

AIR BAG ON/OFF SWITCHES

In a bulletin to all State and Metro New Car Dealer Associations issued November 18, 1997, the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) stated the following:

“ Beginning January 19, 1998, the Federal Government will allow the installation of retrofit air bag on-off switches with proper authorizations from the National Highway Traffic Safety Administration (NHTSA). NHTSA will begin to process requests for on-off switches December 18, 1997. Enclosed are educational materials to provide vehicle owners with accurate information on how they can determine whether they are in a risk group and on how to make an informed choice about whether to have an air bag on-off switch installed. ...

.... These are the same materials we are sending to almost 24,000 new car dealers in the United States to give to consumers seeking information about installing an air bag on-off switch.

..... Car dealers may order additional brochures and request forms from NHTSA, Media and Marketing Division, NTS-21 at the above address [400 Seventh Street, S.W., Washington, D.C. 20590] or by fax at 202-366-3443. We will also loan a set of print negatives or a print disk to organizations who wish to print their own copies.

These materials may be photocopied and are on the NHTSA website at <http://nhtsa.dot.gov> in both English and Spanish. Individuals may order a single copy of the brochure and request form by calling the Auto Safety Hotline: 1-800-424-9393. AAA Clubs and state motor vehicle offices also have supplies of these materials and are making them available to vehicle owners.....”

ADAI issued Bulletin #11 dated December 17, 1997 stating the following:

“ As you all know by now, NHTSA approved new safety regulations which permit a car owner to request and obtain authorization for the installation of an air bag deactivation switch. Customers may have switches installed beginning on January 19, 1998. Fortunately, the regulation does not require a dealer or manufacturer to do the installation. **A dealer may refuse to install the switches.** If you have decided not to install such switches, you need not read the balance of this bulletin. For those dealers who have not decided whether to install air bag on/off switches please read the rest of this bulletin.

The final rule approved by NHTSA does not provide immunity to a dealer who installs an air bag on/off switch. At one point NHTSA considered a standardized waiver of liability against the dealer by the owner in order to obtain authorization for the switch. The waiver provision was questioned by some and eventually was eliminated by NHTSA from the regulation. Instead, NHTSA decided that dealers could privately condition installation of air bag on/off switches upon the customer's execution of a waiver/release agreement. If the customer refused to execute an agreement, the dealer could likewise refuse to do the installation.

Based upon the regulations and NHTSA's comments, you Association decided to develop the enclosed Air Bag On/Off Switch Installation Agreement. Bill Ivers of Stewart & Irwin drafted the agreement for the Association. The agreement provides the dealer with a waiver and release of any claims by the owner, disclaims all warranties and provides indemnification by the customer against third party claims. Thus, if a passenger is injured and brings suit against the dealer, the customer is responsible for defending and paying for the lawsuit. However, please remember that the indemnification provided is only as good as the customer's bank account.

The air bag on/off switch agreement provides substantial protection against claims by your customer. However, the dealer will still be at risk for a third party lawsuit. Due to the potential exposure to third party claims, it is extremely important that you make sure your insurance provides coverage for any claims that may arise out of an air bag related claim. Also, you should determine what limitations or exclusions would apply to such claims. If there is any question as to insurance coverage, we would recommend that you not install any such switch.

We hope this provides you with helpful information on this matter. If you have any questions on the new air bag on/off switch regulation or the enclosed agreement, please contact Tim Dowling at ADAI, 317-635-1441 or Bill Ivers and Stewart & Irwin, 317-639-5454.”