

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

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).

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.

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

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").

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)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0112; Notice 1]

Rivian Automotive, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Rivian Automotive, LLC (Rivian) has determined that certain model year (MY) 2022 Rivian Electric Delivery Van (EDV) motor vehicles do not fully comply with Federal Motor

Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Rivian filed a noncompliance report dated October 24, 2022, and amended the report on November 14, 2022. Rivian subsequently petitioned NHTSA (the "Agency") on November 15, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Rivian's petition.

DATES: Send comments on or before June 20, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Syed Rahaman, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7018.

SUPPLEMENTARY INFORMATION:

I. *Overview:* Rivian determined that certain MY 2022 Rivian EDV motor vehicles do not fully comply with paragraph S4.5.1(b)(5)(i) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

Rivian filed a noncompliance report dated October 24, 2022, and amended the report on November 14, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Rivian petitioned NHTSA on November 15, 2022, 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*.

This notice of receipt of Rivian's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. *Vehicles Involved:* Approximately 1,278 MY 2022 Rivian EDV motor vehicles, manufactured between December 10, 2021, and September 27, 2022, were reported by the manufacturer.

III. *Noncompliance:* Rivian explains that a label displaying the subject vehicle's clearance height is affixed to the same side of the sun visor containing the air bag warning label, therefore, the subject vehicles do not comply with paragraph S4.5.1(b)(5)(i) of FMVSS No. 208.

IV. *Rule Requirements:* Paragraph S4.5.1(b)(5)(i) of FMVSS No. 208

includes the requirements relevant to this petition. S4.5.1(b)(5)(i) requires that except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of FMVSS No. 208, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of FMVSS No. 105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed.

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

Rivian states that the air bag warning label that is affixed to the sun visor in the subject vehicles meets the FMVSS No. 208 content requirements and is displayed as intended by the standard. In addition to this compliant label, there is another label affixed to the sun visor that indicates the clearance height of the subject vehicle. Rivian believes that the vehicle clearance height label included on the sun visor is inconsequential to motor vehicle safety because the subject vehicles are exclusively used in a single fleet of delivery vehicles that are driven by professional drivers. Rivian explains that the subject vehicles are walk-in vans in which the driver's seat is the only designated seating position and drivers are required to wear their seatbelts when operating the subject vehicle. Because of the vehicle's intended usage, Rivian believes that the subject noncompliance does not affect the efficacy of the information provided by the air bag warning label.

Furthermore, Rivian contends that the purpose of the requirement that no other information be present with the air bag warning label is to mitigate "the potential for children to be placed at a seating position that is equipped with an air bag and also inform of the precautions the vehicle occupant may take to protect themselves from being injured by a deploying air bag" Rivian believes that this is not a risk because there is no expectation that a child would be present in or around the subject vehicle. Rivian states that if a child were to occupy the driver's seat, the brake transmission shift interlock that is required by FMVSS No. 114 would prevent the child from operating the vehicle, thus there would be no way for the air bags to be deployed.

Additionally, Rivian says that the drivers of the subject vehicles are required to use the seatbelt at all times and the information provided by the air bag warning label is visible, easy to read, and not positioned near the vehicle clearance height label. Therefore, Rivian believes that there is no indication that the addition of the noncompliant vehicle clearance height label would cause a driver of the subject vehicle to confuse the message of the air bag warning label.

Rivian believes that the reason NHTSA determined that no other types of information are allowed to be displayed on the same side of the sun visor as the air bag warning label was to maximize the effectiveness of the label's content by ensuring that there is consistent and uniform messaging to consumers. Rivian quotes NHTSA's decision on a similar petition from Maserati: "The purpose of [the air bag warning label in] FMVSS No. 208 is to reduce the adverse effects of air bags by attracting the attention of vehicle occupants to look for the air bag warning label on the sun visor."¹

Rivian contends that in past inconsequentiality petitions, NHTSA determined "that the manner in which a particular subset of vehicles is used bears upon the inconsequential nature of the air bag warning label noncompliance." Further, Rivian says that NHTSA has previously granted inconsequentiality for a noncompliance involving the placement of the air bag warning label in a vocational vehicle and found that due to the nature and intended use of the affected vehicles, it would be unlikely for children to be placed in the front passenger seating area.²

Rivian adds that NHTSA granted prior petitions in which the air bag warning

label deviated from the exact language that is required by the standard.³ Although those petitions related to the language that was used in the advanced air bag warning label, Rivian contends that NHTSA's rationale for those determinations still applies in the present case.

Rivian states that the subject noncompliance has been corrected for vehicles in production. Rivian says it is not aware of any crash, death, injury, field report, or claims related to the subject noncompliance.

Rivian 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.

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, any decision on this petition only applies to the subject vehicles that Rivian no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles 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 Rivian 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)

Otto G. Matheke, III,
 Director, Office of Vehicle Safety Compliance.
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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Change to Funding Opportunity; Bank Enterprise Award Program

Funding Opportunity Title: Change to Notice of Funds Availability (NOFA) inviting Applications for grants under the Bank Enterprise Award Program (BEA Program).

Action: Change of Application deadline, and change of deadlines to contact BEA Program staff and AMIS-IT Help Desk staff.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.021.

Executive Summary: On April 3, 2023, the Community Development Financial Institutions Fund (CDFI Fund) published a Notice of Funds Availability (NOFA) for grants under the Bank Enterprise Award Program (BEA Program) in the **Federal Register** (88 FR 19715) announcing the availability of approximately \$70 million in grants, pursuant to the Consolidated Appropriations Act, 2023 (Pub. L. 117-328). The CDFI Fund is issuing this notice to amend five deadlines contained within the NOFA. The amended deadlines are listed in Table A below.

TABLE A—REVISED DEADLINES FOR BEA PROGRAM APPLICANTS

Description	Original deadline	Revised deadline
Grant Application Package/SF-424 Mandatory (Application for Federal Assistance).	11:59 p.m. ET on May 2, 2023	No change.
Last day to register a user and organization in AMIS	5:00 p.m. ET on May 2, 2023	No change.
Last day to enter, edit or delete BEA transactions and verify addresses/census tracts in AMIS.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact BEA Program Staff re: BEA Program Application materials.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact CDFI Fund with questions about Compliance or CDFI Certification.	5:00 p.m. ET on May 30, 2023	5:00 p.m. ET on June 6, 2023.
Last day to contact IT Help Desk re: AMIS support and submission of the FY 2023 BEA Program Electronic Application in AMIS.	5:00 p.m. ET on June 1, 2023	5:00 p.m. ET on June 8, 2023.
Submit completed FY 2023 BEA Program Electronic Application	5:00 p.m. ET on June 1, 2023	5:00 p.m. ET on June 8, 2023.

¹ See Grant of Petition of Maserati, 87 FR 54749, September 7, 2022).

² See Grant of Petition of Spartan Motors, 81 FR 87654, December 5, 2016

³ See Grant of Petition to Bentley Motors, 72 FR 71734, December 12, 2007; see also Grant of Petition to BMW, 71 FR 78511, December 29, 2006.