OMB receives it within 30 days of publication.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0095; Notice 2]

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

Volkswagen Group of America, Inc. (Volkswagen),[1] has determined that certain 2009 Model Year (MY) passenger cars and multipurpose passenger vehicles (MPV) equipped with indirect Tire Pressure Monitoring Systems (TPMS), do not fully comply with paragraph S4.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* Specifically, Volkswagen estimated that approximately 58,292 2009 MY Audi A6 and S6 model passenger cars, 2010 MY Audi A6, S6, A5, A5 Cabrio, S5, S5 Cabrio, A4 and S4 passenger cars, and 2010 MY Audi Q5 MPV's with indirect TPMS manufactured between October 17, 2008 and April 27, 2010 are affected (hereafter referred to as "noncompliant vehicles"). Volkswagen filed a report dated June, 30, 2010 pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR part 556, Volkswagen has petitioned for an exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act as amended and recodified, 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Volkswagen's petition was published, with a 30-day public comment period, on August 11, 2010, in the **Federal Register** (75 FR 48740). One comment was received from Schrader Electronics, Ltd. (Schrader), a manufacturer of direct-type TPMS systems.[2]

For further information on Volkswagen's petition or this decision, contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0645, facsimile (202) 366–5930.

Volkswagen reported that the noncompliance was brought to its attention on October 15, 2009 and June 8, 2010, by the NHTSA's Office of Vehicle Safety Compliance (OVSC) regarding the results of OVSC's compliance test of a 2009 MY Audi A6 model passenger car to FMVSS No. 138 requirements.

On June 3, 2009, OVSC conducted compliance tests on a MY 2009 Audi A6 four-door passenger car (Audi A6). The Audi A6 was tested to determine compliance with FMVSS No. 138, Tire pressure monitoring systems (TPMS). During testing, it was discovered that the Audi A6's low tire pressure/TPMS malfunction telltale (TPMS combination telltale) failed to remain illuminated as required by FMVSS No. 138.

During the FMVSS No. 138 compliance test of the Audi A6, the agency simulated a system malfunction by installing a smaller test vehicle tire using the procedures in paragraph S6 of FMVSS No. 138. The test of the Audi A6 transpired without incident until after OVSC cycled the ignition off, waited five minutes, cycled the ignition on, and then began to drive the vehicle. The TPMS combination telltale's illumination sequence repeated, as required in FMVSS 4.4(c)(2). The Audi A6 was then driven back to the test facility to replace the incompatible tire. When the Audi A6 was driven at speeds below 12.5 mph, the TPMS combination telltale extinguished while the incompatible tire was still mounted on the vehicle.[3]

According to 49 CFR 571.138, S4.4(c)(2), the TPMS combination telltale must remain continuously illuminated as long as the malfunction exists. Therefore, the premature extinguishment of the TPMS combination telltale is in contravention of 49 CFR 571.138 S4.4(c)(2), because the underlying cause of the malfunction, an incompatible tire mounted on the Audi A6, had not been corrected.

Volkswagen's Analysis of Noncompliance

After reviewing OVSC's test results Volkswagen determined that a noncompliance with FMVSS No. 138 existed in the OVSC tested vehicle as well as the other 2009 and 2010 MY vehicles. Volkswagen stated that the TPMS combination telltale does not remain illuminated during all scenarios required by paragraph S4.4 of FMVSS No. 138. Volkswagen also explained that there is an interrelationship between the TPMS and Electronic Stability Control System (ESC) in the noncompliant vehicles.

Volkswagen stated that when NHTSA tested the Audi A6 by driving it with three of the originally installed 245/40R18 tires and one incompatible 215/35ZR18 tire (7% smaller in diameter), the A6's ESC System (Audi's name for ESC is "Electronic Stability Program") initially detected a malfunction and illuminated the ESC malfunction indicator telltale lamp (ESC telltale lamp). That ESC malfunction detection will also cause the TPMS combination telltale to flash for 60–90 seconds. Both telltale lamps will then remain illuminated during the rest of the ignition cycle independent of vehicle speed. When the ignition is subsequently cycled, both the ESC and TPMS combination telltale lamps will re-illuminate. The nonconforming scenario occurs when the vehicle is maintained at a speed range between 6.2–12.5 miles per hour (mph) for approximately 0.2 mile. Under these conditions, the ESC malfunction logic code could be cleared from the control system, which causes the ESC and TPMS combination telltale lamps to extinguish. If the 6.2–12.5 mph speed range is maintained for a longer period of time after the ESC and TPMS combination telltale lamps extinguish (about 5 minutes), the TPMS acts independently of the ESC. The TPMS will recognize the incompatible tire and set the TPMS malfunction logic code and re-illuminate the TPMS combination telltale lamp. The TPMS combination telltale lamp will stay illuminated independent of any ESC malfunctions and perform as described above for as long as the incompatible tire is mounted.

Volkswagen argues that this noncompliance is inconsequential to motor vehicle safety, and makes several arguments. First, after the TPMS combination telltale lamp is extinguished, as described above, it will immediately re-illuminate if the vehicle is accelerated to a speed above 12.5 mph, and remain on throughout the ignition cycle regardless of the vehicle's speed. Second, the TPMS combination telltale lamp would re-illuminate within about 5 minutes if the speed under 12.5 mph and over 6.2 mph was maintained. Third, given this condition, the function of the TPMS combination telltale lamp would never lead to a "flicker" of the

[1] Volkswagen Group of America, Inc. (Volkswagen) is a vehicle manufacturer incorporated under the laws of the state of New Jersey.

[2] To view the petition, all supporting documents and the comment, log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2010–0095."

[3] Incidentally, the Electronic Stability Control malfunction telltale also extinguished.

light or other such confusing performance of the signal except as required in FMVSS No. 138 S4.4(c). Fourth, Volkswagen argues that operation of the vehicle with an incompatible tire for a short distance under 12.5 mph presents no safety risk. Given that the TPMS combination telltale lamp would re-illuminate promptly upon the TPMS recognizing the incompatible tire at a lower speed after 5 minutes or upon acceleration to over 12.5 mph, the chance is insignificant that a driver might be confused by the signal, or even notice it. Fifth, Volkswagen is not aware of any field or customer complaints regarding this noncompliance.

Volkswagen also informed NHTSA that it has corrected the problem that caused this noncompliance so that it will not be repeated in future production.

In summation, Volkswagen believes that the described noncompliance of its vehicles with the requirements of FMVSS No. 138 is inconsequential as it relates to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision

Requirement Background

Tire pressure monitoring systems provide a warning that indicates to the operator when a tire is significantly under inflated. Public Law 106–414 § 13; 114 Stat. 1800, 1806. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces tire tread life, and may affect the vehicle's handling and stopping ability. When the low tire pressure telltale illuminates, the operator is advised by the owner's manual to stop and check his or her tires as soon as possible, and inflate them to the proper pressure. 49 CFR 571.138 S 4.5(a). As discussed in the TPMS rulemaking, NHTSA expected that a typical vehicle will outlast its original set of tires, and believed that it is important that drivers continue to receive the benefits of the TPMS after the vehicle's tires are replaced. The TPMS rule required the TPMS to include a malfunction indicator that would alert the driver in situations in which the TPMS is unable to detect low tire pressure.[4] As is relevant here, the malfunction indicator is required to detect incompatible replacement tires.[5] This provides useful information to the driver regarding the long-term operability of the TPMS, thereby increasing the overall benefits of the system.[6] The indicator illuminates when tires and rims that are incompatible with the TPMS are mounted on the vehicle, not only to discourage such actions, but also to provide an ongoing reminder that the TPMS is unavailable to provide low tire pressure warnings.[7]

NHTSA's Analysis of Volkswagen's Reasoning

Based on NHTSA's testing and Volkswagen's explanation in its petition, the vehicles encompassed by Volkswagen's Noncompliance Information Report will not perform according to paragraph S4.4 of FMVSS No. 138. Instead, the TPMS combination telltale will illuminate as required until the noncomplying vehicle is turned off. When the vehicle is restarted, the TPMS combination telltale will flash on and off for approximately 65 seconds and then remain illuminated, unless, after the TPMS combination telltale stops flashing, the vehicle is driven at speeds between 6.2 and 12.5 mph. Under this condition, the TPMS combination telltale will extinguish. If the vehicle reaches a speed greater than 12.5 mph, the TPMS combination telltale will again flash on and off for approximately 65 seconds and then remain illuminated for as long as the vehicle continues to run. Similarly, if the vehicle is driven at speeds between 6.2 and 12.5 mph, the TPMS combination telltale will extinguish and then re-illuminate within about 5 minutes of driving, and then will remain illuminated continuously until the ignition is turned off.

NHTSA's understanding is that the TPMS combination telltale will not extinguish and illuminate repeatedly if the 12.5 mph speed threshold is crossed repeatedly. This is in line with Volkswagen's explanation of the system operation which indicates that once the TPMS combination telltale is illuminated after one extinguishment, it will remain "on" until the vehicle is turned off. At most, the TPMS combination telltale will remain off for five minutes.

Volkswagen states that no field or customer complaints have been received regarding the noncompliance. NHTSA has checked its records and also found no such complaints have been received.

NHTSA's Consideration

NHTSA rarely grants inconsequentiality petitions for noncompliances of performance standards.[8] The majority of the 49 CFR Part 556 petitions NHTSA has granted have been for noncompliances with labeling requirements in the FMVSSs. In order for a performance-related petition to be granted, the petitioner must demonstrate that the noncompliance "do[es] not create a significant safety risk."[9] The relevant issue is whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant using a compliant vehicle or equipment.[10]

In its petition, Volkswagen argues that driving a vehicle with an incompatible tire for a short distance at a speed under 12.5 mph presents no safety risk. Volkswagen explained that the TPMS combination telltale lamp would re-illuminate promptly upon the TPMS recognizing the incompatible tire at a lower speed or upon acceleration. A warning to the driver, in the manner required by FMVSS No. 138 must be provided within 20 minutes of cumulative driving time at vehicle speeds above 31.1 mph after the occurrence of a malfunction.

NHTSA Conclusions

First, there appears to be an insignificant safety risk created by the noncompliance. The underlying concern is that the TPMS would not be working, and the TPMS combination telltale would not so indicate. But the TPMS initially detects a malfunction and the TPMS combination telltale illuminates and remains illuminated for the remainder of the drive cycle. It is on subsequent drive cycles that the TPMS combination telltale will extinguish if the vehicle is maintained initially at a speed under 12.5 mph. The telltale illuminates and remains illuminated for the remainder of the drive cycle after about 5 minutes or when the vehicle exceeds 12.5 mph, whichever first occurs. This amounts to an outage of short duration at slow speeds. Significantly, the malfunction indicator would remain illuminated after that.

[4] 70 FR 18136, 18137 (April 8, 2005).

[5] 70 FR 18136, 18137 (April 8, 2005).

[6] 70 FR 18136, 18137 (April 8, 2005).

[7] 70 FR 18136, 18151 (April 8, 2005); See also 70 FR at 18159. (In order to ensure continued long-term functionality of the TPMS, the final rule requires a TPMS malfunction indicator capable of detecting when a replacement tire is installed which prevents continued proper functioning of the TPMS and of alerting the driver about the problem.)

[8] *General Motors Corp.,* 69 FR 19899, 19900 (April 14, 2004); *Cosco, Inc.,* 64 FR 29408, 29409 (June 1, 1999) (NHTSA–99–4033).

[9] *Cosco, Inc.,* 64 FR 29409.

[10] *GM Corp.,* 69 FR 19900; *Cosco, Inc.,* 64 FR 29409.

The driver would lack information that the TPMS system was not functioning due to an incompatible tire for such a limited period of time that there would not be a significant safety risk.[11]

Second, the TPMS combination telltale does not "flicker"[12] off and on in stop-and-go traffic. A flickering telltale, due to its inconsistent pattern of illumination, could confuse drivers and may lead them to ignore the warning provided by the TPMS combination telltale. As Volkswagen demonstrated in its petition, the vehicle's TPMS combination telltale will be extinguished for a period of about five minutes at slow speeds, after which it stays illuminated permanently.

Furthermore, occupants of the noncomplying vehicles would not be exposed to significantly greater risk than if they were occupants in a complying vehicle. The malfunction indicator would illuminate shortly after an incompatible tire is installed and the vehicle was then driven. This should provide a highly relevant warning to the person who had the new tire installed. The indicator would remain illuminated for the remainder of the drive cycle. On subsequent drive cycles, there may be a five-minute interval near the beginning of the drive cycle when the TPMS combination telltale extinguishes. Otherwise, the TPMS combination telltale will be illuminated. If an occupant of a noncomplying vehicle is unaware of a TPMS malfunction at this speed for five minutes, we do not believe that the malfunction would pose a significant risk when compared to an occupant in a compliant vehicle.

NHTSA's Response to Comments

In its comments to the docket, Schrader stated its belief that the petition should be denied because, it alleges, safety deficiencies are inherent in indirect type TPMS and the compliance test procedure used by NHTSA is inadequate for the detection of such deficiencies. Schrader did not specifically address the TPMS combination telltale lamp noncompliance that is the essence of the Volkswagen petition. Instead, Schrader stated that it believes there are more "problems" with the indirect system, and asked NHTSA to undertake a comprehensive review and expand its test procedure.

NHTSA's safety standards and test procedures generally are technology neutral to permit manufacturers to have maximum flexibility in meeting any specified performance requirements. Although Schrader alleges that the test procedure may be problematic, the current test procedure (TP–138–03) follows precisely the testing protocol specific in FMVSS No. 138 and did uncover a noncompliance in the Audi indirect TPMS system.

However, if Schrader still takes issue with the actual test requirements that originate in FMVSS No. 138, it should petition the agency for a rulemaking revision. Requests for rulemaking changes should be submitted in a petition for rulemaking filed under the provisions of 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Noncompliance Orders.*

Because Schrader's comments did not provide any information addressing Volkswagen's telltale noncompliance that is the essence of its petition, Schrader's comments do not support denying the subject petition.

Decision

After a review of Volkswagen's arguments, Schrader's comments, and the final rule preamble language, NHTSA is convinced that Volkswagen has met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA agrees with Volkswagen that this specific noncompliance is inconsequential to motor vehicle safety.

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 58,292[13] vehicles that Volkswagen no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Volkswagen has met its burden of persuasion that the FMVSS No. 138 TPMS noncompliance in the vehicles identified in Volkswagen's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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

Issued on: May 18, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

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[11] We note that TPMSs were not developed to warn the driver of extremely rapid pressure losses that could accompany a vehicle encounter with a road hazard or a tire blowout. As the agency noted, presumably, a driver would be well aware of the tire problem in those situations, and the TPMS would provide little added benefit. 70 FR 53079, 53083 (Sept. 7, 2005).

[12] A "flicker" is different from the standard's S4.4(c)(2) requirement that a combination low tire pressure/TPMS malfunction telltale "flash" for a period of 60–90 seconds when a malfunction is detected.

[13] Volkswagen's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Volkswagen as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 58,292 of the affected vehicles. However, the agency cannot 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.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2011–0125]

Pipeline Safety: Notice of Public Meetings on Managing Challenges With Pipeline Seam Welds and Improving Pipeline Risk Assessments and Recordkeeping

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: Recent pipeline incidents involving seam weld anomalies and gaps in data and recordkeeping are driving a stronger focus on better managing these challenges. PHMSA is holding important public meetings to discuss its review of inspection reporting and incident findings in these areas. In addition, these public meetings are part of PHMSA's efforts to address the Secretary of Transportation's "Call to Action" to address pipeline infrastructure risks, drive for more aggressive safety efforts and to be more transparent when executing these safety measures.

These public meetings are designed to provide an open forum for exchanging information on the challenges associated with pipeline seam welds and improving pipeline risk assessments and recordkeeping. Specifically, these public meetings will facilitate individual, panel and working