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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2016-0024; Notice 2]**

**Spartan Motors USA, 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:** Spartan Motors USA, Inc. (Spartan), has determined that certain model year (MY) 2013-2015 Utilimaster Vans do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection*. Spartan Motors USA, Inc., filed a defect report dated January 15, 2016. Spartan then petitioned NHTSA on February 12, 2016, for a decision that the subject noncompliance is inconsequential to motor vehicle safety.

**ADDRESSES:** For further information on this decision please contact James A. Jones, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5294, facsimile (202) 366-3081.

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** Spartan Motors USA, Inc. (Spartan), has determined that certain model year (MY) 2013-2015 Utilimaster Vans do not

fully comply with paragraph S4.5.1(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection*. Spartan Motors USA, Inc., filed a report dated January 15, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* for Spartan. Spartan also petitioned NHTSA on February 12, 2016, under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Spartan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on July 21, 2016 in the Federal Register (81 FR 47493). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2016-0024."

**II. Vehicles Involved:** Affected are approximately 910 MY 2013-2015 Utilimaster Vans that were manufactured between July 11, 2014 and December 8, 2015.

**III. Noncompliance:** Spartan explains that the noncompliance occurred during alterations to the subject vehicles. During alterations the sun visors were removed and then reinstalled. As a result of the reinstallation, the required sun visor air bag warning labels are not visible when the sun visors are in the stowed position. Since the sun visor air bag warning labels are not visible when in the stowed position, an air bag alert label is required and therefore does not meet the requirements as specified in paragraph S4.5.1(c) of FMVSS No. 208.

**IV. Rule Text:** Paragraph S4.5.1(c) of FMVSS No. 208 requires in pertinent part:

S4.5.1(c) *Air bag alert label.* If the label required by S4.5.1(b) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6(c) of this standard, and shall comply with the requirements of S4.5.1(c) (1) through S4.5.1(c) (3)...

**V. Summary of Spartan's Petition:** Spartan described the subject noncompliance and stated its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

- (a) Spartan cited the definition of motor vehicle safety as stated in the Safety Act under 49 U.S.C. §30111(a). Spartan also cited 49 U.S.C. §30118(d) under the Safety Act where Congress acknowledges that there are cases where a

manufacturer has failed to comply with a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified.

- (b) Spartan stated that paragraph S4.5.1(b)(2) of FMVSS No. 208 requires an air bag warning label to be installed, at the manufacturer's option, on either side of the sun visor at each outboard seating position equipped with an inflatable restraint. Within that same section of FMVSS No. 208, it states that air bag warning labels are to be installed, at the manufacturer's option, in accordance with Figure 8 or 11 of the standard. Footnotes under Figures 8 and 11, among others, state "Sun Visor Label Visible when Visor is in Down Position."

Spartan submitted a photograph depicting that the air bag warning label on the subject vehicles is visible when the sun visor is in the down position, however, the content is inverted.

- (c) Spartan specified that the content of the sun visor label identifies the risks associated with the placement of children, or child seats, encourages the use of seatbelts, and defers to the owner's manual for information pertaining to the air bags.

Spartan notes that they are a vehicle alterer in this case and are not responsible for the content of the air bag warning label and that they make no assertions relating to compliance of the label. However, during alterations to the vehicles they do remove and reinstall the sun visors.

(d) Spartan also stated that they alter a completed vehicle (in this case a van) to become a vocational vehicle intended to be used as a delivery service vehicle (i.e., a vehicle used to carry parcel packages or other goods.) And although, the altered vehicle would be equipped with two outboard seating positions, delivery service vehicles are typically occupied by the driver who has a specific purpose of delivering goods. Given the nature of, or intended use of, the vehicle, it would be unlikely for children to be placed in the passenger seating area.

(e) Spartan clearly expressed that they do not alter information in the owner's manual although it may provide supplements related to the alterations being made. Spartan says that the content in the owner's manual states that the air bag system is supplemental to the seat belts and further describes risks associated with the air bag system. Furthermore, the information in the owner's manual discusses an air bag warning indicator (tell-tale) of which the vehicle is equipped and its function (this indicator

would provide indication to the driver that the vehicle is equipped with an air bag system.)

- (f) Spartan believes that while the content on the sun visor warning label (although not provided by Spartan) may not be in the upright position to be easily read by the occupants, it is visible with the sun visor in the down position. And even though the label is inverted, the coloring scheme would continue to signify risks associated with the air bag system.

Spartan elaborated by saying that the information within the owner's manual for the affected vehicles expands on potential risks related to the system but also encourages the use of seatbelts as the primary purpose of occupant protection.

Spartan additionally informed NHTSA that on December 8, 2015 containment actions were conducted and all units in control of Utilimaster were inspected and the noncompliance corrected. This included vehicles currently undergoing alterations.

In summation, Spartan believes that given the vocational use of the affected vehicles and information provided in the foregoing that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt Spartan from providing notification of the noncompliances as required by

49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA'S DECISION:**

*Background:* To reduce the adverse effects of air bags, especially for children, NHTSA required newly improved, attention getting labels in a final rule issued on November 27, 1996<sup>1</sup>. The new rule required vehicle manufacturers permanently affix an air bag alert label to the sides of sun visors. See paragraph S4.5.1(c) of FMVSS No. 208. A manufacturer did not have to provide the alert label if the sun visor air bag warning label (see paragraph S4.5.1(b) of FMVSS No. 208) was placed so that it is visible when the visor is in the stowed position. The air bag alert label includes instructions to "flip the visor over" and a pictogram of a rear facing child restraint being struck by an air bag. NHTSA believed that the alert label is more likely to attract the attention of vehicle occupants and induce them to look for the air bag warning label on the other side of the sun visor. See 61 FR 60206.

On May 12, 2000, NHTSA refreshed the content requirements of the air bag warning labels consistent with its intent to require labels for vehicles with advanced air bags.

Additionally, in order to provide consumers with adequate

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<sup>1</sup> The new labels would not be required on vehicles having a "smart passenger-side air bag" (i.e., an air bag that would automatically shut-off or adjust its deployment so as not to adversely affect children)." This provision, however, was removed from the current rule issued on May 12, 2000.

information about their occupant restraint system, NHTSA required manufacturers to provide a written explanation of the vehicle's advanced air bag system in owner's manuals. See 65 FR 30722.

*NHTSA's Analysis:* Acting as an alterer<sup>2</sup>, Spartan removed and re-installed sun visors as part of its modification of the subject vocational vehicles. The vocational vehicles are equipped with advanced air bags at the driver and front passenger seating positions and had compliant air bag warning labels pursuant to paragraph S4.5.1(b)(1) of FMVSS No. 208 permanently affixed to the sun visors, and visible to vehicle occupants when the sun visors were stowed prior to Spartan's modifications.

The left and right-side sun visors are nearly identical in size, have identical attachment points to the headliner and are interchangeable. Apparently, when re-installing the sun visors, Spartan incorrectly placed the left-side visor on the right-side of the vehicle and vice-versa. As a result, the air bag warning labels are no longer visible to vehicle occupants when the sun visors are stowed. Rather, the air bag warning labels are inverted and only visible to vehicle occupants when the sun visors are deployed.

In accordance with paragraph S4.5.1(c) of FMVSS No.208, if the air bag warning label is not visible when the sun visor is

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<sup>2</sup> As defined by 49 CFR § 567.3.

in the stowed position, an additional label (i.e., air bag alert label) conforming to Figure 6(c) of FMVSS No. 208 shall be permanently affixed to the visor and visible when the visor is in the stowed position. Spartan failed to affix air bag alert labels to the sun visors as required<sup>3</sup>.

*NHTSA's Decision:* NHTSA has concluded that the absence of the air bag alert labels affixed to sun visors on subject Spartan vocational vehicles is inconsequential to motor vehicle safety. NHTSA agrees that given the nature and intended use of the subject vocational vehicles, it would be unlikely for children to be placed in the front passenger seating area. The subject vehicles are equipped with OEM installed advanced airbags that have the potential to substantially decrease the risk of injuries and deaths occurring from deployment. In addition, a written explanation of the advanced passenger air bag system is included in the owner's manuals.

This petition is granted solely on the agency's decision that the noncompliance in the subject vehicles is inconsequential as it relates to motor vehicle safety. It is important that all other vehicles subject to these requirements continue to meet them.

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<sup>3</sup> In the petition, Spartan discussed noncompliance to paragraph S4.5.1(b)(2) of FMVSS No. 208 and in their safety recall report, incorrectly cited paragraph S4.5.1 5(c) of FMVSS No. 208. The noncompliance resulting from the absence of air bag alert labels pursuant to paragraph S4.5.1(c) of FMVSS No. 208 is under review in this petition.

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 Spartan 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 Spartan 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)

**Jeffrey M. Giuseppe,**

*Director,*

*Office of Vehicle Safety Compliance.*

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