

We otherwise denied the petitions or, as to certain requests, dismissed them because the agency had subsequently considered or was considering the same requests in the context of another rulemaking proceeding.

In addition, in response to a petition for rulemaking from Porsche, we stated that we were considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers.

## II. Public Comments

We received a total of nine comments, seven from automobile manufacturers and two from automotive suppliers. The automobile manufacturer commenters were the Alliance of Automobile Manufacturers (Alliance) and six individual manufacturers—Subaru, Nissan, Porsche, General Motors (GM), DaimlerChrysler (DC), and BMW. The automotive supplier commenters were Delphi and Elesys.

The commenters were generally supportive of the agency's proposal to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the first stage phase-in. No commenter opposed reducing the percentage from 35 percent to 20 percent, although two, the Alliance and DC, argued that a greater reduction should be provided.

Nissan stated that it supports the proposal. According to that company, the developmental period for the occupant sensing technology needed to meet the requirements has been longer than expected due to the developmental capacity of the suppliers of this technology.

BMW cited the significant technical challenges it has faced and will continue to face and stated that it believes that reducing the first year percentage to 20 percent will provide the necessary flexibility such that sufficiently robust advanced air bag systems will be developed for new vehicles, as well as redesigned for current production vehicles and implemented during the phase-in period.

Subaru stated that a reduction in the first year percentage to 20 percent or less would permit it to focus on applying its manpower during the first year on implementing suppression functionality in a single specific model. That company stated that it would then be in a position to effectively develop systems with some certainty for vehicles in the second and third years.

GM stated that it agrees with the agency's proposed reduction to 20 percent of the percentage of vehicles that must meet the first-year phase-in

requirements for advanced air bags. That company stated that although it would be able to satisfy the original first-year requirement of 35 percent, it agrees with the agency that the proposal "strikes a reasonable balance between ensuring the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested."

The Alliance stated that it is unaware of any new data or information that would lead it to change its conclusion, presented in its petition for rulemaking, that 10 percent is the correct phase-in percentage requirement to be applied to the first year. That organization argued that not every manufacturer could accede to a phase-in percentage greater than 10 percent. The Alliance also stated that, while it did not request modification of the second year percentage in its petition, the continued difficulty in developing effective and reliable air bag systems, including occupant classification sensor technologies, supplier constraints, as well as the significant challenge of implementing these new technologies might require modification of the second year phase-in percentage as well.

DC stated that it believes the agency has underestimated the complexity, difficulty, and technical challenges related to the phase-in of the advanced air bag requirements. It stated that in its quest to develop low risk air bag systems, which it believes minimizes real world risk, and to reduce the uncertainty associated with occupant classification systems in the real world, it continues to uncover additional unforeseen technical development and vehicle integration challenges. DC asked that the agency adopt a percentage of 10 percent for the first year phase-in and reconsider its decision not to reduce the second year percentage from 65 percent to 40 percent, as DC had requested in its petition for rulemaking.

Delphi stated that it has, at this time, both technical capability and production capacity to support its customers in meeting either the original or the proposed advanced air bag regulatory volume requirements. That company stated that its product enables compliance with Standard No. 208's suppression requirements and meets real world reliability requirements in calibrated production seats.

Elesys stated that its product meets or exceeds all applicable Standard No. 208 requirements, as well as the significant real-world durability, configuration, production and installation challenges posed by its automotive customers. That

company stated that it understands why the agency proposed to reduce the first year percentage, but that any further reduction in the required percentages for later years is unnecessary for two reasons: (1) Viable, real-world-tested solutions already exist in the marketplace, and (2) such a delay would unduly penalize companies, including Elesys, who have invested heavily in research and development to meet the implementation schedule as it is currently configured.

Only one commenter, Porsche, commented on the issue of possible adjustments in the alternative phase-in requirements available to limited line manufacturers. That company suggested a revised approach for addressing the issues it had raised in its petition.

## III. Agency Decision

After carefully considering the comments, we have decided, for the reasons discussed in the NPRM, to adopt as final our proposal to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. We are making this change in light of the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We have not yet reached a decision with respect to possible adjustments in the alternative phase-in requirements available to limited line manufacturers, and will address that issue in a separate document, in the near future.

As noted above, no commenter opposed reducing the percentage from 35 percent to 20 percent, although two, the Alliance and DC, argued that a greater reduction should be provided. These commenters recommended that the agency reduce the first year percentage to 10 percent, and DC also recommended that the agency reduce the second year percentage from 65 percent to 40 percent.

While we have considered the recommendations of the Alliance and DC, they have not provided information or analysis demonstrating that a further reduction is necessary, either for the first or second year. We do not disagree with their contention that the advanced air bag final rule poses significant technical challenges, but believe a reduction in the first year percentage from 35 percent to 20 percent adequately addresses that concern. We have had periodic discussions with