

PM1 vehicle. These functional checks include verifying proper operation of PM1's actuators, and that all valves, regulators, and avionics function normally. During these tests, the PM1 will contain no H<sub>2</sub>O<sub>2</sub>. Blue Origin will pressurize the PM1 helium tanks in the VPF before moving the PM1 to a test landing pad. A separate test, called the "flight readiness test", will be performed after helium pressurization gas has been loaded on the vehicle, just before the vehicle is transported to the test landing pad. At the test landing pad, Blue Origin will load the PM1 with H<sub>2</sub>O<sub>2</sub> and prepare it for flight. After landing, the PM1 and any support equipment will be returned to a safe condition. In accordance with this waiver, under Blue Origin's experimental permit, launch begins with pressurization of gaseous helium bottles of the PM1 in the VPF and includes all preparation until flight of the vehicle.

By statute, for a suborbital rocket, "launch" means to place or try to place a launch vehicle in a suborbital trajectory, and includes activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States. 49 U.S.C. 70102(3). Chapter 701 requires FAA authorization of Blue Origins' launch processing activities, by license or permit, unless waived by the FAA. 49 U.S.C. 70104, 70105. By regulation, launch begins with the arrival of a launch vehicle at a U.S. launch site. 14 CFR 401.5.<sup>1</sup>

#### Waiver Criteria

Chapter 701 allows the FAA to waive the requirement to obtain a license for an individual license or experimental permit applicant if the waiver is in the public interest and will not jeopardize public health and safety, safety of property, national security and foreign policy interests of the United States. 49 U.S.C. 70105(b)(3).<sup>2</sup> To assess the impact on public health and safety and safety of property, the FAA utilizes a four-prong test. The FAA also addresses any aspects of granting a waiver that

<sup>1</sup> Under current FAA policy, the FAA does not require Blue Origin to obtain a part 420 license for the operation of West Texas Launch Site. Nonetheless, although not licensed, West Texas Launch Site is still a launch site. To the extent that the FAA has previously suggested that a license was required for a launch site to be a launch site, see *Waiver of License Requirement for Scaled Composites' Pre-flight Preparatory Activities Conducted at a U.S. Launch Site*, 69 FR 48549, 48550 (Aug. 10, 2004), that reasoning was incorrect.

<sup>2</sup> Chapter 701 does not provide the FAA authority to waive a permit. See *id*; see also 70105a(i).

may have national security or foreign policy implications.

#### Four-Prong Test

The four-prong test used by the FAA was originally raised by the House Science Committee in 1995, as guidance to the FAA to assist it in defining "launch" under chapter 701. H.R. Rep. No. 233, 104th Cong., 1st Sess., at 60 (1995). The guidance suggested that pre-flight activities that should be regulated as part of a "launch", are those that:

1. Are closely proximate in time to ignition or lift-off,
2. Entail critical steps preparatory to initiating flight,
3. Are unique to space launch, and
4. Are inherently so hazardous as to warrant AST's regulatory oversight under 49 U.S.C. chapter 701.

As the FAA noted in the *Scaled Waiver* and in a *Notice of Proposed Rulemaking, Experimental Permits for Reusable Suborbital Rockets*, 71 FR 16251 (Mar. 31, 2006), the four-prong test provides a rational approach to determining whether to waive the license requirement for launch processing. The many hazards involved in the processing of expendable launch vehicles led the FAA to define launch to begin with the arrival of a vehicle at the launch site. *Commercial Space Transportation Licensing Regulations*, 64 FR 19586, 19592 (Apr. 21, 1999); *Scaled Waiver*, 69 FR at 48550. With new technologies involving different hazards, however, the FAA is willing to entertain requests for waivers. There should be no concerns if the license requirement is waived because the nature and existence of hazards are addressed as part of the waiver process.

#### The Four-Prong Test Applied to PM1 Launch Processing

Prior to pressurization of the helium tanks, no launch processing activities meet all four prongs of the test. In particular, no inherently hazardous activities take place until pressurization. Therefore, the FAA finds no activities prior to pressurizing the vehicle helium tanks require oversight by the FAA. Storage of the helium is not hazardous because it is inert and will not react with any other elements or compounds under ordinary conditions. The unfueled PM1 presents no risk of fire, explosion, debris, or unintended motor flight.

#### National Security and Foreign Policy Implications of PM1 Launch Processing

The FAA evaluation conducted in support of Blue Origins' experimental permit concluded that there are no issues relating to U.S. national security

or foreign policy interests that would require the FAA to prevent launches of PM1. Thus, there are no national security or foreign policy issues associated with the launch processing of PM1.

#### Summary and Conclusion

A waiver is in the public interest because it accomplishes the goals of Chapter 701 and avoids unnecessary regulation. The waiver will not jeopardize public health and safety or safety of property because launch processing activities for PM1 up to helium pressurization conducted at West Texas Launch Site are benign to the public. A waiver will not jeopardize national security and foreign policy interests of the United States.

For the foregoing reasons, the FAA has waived the requirement for Blue Origin to obtain a license for Blue Origin's launch processing until helium pressurization conducted at West Texas Launch Site.

Issued in Washington, DC, on October 13, 2006.

**Stewart W. Jackson,**

*Manager, Systems Engineering and Training, Office of the Associate Administrator for Commercial Space Transportation.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26109]

#### Panoz Auto-Development Company; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

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

**ACTION:** Notice of receipt of petition for temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

**SUMMARY:** In accordance with the procedures in 49 CFR part 555, Panoz Auto-Development Company has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer

that has tried in good faith to comply with the standard.<sup>1</sup>

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy Nakama, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

*Comments:* We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site by clicking on "Help and Information" or "Help/Info."

- *Fax:* 1-(202)-493-2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

*Docket:* For access to the docket in order to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

We shall consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we shall also consider comments filed after the closing date.

### **I. Advanced Air Bag Requirements and Small Volume Manufacturers**

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags."<sup>2</sup> The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the

agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of very expensive, low volume, exotic sports cars.

### **II. Overview of Petition for Economic Hardship Exemption**

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Panoz Auto-Development Company (Panoz) has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208 *Occupant Crash Protection* for the Panoz Esperante only. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A copy of the petition<sup>3</sup> is available for review and has been placed in the docket for this notice.

### **III. Statutory Background for Economic Hardship Exemptions**

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus,

<sup>3</sup>In an e-mail message of August 17, 2006 to Otto Matheke, Esq. of NHTSA's Chief Counsel's office, the company waived confidential treatment under 49 CFR part 512 for certain business and financial information submitted as part of its petition for temporary exemption.

<sup>1</sup>To view the application, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter the docket number set forth in the heading of this document.

<sup>2</sup>See 65 FR 30680 (May 12, 2000).

NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

#### IV. Petition of Panoz Auto-Development Company

Panoz states that it seeks a temporary exemption from the advanced air bag requirements of FMVSS No. 208 only for the Panoz Esperante, a two seat convertible sports car. Panoz states that "[t]he Esperante is the only passenger car currently being produced by Panoz, a small volume manufacturer." Panoz states that it is an independent company with no affiliation with other automobile manufacturers.

Panoz began to sell the Esperante in 2001. The Esperante is equipped with a driver and passenger side air bag. The driver side air bag is supplied by Breed and the passenger side air bag is supplied by Ford. Panoz states that it spent a "significant" amount of money in order to comply with the "inflatable restraint requirements" of FMVSS No. 208. Panoz was able to achieve compliance with "extensive technical support" from Visteon, who performed all the calibration work on the air bag restraint module necessary for compliance.

Panoz stated that as a small volume manufacturer with limited financial and technical resources, Panoz must use components produced by large volume manufacturers in order to meet safety and emissions requirements. Panoz stated that it uses components developed by Ford for the Ford Mustang "in order to meet the stringent regulations." Panoz's center tub and chassis design is based on the previous generation Ford Mustang which Panoz referred to as the "SN95 platform." The front chassis structure is engineered to closely simulate the Ford Mustang crash pulse, so that the same air bag restraint module could be used in the Esperante, with some calibration changes, as was used in the Mustang. The interior space in the Esperante was designed to be similar to the Mustang so that the Mustang's relationship of the air bags to the occupants was simulated in the Esperante.

Panoz cited the following issues as contributing to its inability to meet the advanced air bag requirements of FMVSS No. 208 by September 1, 2006:

1. Actual sales of the Esperante have been below projected sales;
2. In Model Year 2005, a complete change was made to the Mustang

platform, resulting in a new S197 Ford platform;

3. A delay in Panoz's receiving the necessary information from Ford regarding the new chassis delayed Panoz's design and development of an Esperante that can meet the advanced air bag requirements;

4. Visteon declared bankruptcy and eliminated their air bag system division; and

5. Advanced air bag systems components and technology are not readily available to small volume manufacturers. Most vendors continue to concentrate on large volume manufacturers.

How these issues have affected Panoz's inability to manufacture the Esperante to meet the advanced air bag requirements are discussed in the following sections on Panoz's statements of economic hardship and good faith efforts to comply.

Panoz states that while its petition is under consideration, it will continue the design and development of the advanced air bag system. Panoz has assigned engineering personnel and test vehicles to this project and Panoz will continue to pursue full compliance with the requirements of FMVSS No. 208.

Panoz estimates that full compliance with FMVSS No. 208 requirements will be achieved before July 2009.

#### V. Panoz's Statement of Economic Hardship

Panoz has estimated that the addition of an advanced air bag system adds approximately \$6,129 to the cost of each vehicle. The impact of the cost increase could reduce vehicle sales by approximately 8 percent. Panoz stated that as a result of development efforts necessary to comply with the "airbag mandate"<sup>4</sup> and with Environmental Protection Agency and California Air Resources Board requirements, the manufacturer's suggested retail price (MSRP) of the Esperante was increased to \$121,326. As a result of the price increase and "prevailing market conditions," Panoz stated that:

actual sales were 35 units below projections in 2001, 30 units below projections in 2002, 72 units below projections in 2003, 77 units below projections in 2004, 73 units below projections in 2005, and 43 units below projections in 2006.<sup>5</sup>

Panoz also stated: "The total production of Panoz Esperante vehicles

<sup>4</sup> Panoz did not specify whether it meant the advanced air bag requirements or other FMVSS No. 208 air bag requirements.

<sup>5</sup> Panoz did not provide actual sales figures or production figures for the Esperante for any of these years.

during the past 12 months was 12 units. The 2006 calendar-year production to date is 10 vehicles."

Panoz stated that the reduced sales revenue forced it to slow the advanced air bag system and other programs and decrease staff by approximately 30 percent.

Panoz cited the following development work and modifications related to the installation of an advanced air bag system in the Esperante. Panoz estimated the total cost to adapt an advanced driver and passenger-side air bag system within one or two years to be \$1,928,000:

1. Develop a new chassis that would generate the same crash pulse as the S197 Mustang (\$380,000);
2. Chassis tooling (\$300,000);
3. Design a new firewall and surrounding structure in order to install the passenger side air bag from the Mustang (\$187,000);
4. Interior tooling (\$150,000);
5. Installation of the Mustang steering column and driver side air bag (\$85,000);
6. Installation of a new passenger side seat with built-in sensors (\$49,000);
7. Modifications to the vehicle wiring harness (\$65,000);
8. Low (8 mph), medium (14 mph) and high (30 and 35 mph) speed barrier crash testing, including the cost of test vehicles and engineering support (estimated at \$235,000);
9. Undercarriage snag, pole snag, rough-road testing, and engineering support, including the cost of test vehicles (estimated at \$98,000);
10. Barrier crash tests with 3 and 6 year old dummies, including the cost of test vehicles (\$228,000);
11. Testing for out-of-position occupant sensing (\$46,000);
12. "Compliance-level" frontal barrier crash tests at 30 mph, including the cost of vehicles (estimated at \$68,000); and
13. Continued evaluation of production vehicles under varying ambient and road conditions (estimated at \$37,000).

Panoz stated that this \$1,928,000 expenditure represents a "significant sum." Panoz stated it must continue the sale of the existing Esperante in order to generate the revenue necessary to fund this project. The three year extension will provide Panoz the time necessary to properly develop the advanced air bag system.

If the exemption is not granted by NHTSA, Panoz stated that it will lose:

approximately \$4,226,120.00 in sales revenues in 2006 based on the projected annual sales of 53 units, \$6,339,180.00 in 2007 based on the projected sales of 60 units, \$10,565,300.00 in 2008 based on the

projected sale of 100 units, and \$15,847,950.00 in 2009 based on the projected sale of 150 units.

Panoz further stated that denial of the petition would cause substantial economic hardship and would keep it from meeting the advanced air bag requirements of FMVSS No. 208, removing the Esperante from the U.S. market and jeopardizing the existence of the company. Panoz stated that a three-year exemption would spread the necessary expenditures to approximately \$1,928,000 divided by thirty-six months or \$53,556 per month, which would be sustained through the sales of Esperante vehicles.

#### VI. Panoz's Statement of Good Faith Efforts To Comply

Panoz states that the delay in the implementation of the advanced air bag system has mostly been due to "circumstances beyond the control of Panoz." Panoz states its intent to "provide the safest vehicles possible to the public." The three year exemption from air bag requirements is necessary to develop and test the "most up-to-date airbag technology available." Panoz states that the Esperante will "remain fully compliant with all FMVSS standards during the extended exemption periods with the sole exception of the advanced air bag requirements of standard 208." Panoz cited the following changes that must be made to the Esperante in order to meet the advanced air bag requirements:

1. Modify the chassis in order to simulate the S197 Mustang crash pulse;
2. Modify the interior in order to simulate the interior space of the S197 Mustang and the relationship between the occupants and air bag system;
3. "Package"<sup>6</sup> the new Mustang seats which are equipped with sensors;
4. "Package" the air bag system sensors, restraint control module and wiring harness;
5. Modify the dashboard and support structure to install the new passenger side air bag;
6. Install new driver side air bag;
7. Perform crash tests to determine compliance with the Federal motor vehicle safety standards; and
8. Validate the advanced air bag system.

Panoz cited the following as a factor in "significantly" delaying its ability to develop an Esperante model that meets advanced air bag requirements. Ford introduced the new Mustang in Model Year 2005. Panoz was scheduled to receive a preproduction Mustang for

development purposes in 2004.

However, Panoz did not receive an S197 Mustang until March 2005, a delay of approximately a year.

Panoz states that between October 2003 and July 2006, it spent 6,292 man-hours and \$630,000 to develop an advanced air bag system for the Esperante. A large portion of these resources went into designing a new "compliant" chassis, with assistance from Multimatic Corporation. The new chassis project began before Panoz received a new Mustang from Ford. Development of this chassis is ongoing.

Panoz states that in addition to expenditures relating to the installation of an advanced air bag system, "during this period" Panoz spent approximately \$1,910,000 towards compliance with other Federal motor vehicle safety standards and with Environmental Protection Agency and California Air Resources Board emissions standards.

Panoz noted that Visteon developed and calibrated the restraint control module installed in the Esperante. Panoz intended to enter into a contract with Visteon to develop the advanced air bag system and recalibrate the air bag restraint module for use with the advanced air bag system. Panoz was unable to use this option when Visteon eliminated its air bag development group.

Panoz stated that it began the process of complying with advanced air bag requirements in October 2003 by entering into a contract with Multimatic Corporation to develop a chassis that simulates the crash pulse and duplicates the interior packaging of the "S197 Mustang." Panoz stated that a large portion of the work has been accomplished, but because of financial constraints and inability to obtain the necessary S197 crash pulse information, the work has not been completed. Panoz stated that the new chassis design dictates that it must develop a proprietary fuel tank that is able to work properly with the Ford On-Board-Diagnostic system, since the new Mustang fuel tank will not fit in the Esperante. The new chassis also required redesign of the suspension system.

#### VII. Panoz's Statement of Public Interest

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Panoz states that the Esperante is a "unique" car produced in the U.S. using "100 percent U.S. components." The powertrain, climate

control system, wiper/washer system, and other major components are purchased from Ford Motor Company. Other parts are purchased from approximately 469 different companies. Panoz currently provides direct employment to "35 full time employees and one part time employee." The Panoz Esperante is currently being sold through 20 dealers in the U.S. Panoz states that in addition to providing direct employment to 36 employees, "at least 500 employees from over 469 different companies remain involved in the Panoz project."

Panoz states that the Esperante remains as the only vehicle developed and sold in the U.S. which uses extensive aluminum technology. Panoz states that the Esperante is the only vehicle to currently use molded aluminum body panels for the entire car. Application of aluminum technology continues to gain strength in the U.S. automotive industry. Several new manufacturers have introduced new models equipped with a large number of aluminum components. Panoz asserts that "[w]ith the probable mandate for greater fuel efficiency, the use of aluminum technology should continue to escalate." Panoz states that the Esperante is a "showcase" for aluminum technology. Several companies have used some of the Esperante technology in their products. Panoz states that it is an innovator in vehicle technology. Panoz further states that it continues to provide the public with "a classic alternative" to current production vehicles.

#### VIII. Request for Comments

We are providing a 15-day comment period, since the advanced air bag requirements became effective for small volume manufacturers on September 1, 2006. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: October 17, 2006.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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<sup>6</sup> Panoz did not explain what it means by the term "package."