

VOLKSWAGEN

GROUP OF AMERICA

Mr. Jeffrey Giuseppe
Associate Administrator for Enforcement
National Highway Traffic Safety Administration
Attention: Recall Management Division (NVS-215)
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Christopher T. Sandvig NAME
Director, Group Customer Protection Title
Group Customer Protection Department
248-754-5000 Phone
248-754-5093 Fax
May 25, 2018 Date

Subject: Notification of Recall Pursuant to 49 CFR Part 579.11 (a)
2008-2016 MY Volkswagen Tiguan – Front Center Armrest

VOLKSWAGEN GROUP OF AMERICA, INC.
3800 HAMLIN ROAD
AUBURN HILLS, MI 48326
PHONE +1 248 754 5000

Dear Mr. Giuseppe:

Pursuant to 49 CFR 579.11(a), Volkswagen Group of America, Inc. ("VWGoA") hereby submits the following recall that will be conducted overseas.

- (1) Manufacturer Name
Volkswagen
- (2) Date of Determination by the Manufacturer
May 18, 2018
- (3) Identification of Vehicles, Basis of Determination and How Vehicles Differ from Identical or Substantially Similar Vehicles Not Included in Recall

Make: Volkswagen

Line: Tiguan

Model Year: 2008 - 2016

Date of Production: May 2008 – April 2016

Basis for Determination: Inquiry by South Korean Agency MoLIT

Reason U.S. Vehicles Are Not Affected: As the agency is aware, the Korean authority first raised a concern about the armrests in certain VW vehicles during the course of routine vehicle testing. VW explained its view that the armrest is not serving as an interior compartment door and therefore is not subject to the regulatory provision requiring a latch on such doors. Instead, the VW design provides an ergonomic support which assists passengers. An incidental feature of the armrest is that it hovers over certain open storage compartments. A latch is inconsistent with the functional and design intent of the armrest and is not required. VW proactively reached out to NHTSA and discussed this approach, and the benefits of this approach, with the agency. With the knowledge and consent from the Korean authority, VW submitted an interpretation letter to NHTSA's Chief

Counsel for a formal opinion with regard to VW's design. At the time, VW understood that the Korean authority would await NHTSA's opinion before reaching its own conclusion. However, in May 2018, the Korean MoLIT concluded that the vehicles identified above do not comply with the Korean standard, KMVSS Article 111-3. The Korean system does not include a provision for inconsequential treatment. Therefore, VW was left with the choice of voluntarily recalling the subject vehicles or carrying a heavy burden through the Korean administrative process. VW disagrees with the decision of the Korean authority, but has decided not to dispute the decision for the Korean market. In the US, VW continues to believe that the appropriate decision is that the armrest does not constitute an interior compartment door. VW will await the opinion of the agency before determining what, if any, next steps are appropriate. VW's position is fully explained in the attached request for interpretation sent to NHTSA on November 20, 2017.

- (4) Description of Noncompliant Component(s) and Manufacturer
Center armrest by Grammer
- (5) Total Number of Vehicles Affected
Approximately 35,000
- (6) Description of Noncompliance
On Volkswagen vehicles with a front center armrest manufactured within a specific period, Korean authorities assessed a technical non-compliance, related to article 111-3 of KMVSS (interior compartment doors). At the request of the Korean authorities, VW has agreed to describe the issue in its recall submission as follows: "Under the conditions described in the KMVSS111-3 the Arm-Rest may interfere with safe driving in the event of an accident."
- (7) Affected Countries
South Korea
- (8) Type of Campaign
Non-Compliance Recall
- (9) Determination made by:
Volkswagen AG
- (10) Manufacturers Program of Remedy
Retrofitting locking mechanism for center armrest
- (11) Start of Campaign
To be determined
- (12) Identification of Identical or Substantially Similar Vehicles to U.S. Market
Tiguan MY 2008 - 2016

Sincerely,



Christopher T. Sandvig
Director, Group Customer Protection

VOLKSWAGEN

GROUP OF AMERICA

VIA FEDEX
Jonathon Morrison, Esq
Chief Counsel
National Highway Traffic
Safety Administration
1200 New Jersey Ave, S.E.
Washington, DC 20590

Thomas Zorn Name
Senior Director Title
Safety Affairs and Advanced Research Department
248-754-6480 Phone
248-754-4511 Fax
Thomas.zorn@vw.com e-mail

20 November 2017 Date

Dear Mr. Morrison:

VOLKSWAGEN GROUP OF AMERICA, INC.
3800 HAMLIN ROAD
AUBURN HILLS, MI 48326
PHONE: +1 248 714 5000

This letter is submitted on behalf of Volkswagen AG ("VW") and Audi AG ("Audi") with regard to the appropriateness of VW and Audi's longstanding certification of a unique armrest design for the Audi Q5 and VW Tiguan through MY 2017 ("VW and Audi armrests"). The companies in good faith have certified these (and other) armrests to the armrest requirements in FMVSS 201, S5.5, which requires that armrests be constructed to protect occupants during a crash.¹

The armrest design has been utilized in a variety of vehicle models for many years. It has performed effectively and without incident. Recently, however, Korean authorities have questioned whether the armrest is also an "interior compartment door," subject additionally to the requirements of FMVSS 201, S5.3. That is a distinct regulatory provision aimed at protecting occupants who may come into contact with sharp edges or hard door surfaces, such as glove compartments, during an impact. It requires "interior compartment doors" that are placed in specified locations within the vehicle, such as within a console, to remain secured when subjected to certain inertial loads.²

The latch requirement of S5.3 is inapplicable to the VW and Audi armrests. The unique design and utility of the VW and Audi armrests negate the suggestion that the armrests are operating as an

¹ S5.5.1 *General*. Each installed armrest shall conform to at least one of the following: (a) It shall be constructed with energy-absorbing material and shall deflect or collapse laterally at least 50 mm without permitting contact with any underlying rigid material. (b) It shall be constructed with energy-absorbing material that deflects or collapses to within 32 mm of a rigid test panel surface without permitting contact with any rigid material. Any rigid material between 13 and 32 mm from the panel surface shall have a minimum vertical height of not less than 25 mm. (c) Along not less than 50 continuous mm of its length, the armrest shall, when measured vertically in side elevation, provide at least 50 mm of coverage within the pelvic impact area.

² S5.3 *Interior compartment doors*. Each interior compartment door assembly located in an instrument panel, console assembly, seat back, or side panel adjacent to a designated seating position shall remain closed when tested in accordance with either S5.3.1(a) and S5.3.1(b) or S5.3.1(a) and S5.3.1(c). Additionally, any interior compartment door located in an instrument panel or seat back shall remain closed when the instrument panel or seat back is tested in accordance with S5.1 and S5.2. All interior compartment door assemblies with a locking device must be tested with the locking device in an unlocked position.

“interior compartment door.” Indeed, the typical in-use position for these armrests will not be covering the storage area in the console. Nor are the armrests integrated into the console assembly. The VW and Audi armrests are separately designed, tested and manufactured pieces of equipment that are independently mounted to the floor with their own structural support.

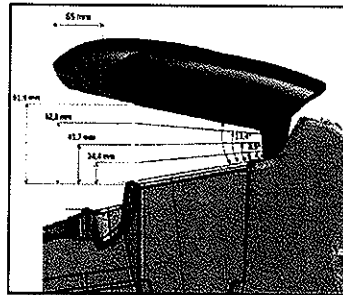
VW and Audi request a formal opinion from the Chief Counsel affirming that the companies’ certification of the VW and Audi armrests to S5.5 is appropriate and that S5.3 is not applicable to this armrest design.³ If the agency’s position, however, is that the VW and Audi armrests should additionally be certified to the latch requirements of FMVSS, S5.3, VW and Audi request that such an interpretation be applied prospectively. There is ample precedent and support for honoring that request.

The VW and Audi Armrests

The VW and Audi armrests have an intentional design driven by their essential function as a support and comfort feature. The unique adjustable design of these armrests allows vehicle occupants to adjust the armrest to fit their preferences and ergonomic needs. The armrests will lock into place, providing enhanced comfort and support for the occupants while the vehicle is being driven.



VW in Typical Use Position



Audi Adjustable Design

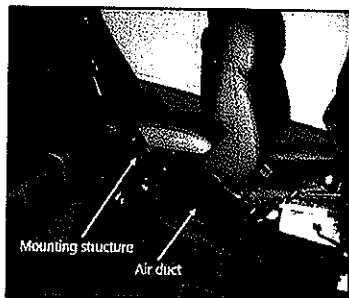


Audi in Typical Use Position

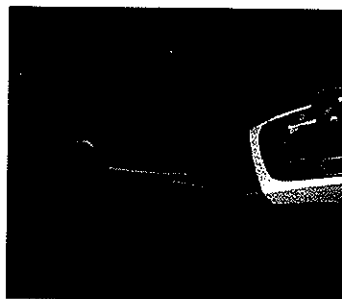
This design differs from the more typical armrest that functions more as an interior compartment door. The typical in-use position of the Audi and VW armrest design is designed to be adjusted upright. By contrast, an armrest that serves more like a door lies flat and simply hinges open or closed to provide access to the personal effects within the storage area. In sum, the functionality of the VW and Audi armrests is incompatible with it being a door since it is used (and intended to be used) as an armrest in an upright, adjusted position.

³ VW and Audi had a good faith basis for certifying the vehicles to the armrest provisions. In a 2004 letter to VW, NHTSA made clear that the agency “does not provide approvals of motor vehicles or motor vehicle equipment,” and that the companies are responsible for making the certification determinations. In that same letter (which related to a sliding interior compartment door), the agency made clear that “the determination of whether an interior compartment door is subject to the requirements of S5.3 is determined by both the location of the door and whether the door fits within the definition of ‘interior department door.’ S5.3 applies only to interior compartment doors located in the instrument panel, console, seat back or side panels adjacent to a designated seating position.” *Letter to Volkswagen of America, Inc. dated 2/12/2004*. Consistent with that direction, VW and Audi determined that the armrests at issue are not “interior compartment doors” because they do not function as a door and are not in or part of the console assembly.

The VW and Audi armrests, moreover, are not functionally part of the console assembly. They are separately designed, tested for durability, and manufactured. They are typically mounted independently to the floor.⁴



Audi Q5 Armrest Without Center Console



Audi Q5 Center Console Without Armrest

The consoles, which have a variety of areas to store or place personal effects, fit under the armrest to fill the space beneath the armrest and the transmission shifter. While most of VW and Audi offerings in the U.S. that come with these armrests also offer a separate center console, the consoles are offered without the armrests in other markets, further demonstrating their separateness.



VW Armrest and Center Consoles are Separate Structures

The Armrests Meet the Safety Purposes of FMVSS 201

The agency has made clear many times that the safety purpose underlying FMVSS 201 is to protect occupants from potential injuries resulting from impacting the vehicle interior during a crash.⁵ FMVSS 201 was part of the initial set of motor vehicle safety standards first proposed in 1967. The intended purpose of the standard was “to afford impact protection for occupants.” The initial standard included the mandate that armrests be constructed of energy absorbing materials in order to provide a soft cushion should an occupant strike it during an impact. *See* 32 Fed. Reg. 2413 (Feb. 3, 1967).

⁴ The consoles are sometimes also bolted to the rear of the armrest structure solely to ensure a consistent and aesthetic look. The consoles, however, are not intended to and do not provide structural support for the armrest.

⁵ “FMVSS No. 201 establishes performance requirements designed to reduce the risk of injury in the event an occupant strikes the interior of a vehicle during a crash.” *See Letters to Hyundai America Technical Center Inc. dated 07/07/2005; Volkswagen of America, Inc. dated 2/12/2004; Roger Fairchild dated 10/18/2001. See also* 60 Fed. Reg. 43031 (Aug. 18, 1995) (“The standard sets requirements for instrument panels, interior compartment doors, seat backs, sun visors, and armrests to lessen injuries to persons thrown against them in crashes”); *Lynco Products dated 08/26/1988* (“the purpose of the requirement is to prevent a door from flying open and striking an occupant in a crash”).

The requirements associated with interior compartment doors, while initially proposed as a separate standard, were added to FMVSS 201 in 1968. The definition of an “interior compartment door” was added to the general provisions of FMVSS 571.3, and covers only those doors “in the interior of the vehicle installed by the manufacturer as a cover for storage space normally used for personal effects.” The added provision, S5.3, requires that such an “interior compartment door” remain secured when subjected to certain inertial loads in order to preclude a hard door or its sharp edges from striking an occupant during a crash.

The agency crafted a specific and purposeful definition of “interior compartment doors.” It did not intend to include all doors in that definition. For example, the agency does not consider ash tray covers, spare tire covers, and cup holder covers to be interior compartment doors. *See Letters to Roger Fairchild dated 10/18/01 (door located in an armrest); Bruce Henderson dated July 3, 1984 (fuse box door); Russ Bornhoff dated Jan. 31, 1986 (outside surface of a fold-down table); George Ball dated 2/27/1990 (cupholders).*

Significantly, there has never been a requirement that every space intended to normally store personal effects have a cover, and indeed there are often many such spaces in motor vehicles where personal items are set without a lid that would otherwise keep them intact in the event of sharp turns or impacts. The lack of any such requirement is consistent with the overall intent of the standard to address the potential for injuries based on contact with structures and components in the vehicle, not with personal items being released into the passenger compartment. In fact, the test procedure for S5.3 is aimed only at ensuring the door remains shut and does not include imposing outward moving load against the door. Section 5.5 and section 5.3 provide different forms of protection for different needs. Both are aimed at ensuring that occupants are not injured if they impact either the armrest or an open interior compartment door during a crash. The assumption underlying the interior compartment door provision is that there may be sharp edges and sides that could harm an occupant. That cannot be the case, however, with regard to an armrest that already provides impact protection. There is simply no safety reason, therefore, to require that an armrest meeting the provisions of S5.5 also meet the provisions of S5.3.

For this reason, the definition of an “interior compartment door,” which was added to the pre-existing regulatory text that already included the armrest requirements, logically refers to a door that is “installed by the manufacturer” with the primary intent for it to cover an open storage area. If the manufacturer provides a door for that purpose that does not meet the armrest requirement, then the door must remain closed to protect the occupants. But if the manufacturer has provided an armrest that already provides impact protection, and, as here, is not intended functionally or structurally to be an “interior compartment door,” the requirements of S5.3 need not, and do not, apply.

The VW and Audi Certification Is Consistent with Prior Interpretations

The agency has addressed the difference between an armrest and an “interior compartment door” in various letters over the years. In 1990, the agency responded to a question from Mercedes-Benz asking about a new armrest design with a built-in compartment to accommodate a car phone. The storage area would be covered by a lift-up lid to afford easy access to the phone. The agency agreed with the company that the lift-up lid would not constitute an “interior compartment door” requiring a latch, and instead would be subject to the armrest provisions in FMVSS 201. Significantly, the agency concluded that the lift-up lid was part of the armrest and not part of any console assembly. Even if the lift-up lid was an “interior compartment door,” according to the agency “only interior compartment doors *located in the listed components* must comply with [the latch requirements]. Since an armrest is not among the listed components, interior compartment doors located in an armrest are not subject to [the latch requirements].” *Letter to Mercedes-Benz of North America, Inc. dated 06/14/1990* (emphasis added). Similarly, here,

since the VW and Audi armrests are not structurally part of any of the listed components, including the console, they too are not subject to the latch requirements.

The agency provided a more detailed explanation in a 2001 letter in which the agency specifically addressed the difference between an armrest and a console. The agency reiterated that a door incorporated into an armrest is not an "interior compartment door" and would not need a latch. The agency noted that while an armrest typically is attached to a seat or to a door panel, a console is a different structure entirely. A console is "a low-lying structure mounted on the floor of and [lying] particularly between the vehicle seats. . . . If the console incorporates a door with a top that closes over a storage space and this space would normally be used for the storage of personal effects, the cover would be an 'interior compartment door,'" subject to the latch requirement. *Letter to Roger Fairchild dated 10/18/2001*. The VW and Audi armrests, in addition to functionally serving to provide support and comfort, are separately mounted to the floor and are not low-lying structures. They are neither stand-alone consoles nor part of the console. Instead, they are independent and rise up and over the console to provide support for occupants.

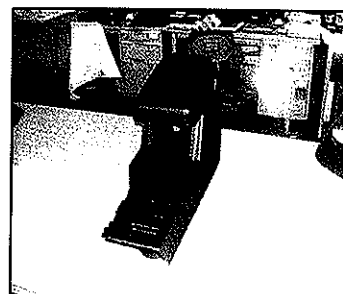
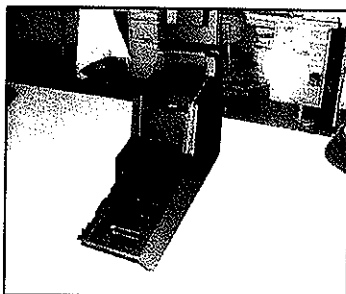
The agency again considered the applicability of these provisions in a 2006 response to a question from Subaru. At issue in the Subaru letter was not a separate armrest, but instead a center console with either an L-shaped or a J-shaped design.⁶ "At the top of the console's vertical segment, there is also a moveable armrest that can pivot on a hinge at the rear so that it is either upright between the two front seat backs or horizontal over the top of the vertical segment of the console." *Letter from Subaru dated June 15, 2006*.

Based on Subaru's description and pictures that were provided, the agency concluded that since the armrest was part of the console assembly and was installed by the manufacturer to serve as a cover for storage space holding personal effects, it was considered an "interior compartment door" subject to the latch requirement. *Letter to Subaru of America dated 11/02/2006*; See also *Letter to Lynco Products dated 08/26/1988* (a "storage console-armrest," where the armrest and the storage console are intended by the manufacturer to be functionally and structurally one component, must meet both the armrest and the interior department door requirements if installed in new motor vehicles).

The Subaru armrest and console designs are fundamentally different from the VW and Audi armrest designs and are intended to provide different functionality. Additional pictures showing these differences are attached at the end of this letter.

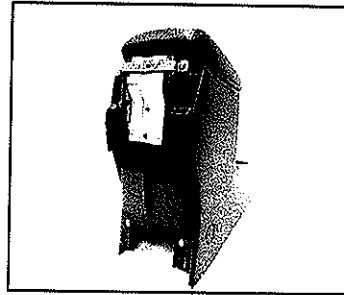
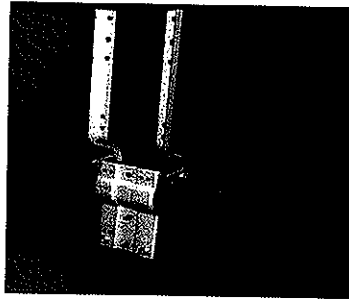
First, as set forth in the Subaru request letter, the Subaru armrest has only two positions – open and closed. As such, it is clearly intended to provide a cover for the storage compartment when closed and to open only to provide access to the storage area. It can operate as an armrest only in the closed position. The VW and Audi armrests, in contrast, adjust to a variety of positions and in each position serves as an armrest. The assumed use position for these armrests is not solely the lowest position, but rather whichever adjustment height is most comfortable for the occupant. In contrast to the Subaru design, the

⁶ Subaru provided the following pictures with its request:

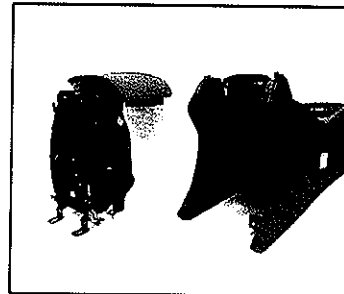


VW and Audi armrests are not “interior compartment doors” that are “installed by the manufacturer as a cover for storage space normally used for personal effects.” *FMVSS 571.3*. They simply reside in the space above the console assembly and some of its storage areas.⁷

Second, the Subaru letter made clear that the armrest was an incorporated feature of the center console. A picture taken of a 2014 Subaru (believed to be the same or similar design as that of the 2006 letter and pictured immediately below) shows the armrest firmly integrated into the console assembly with an integrated structure, integrated hinge assembly and integrated structural support. The VW and Audi armrests (pictured below that), in contrast, have a completely independent structure, have their own integrated hinge assembly not physically attached in any way to the console, and as shown above, are separately mounted to the floor. Unlike the VW and Audi armrests, the Subaru construction is one uniform piece. Neither the armrest nor the console operate independently (see below).



The Subaru Armrest is Hinged Directly to the Console



The Audi Armrest Stands Independently and Attaches Flush to the Console for Aesthetics

The VW and Audi armrests are not part of the console assembly. Because the armrests are not part of the console assembly, even were they to be considered an “interior compartment door,” they are not subject to S5.3.

⁷ While in some VW and Audi vehicles the bottom of the armrest may be flush with the top of the console, in other vehicles there is a small gap between them. The presence of a small gap in some vehicles further evidences that the armrest is not intended to function as a cover for the storage area beneath it. Further, while the *Fairchild* letter suggests that the objective use of an area for storage is more determinative than a company's intent for purposes of deciding whether or not the area should be considered “normally” used for storage, the manufacturer's design intent should be determinative as to whether a door was “installed by the manufacturer as a cover,” for otherwise this language would be superfluous.

Any Different Interpretation Should Be Applied Only Prospectively

The VW and Audi armrests were designed as stand-alone structures independent of the console assembly. VW and Audi have had no reason to doubt their good faith certification of many models as armrests subject only to S5.5. The unique armrest was not designed to act as a cover, and, unlike binary armrests with only two (open and closed positions), does not additionally serve as a cover during general use. The armrest is instead designed to be used in an elevated position that does not cover the storage area beneath it. Nor are the VW and Audi armrests integrated into the console assembly. They are stand-alone features with independent structural and hinge assemblies and are separately tested for durability. Accordingly, the armrests are completely different than Subaru's and more akin to that utilized by Mercedes.

To the extent the agency may decide to take a different view, however, VW and Audi request the agency apply that interpretation prospectively. The agency has taken a similar approach in the past when faced with a good faith interpretation that ultimately was found to be inconsistent with the agency's current view of the regulation. *See, e.g., Letter to The Alliance of Auto Manufacturers dated 05/21/2004* (responding to a request for reconsideration of the agency's interpretation but concluding that "[b]ecause there has been some confusion within the industry regarding the proper interpretation of the term 'daylight opening,' [the agency would] begin enforcing FMVSS No. 104 consistent with [its] May 6, 2003, interpretation beginning with vehicles manufactured on September 1, 2005."). *See also Letter to Pollack Switch Products Division dated July 16, 2013* (amending a previous interpretation and agreeing only to pursue an enforcement action prospectively).

Further, were the agency to take such a position based on any perceived safety need to keep personal effects within the storage compartment (despite the fact that the armrest is typically not used in a flush position covering the storage area), such a position would be inconsistent with the long-standing reasoning underlying these FMVSS 201 provisions to protect occupants from injury arising from contact with the armrest or with the door and not to protect occupants from contact with personal effects within the vehicle or within the storage area.

Were the agency to purport to change the underlying purposes of these provisions, it should do so only prospectively.

Conclusion

VW and Audi have for many years certified this unique offering as an armrest, consistent with its design intent and its function in the vehicle. The VW and Audi armrests are intended to be adjusted upwards and to be used in the most ergonomically comfortable position for each occupant. They are not designed to be a cover for the storage area below. Moreover, VW and Audi armrests are independently supported with their own structure and hinge assembly, and are independently tested for durability. They are not incorporated into and made part of the console assembly. The armrests meet the safety needs identified in FMVSS 201. They have functioned effectively and without incident for many years.

VW and Audi request that the Chief Counsel confirm that the longstanding certification of this feature in the VW and Audi armrests to the requirements of the armrest provision in S5.5 is appropriate and that the additional provisions of S5.3 – consistent with the terms of the regulation and the construction and operation of the armrests – are inapplicable to this armrest design.

Please do not hesitate to call with any further questions, or if a further meeting to discuss this issue would be helpful to your determination.

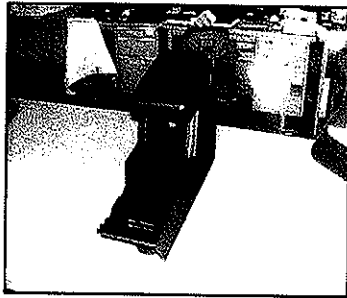
Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Zorn', with a stylized flourish at the end.

Thomas Zorn
Senior Director
Safety Affairs and Advanced Research

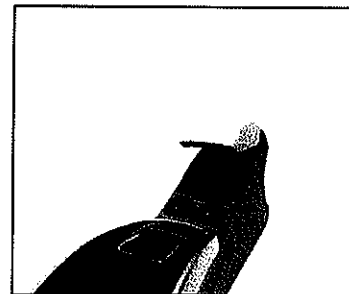
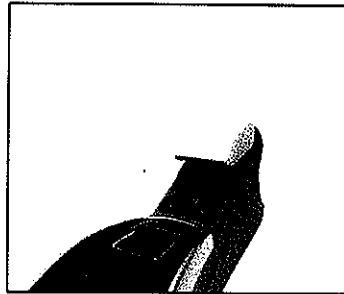
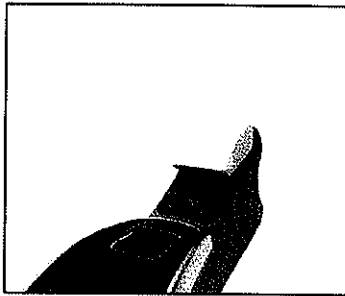
Additional Pictures

Subaru



When driving, the occupant has only one choice – to drive with the Subaru armrest in the fully down position. The armrest remains closed and is opened only to allow access to the storage compartment.

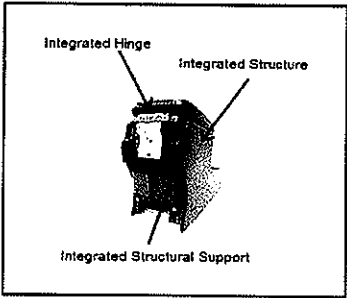
Audi Q5 and VW Tiguan



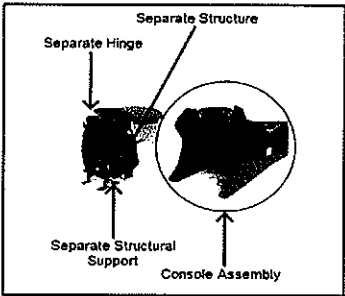
The Audi Q5 and VW Tiguan armrests have numerous, adjustable positions for use when driving. Occupants can choose the height and forward adjustment that is most ergonomically comfortable for them. The armrest is designed exclusively to serve as an armrest – not as a storage area cover.



Subaru Versus Audi Q5



Subaru



Audi Q5