological reasons.

**VII. NHTSA's use of prosecutorial discretion
with respect to air bag deactivation**

In 76 instances to date, the agency has exercised its prosecutorial discretion with respect to requests to deactivate an air bag. Eighteen of the cases involved children. NHTSA told vehicle owners whose vehicle lacked a back seat in which to carry an infant or who needed to monitor closely a child with a special medical condition³ that the agency would not regard the temporary deactivation of the passenger-side air bag by a dealer or repair business as grounds for an enforcement proceeding. The agency urged that the air bag be reactivated when the circumstances necessitating its deactivation ceased to exist. Additional requests, based on medical conditions or the absence of a rear seat, are pending.

³ The majority of medical conditions were related to apnea, although exemptions have also been granted for children in wheelchairs, and children with a tendency to spit up and choke.

Similarly, in the other two instances, the agency told two owners that if their physicians concluded that the risks associated with their medical condition⁴ and the deployment of their driver-side air bag exceeded the risks to their safety from the air bag's not deploying, NHTSA would not regard deactivation of the air bag as grounds for an enforcement proceeding. There are a large number of pending requests from women of small stature and a smaller number from adults with various medical conditions.

The volume of these requests for deactivation, and the variety of concerns underlying them, necessitate a rulemaking response, as opposed to individual, case-by-case resolution.

VIII. Proposal to permit deactivation

NHTSA has tentatively decided to exempt dealers and motor vehicle repair businesses conditionally from the "make inoperative" prohibition so that they can deactivate⁵ either or both the driver- and passenger-side air bags at the request of a vehicle owner.⁶

Passenger-side deactivation

While NHTSA expects that smart passenger-side air bags will, within several model years, offer a means for significantly reducing or eliminating the risk of adverse side effects to children from

⁴ The medical conditions were as follows: case 1-emphysema and chronic bronchitis; and case 2-short stature and osteomyelitis.

⁵ The term "deactivate" has been used interchangeably with "disconnect."

⁶ As used in this notice, the term includes lessees whose term of lease is not less than four months. (See 49 U.S.C. §30119(f)(1).)

air bags, the agency believes that, in the interim, steps need to be taken to minimize the possibility that air bags will harm children.

Fortunately, in the vast majority of cases, this can easily be accomplished by placing children in the back seat. This is the safest place for children, regardless of whether a vehicle has a passenger air bag.

However, some vehicles either do not have rear seats or have rear seats too small to accommodate rear-facing infant seats. In addition, NHTSA believes it is necessary to recognize that in a variety of circumstances and for a variety of reasons, parents sometimes need to place children in the front seat of vehicles that have back seats. In some cases, such as situations involving infants with a special medical condition, there may be a need for placing an infant in the front seat. The American Academy of Pediatrics indicated in its comments on the agency's August 6, 1996 NPRM (61 FR 40784) regarding the adverse effects of air bags that cases involving medical conditions are relatively few in number. The National Association of Pediatric Nurse Associates & Practitioners, estimated that as many as 20,000 children under the age of 5, as well as 5,000 infants, require some type of medical technology assistance, but did not suggest how many of these children have conditions requiring them to be carried in the front seat. In still other cases, parents may need to transport a number of children greater than the number of rear seats in their vehicles. Parents

may also permit children older than infants to ride in the front seat because the children strongly desire to do so.

NHTSA believes that, in the situations involving infants in the front seat, deactivation would provide parents a means of ensuring that their children would not be harmed by the air bag. Rear facing infant seats can never be placed in front of an activated passenger air bag without creating a risk of serious injury or death.

Deactivation is more problematical with respect to older children. Most of the children who were older than infants and were killed by air bags were not using any type of occupant restraint.⁷

Most of the rest were using only a lap belt. Moreover, the agency believes that some properly positioned and restrained children will benefit from an air bag in some types of crashes. Nevertheless, the agency recognizes that not all older children are properly restrained and that particularly children not using any restraint at all or using only a lap belt are at some risk of being killed by an air bag. Further, there has been one instance in which a child using a lap and shoulder belt was killed, and three reports of serious injuries to children using lap and shoulder belts. NHTSA also realizes that parents may find it is difficult to keep their children

⁷ For situations in which there is no option other than to place children in the front seat (not including infants in rear facing infant seats who can never safely be put in the front seat in front of an activated air bag), NHTSA recommends the following: (1) The child should be properly restrained. This means, depending on the size of the child, a forward-facing child seat, a booster seat plus a lap/shoulder belt, or a lap/shoulder belt alone (for larger children); (2) The seat should be pushed all the way back, to maximize the distance between the child and the air bag; (3) The child should be sitting with his/her back against the seat back, and with any extra slack removed from the safety belt.

properly positioned and restrained, e.g., some children may tend to remove their shoulder belt and/or move forward away from the vehicle seat back and sit on or near the front edge of the vehicle seat. An activated air bag would create an added safety risk in these situations.

In issuing this proposal, NHTSA does not wish to encourage parents to place children in the front seat. Regardless of whether a vehicle is equipped with a passenger air bag, the rear seat is the safest place for a child to sit. However, the agency believes it is necessary in establishing safety requirements to take into account how people behave in the real world.

NHTSA anticipates that depowering air bags will be the first step in reducing the risk of air bag injuries in future vehicles, but that even a depowered air bag could present a risk to an infant in a rear-facing infant seat or to an unrestrained child who is thrown onto the dash as the result of pre-crash braking. Deactivation would thus continue to be permitted with depowered air bags.

However, the development of smart air bags will significantly reduce the risks of deployment from passenger-side air bags by either preventing them from deploying at all or deploying them safely in situations in which children would otherwise be at risk. Accordingly, the agency proposes that deactivation of a passenger-side air bag would not be permitted if the air bag were equipped with a cutoff switch or meet the criteria established by

the agency for smart air bags.

While some adult passengers may be at risk from air bag deployment, NHTSA emphasizes that it is aware of only one adult passenger, a belted 98-year-old woman, who has been killed by an air bag. Additionally, since since most vehicles are now equipped with a bucket seat for the front passenger, a passenger in that seat would not have to position the seat all the way forward, as some short-statured drivers must in order to drive, and would thus usually be able to keep the seat far away from the dashboard. This should eliminate any potential risks and the need for deactivating the passenger-side air bag for reasons relating solely to stature. This would not be true in the case of a passenger sitting on a bench seat in a vehicle being driven by a person of short stature.

Driver-side deactivation

For the reasons stated in the "Scope of problem" section above, NHTSA sees considerably less need for deactivation of driver-side air bags and anticipates that most drivers should keep their air bags fully operable. The total number of deaths attributed to driver-side air bags is less than two percent of the total number of lives saved, i.e., 19 deaths versus 1500 lives saved. The decline in adult air bag deaths in the last several years is believed to reflect the technological improvements that have been made in driver air bags. The agency encourages all drivers contemplating deactivation to also consider the other people who regularly drive

the vehicle in question. All benefits from air bag usage would be eliminated in exchange for a very small, potential benefit to a driver who may be at risk from deployment.

Nevertheless, some current driver-side air bags pose risks to some drivers, particularly if they are so short-statured that they must sit very near the steering wheel. For this reason, the agency is proposing to permit deactivation of the driver side air bag in any existing vehicle and in any model year 1997 or 1998 vehicle. The agency would analyze future data concerning trends in driver air bag deaths and concerning the overall effects of deactivation on driver safety and determine at a later date whether it is appropriate to extend the deactivation permission beyond model year 1998 vehicles. As noted above, data for the last several years indicates a decline in driver air bag deaths.

Specifics of proposal. The specifics of the proposal are as follows:

The proposed exemption from the "make inoperative" prohibition is a conditional one. A dealer or repair business would be permitted to deactivate an air bag only if the dealer or repair business:

- Provides the vehicle owner with the NHTSA information sheet⁸

⁸ NHTSA requests comments on the information included in Appendix B. NHTSA believes that the sheet should include a discussion of the relative risks faced by discrete groups of occupants such as children in rear-facing infant seats, other children and short-statured female drivers. As to the latter, the sheet discusses alternate ways to reduce the risk, such as by installing pedal extenders and moving the seat back. Note: NHTSA anticipates that as additional data concerning air bag performance are received and analyzed, changes may be made to the information sheet.

attached as Appendix B of this notice concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on.

- Obtains from the vehicle owner a signed, written authorization⁹ identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the vehicle owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.
- For each deactivated air bag, places labels on both sides of the sun visor above the air bag.

The label visible when the sun visor is in a stowed (up) position shall state:

WARNING

Air Bag has been deactivated

See other side

The label visible when the sun visor is in a down position shall state:

WARNING: (Insert "The passenger-side air bag," "The

⁹ NHTSA is attaching a sample form to this notice as Appendix C. The form could be used by the dealer or repair business that deactivates the air bag, or by the manufacturer of the vehicle or other appropriate party. The agency is requesting comment on the form and will make appropriate changes to the form in the final rule.

driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

Both visor labels shall have the word "WARNING" either

in yellow
lettering
on a black
background
or black
lettering
on a yellow
background

- For each deactivated air bag, places a permanent label on the adjacent door jamb.

The label shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated.

The label shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

- Marks in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified mechanic.

- Sends a copy of the signed, written authorization form to the manufacturer of the vehicle.

Each motor vehicle manufacturer shall retain for a period of not less than five years a copy of each authorization form received pursuant to this regulation.

NHTSA requests comments about the appropriateness of these requirements. Among the specific issues are the following:

--Should the agency model any of its requirements on either the practices in Europe regarding air bag deactivation and reactivation or on the practices for granting exemptions to State safety belt use laws?

--Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might be reasonably expected to occur? For example, should deactivation of passenger-side air bags be allowed only in cases in which the vehicle owner needs to carry young children? Should deactivation of driver-side air bags be allowed only in cases in which the vehicle owner or other driver of the vehicle has an acute medical condition, is of short stature, or is elderly?

Would the administrative details involved in implementing these limitations overly complicate the availability of deactivation?

--If it becomes permissible to deactivate air bags, with the result an air bag could be turned off permanently, should the agency permit lesser measures as well, such as a cutoff switch that could be used to turn off air bags temporarily? In a final rule issued in today's Federal Register, the agency has decided that cutoff switches should not be permitted in new vehicles other than in those that do not have a rear seat large enough to carry a rear-facing infant seat. Would permitting retrofit cutoff switches conflict with this decision? Should there be any limitations on the methods of deactivating air bags? For example, should there be a requirement that the deactivation be performed in a manner that facilitates reactivation?

--The agency solicits comments on the contents of the authorization form. Should the authorization form state the vehicle owner is willing to allow labels to be installed?

--In a vehicle in which only the passenger-side air bag is deactivated, should labels be placed on the driver sun visor as well as the passenger sun visor? Such additional labels might be helpful to a driver who is unfamiliar with the vehicle or to a subsequent purchaser of the vehicle.

--While NHTSA has not proposed the size of the message area or the lettering height, it requests comments on whether it

should specify message area or lettering height and, if so, what sizes would be appropriate.

--Should the vehicle manufacturers be required to follow the practice, described by Volvo, of sending periodic reminders to vehicle owners that one or both of their air bags are deactivated and after title to the affected vehicles changes?

--Should dealers and repair businesses be required to retain a copy of the vehicle owner's signed authorization statement? If so, for what period of time?

Additional considerations. NHTSA recognizes that there are potential safety tradeoffs associated with air bag deactivation. The agency emphasizes that only in limited instances would air bag deactivation be, on balance, in the best interests of a driver or passenger. Given the number of air bag deaths to date, the chance of a teenager or adult being killed by an air bag is significantly less than the chance of being involved in a crash in which an air bag would reduce such a person's injuries, whether the individual is belted or unbelted. Moreover, while a fully restrained, forward-facing child can be killed by an air bag, the death of only one fully restrained, forward-facing child has been confirmed as having been caused by an air bag.

However, as discussed above, the agency is dealing with an extraordinary situation. While air bags are providing significant

overall benefits, air bags are also causing fatalities to such an extent that their public acceptability has been put at risk.

Clearly, some solution that addresses that risk must be offered.

As noted above, NHTSA anticipates that the proposed exemption from the make inoperative prohibition would affect the vehicles produced in only a limited number of model years. Driver air bag deactivation would be permitted only for existing vehicles and the vehicles produced in model years 1997 and 1998. Deactivation of a passenger-side air bag would be permitted in any vehicle whose passenger-side air bag was neither equipped with a cutoff switch nor met the criteria for smart air bags set forth in the final rule on labeling. Since the number of child deaths due to air bags is steadily increasing, it would be appropriate to permit deactivation of passenger air bags until smart passenger-side air bags are introduced. This would allow vehicle owners who either face potential risk from deployment themselves or who regularly transport other increased-risk individuals to deactivate one or both air bags.

NHTSA strongly recommends that air bag deactivation be undertaken only in instances in which the vehicle owner believes that the air bag poses an unreasonable and significant risk given that individual's particular circumstances. However, given the administrative complexity that would be associated with reviewing individual applications, the agency is proposing to allow any person to choose to deactivate, without having to demonstrate any particular

need.

Since deactivating totally disables the air bag, thereby eliminating any safety benefit for vehicle occupants not at risk of serious injury due to air bag deployment, deactivating should be sought only if no other option is available. The agency urges all owners who choose to deactivate their air bag to reactivate the air bag once the perceived need for deactivation has abated.

IX. Effective date

In view of the need to provide immediate relief, the agency tentatively concludes that there is good cause to make the proposed regulation effective immediately upon publication of a final rule.

X. Rulemaking analyses and notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures, because of the degree of public interest in this subject. This action would not be economically significant. It would not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except

in instances in which a dealer or repair business agreed to deactivate an air bag. In such an instance, there would be costs associated with such an action per se as well as labeling costs, but it is uncertain who would bear these costs. Based on the Final Regulatory Evaluation for the agency's final rule requiring new, enhanced warning labels relating to air bags, such labels would cost between 15 and 25 cents per vehicle. In addition, motor vehicle manufacturers would have some minor recordkeeping expenses. In view of the analysis in the regulatory evaluation on labels, the agency regards the costs associated with deactivation to be so minimal that a full regulatory evaluation for this notice is not warranted. The agency requests comments about the anticipated costs associated with this proposal. If the agency decides to adopt the proposal as a final rule, then it would discuss the costs in a Final Regulatory Evaluation for this rulemaking.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. While some dealers and repair businesses would be considered small entities, the proposed requirements would not impose any mandatory significant economic impact.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National

Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This proposed rule would 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 of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XI. Comments

NHTSA is providing an abbreviated comment period of 30 days, given the significant public attention given to the adverse effects

of air bags. Moreover, while it is addressing improved labeling, extension of time for manual cutoff switches, and depowering of air bags in separate notices, they are related actions addressing the same problem. The anticipated SNPRM on smart bags is also related.

Only the actions on labeling and the extension of time for manual cutoff switches have reached the final rule stage; the others are still at the proposal stage. Commenters are invited to address the relationships between these actions, e.g., the extent to which one action affects the need for, the potential benefits of or cost effectiveness of, another action.

Commenters are also invited to address alternatives not addressed by these actions. The agency requests that commenters favoring other alternatives specifically provide a comparison of costs, benefits and leadtime.

As indicated above, the agency anticipates publishing in the near future a separate SNPRM to propose performance requirements for smart air bags and to propose a phase-in schedule for requiring these devices. Since that rulemaking action may not be completed until after this action on deactivation, NHTSA requests comments on how to address the definition of smart air bag in the final rule for deactivation.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing

date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend chapter V of Title 49 CFR of the Code of Federal Regulations as follows:

1. Part 595 would be added to read as follows:

PART 595-AIR BAG DEACTIVATION

595.1 Scope.

595.2 Purpose.

595.3 Applicability.

595.4 Definitions.

595.5 Requirements.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

595.1 Scope.

This part establishes conditions under which air bags may be deactivated and associated recordkeeping requirements.

595.2 Purpose.

The purpose of this part is to provide an exemption from the "make inoperable" provision of 49 U.S.C. 30122 and permit motor vehicle dealers and motor vehicle repair businesses to respond to consumer requests to deactivate driver and passenger air bags.

595.3 Applicability.

This part applies to motor vehicle manufacturers, dealers and motor vehicle repair businesses.

595.4 Definitions.

Statutory terms. The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." This term includes businesses that service vehicles without malfunctioning or broken parts or systems by adding features or components to or otherwise customizing those vehicles. The terms *manufacturer* and *dealer*, defined in 49 U.S.C. §30102(a), are used in accordance with their statutory meaning.

595.5 Requirements

(a) A dealer or motor vehicle repair business may deactivate a passenger-side air bag if that air bag

(1) does not have a manual cutoff switch, or

(2) does not meet the criteria in 4.5.5 of §571.208 of this chapter for a smart air bag.

(b) A dealer or motor vehicle repair business may deactivate a driver-side air bag in any vehicle manufactured before September

1, 1998.

(c) A dealer or motor vehicle repair business that deactivates an air bag pursuant to paragraph (a) or (b) of this section shall meet all of the conditions specified in subsection 5 of this section.

(d) A dealer or motor vehicle repair business may deactivate a driver or passenger-side air bag subject to the condition that the dealer or repair business:

(1) Shall provide the vehicle owner with a NHTSA information sheet concerning the circumstances in which deactivation may be appropriate, based upon the comparison of risks in those circumstances of turning the air bag off versus leaving it on.

(2) Shall obtain from the vehicle owner a signed, written authorization identifying the vehicle by make and model, by model year, by VIN number, and the seating position(s) of the deactivated air bag(s). Such authorization shall include an affirmation by the owner that he or she was given and has read a copy of the NHTSA information sheet prior to signing the authorization.

(3) Shall, for each deactivated air bag, place labels on both sides of the sun visor above that air bag.

(i) The label visible when the sun visor is in a stowed (up) position shall state:

WARNING

Air Bag has been deactivated

See other side

(ii) The label visible when the sun visor is in a down position shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(iii) Both visor labels shall have the word "WARNING" either in yellow lettering on a black background or black lettering on a yellow background.

(4) Shall, for each deactivated air bag, place a permanent label on the adjacent door jamb. The label shall state:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated.

The label shall also contain the name and address of the dealer or repair business that deactivated the air bag(s).

(4) Shall mark in the vehicle owner's or service manual (if available) the following warning:

WARNING: (Insert "The passenger-side air bag," "The driver-side air bag" or "Both air bags") of this vehicle has(have) been deactivated. To reactivate, contact an authorized dealer or a qualified motor vehicle repair business.

(5) Shall send a copy of the signed, written authorization form to the manufacturer of the vehicle.

(e) Each motor vehicle manufacturer shall retain, for a period of not less than five years, a copy of each authorization form received pursuant to this section.

L. Robert Shelton
Associate Administrator for
Safety Performance Standards

BILLING CODE: 4910-59P

[Signature page for RIN 2127-AG61 (NPRM)]