

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2008.

**Margaret O'Brien,**

*Chief Information Officer.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0073]

#### **Mosler Automotive; Grant of Application for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208**

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

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

**SUMMARY:** This notice grants the petition of Mosler Automotive (Mosler) for a temporary exemption from certain air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, for the Mosler MT900 for the requested period of thirty months. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

This action follows our publication in the **Federal Register** of a document announcing receipt of Mosler's application and soliciting public comments.

**DATES:** The exemption is effective immediately and remains in effect until May 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ed Glancy or Mr. Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE.,

Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

#### **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" (see 65 FR 30680). 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 before that. However, because the new requirements were challenging, major air bag suppliers have 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 addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a

manufacturer of a high-performance sports car.

#### **II. 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 a 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. Thus, 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, as the first manufacturer, they had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"<sup>1</sup> the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

#### **III. Petition of Mosler and Notice of Receipt**

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Mosler has petitioned the agency for a temporary exemption from certain advanced air bag requirements of

<sup>1</sup> 49 U.S.C. 30113(b)(1).

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. A notice of receipt of this petition was published in the **Federal Register** on June 12, 2007 (72 FR 32392).

Mosler is a U.S. company, organized as a Florida corporation in 1987 and owned by a single American shareholder. Mosler began production in 1998 of high performance sports cars based on an aluminum honeycomb monocoque chassis. This application concerns the MT900 (Model Year 2004, currently the company's only model), which is expected to retail for \$189,900. To date, the MT900 has been in and out of production, with the following numbers of vehicles being produced over the past three years: 12 vehicles in 2004; 8 vehicles in 2005; and 13 vehicles in 2006. Worldwide sales, as of the time of the petition, were 10 race cars, 3 U.S. street cars, and 8 European specification cars. Mosler is requesting an exemption for the MT900 from all of the advanced air bag requirements in S14 of FMVSS No. 208 (we are treating this as a request for an exemption from S14.5.2, Rigid barrier unbelted test), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Mosler stated its intention to have its advanced air bag system ready approximately two and a half years from the date of the petition. Accordingly, the company seeks an exemption from the above-specified requirements of FMVSS No. 208 for a period of two and one half years (thirty months).

#### **IV. Agency Analysis of Mosler's Petition**

Because no comments were received in response to the notice of receipt of Mosler's petition, the agency has based its decision on the arguments and facts put forth in the petition, and on its own expertise.

##### *a. Eligibility*

In order to be eligible for an exemption based on economic hardship, a company must submit information on the requirements put forth in 49 CFR 555.6(a). Among other things, the manufacturer must state how failure to acquire an exemption would cause

economic hardship and the itemized estimated cost to comply with the standard. Additionally, it must provide a description of efforts to comply with the requirement and the estimated date by which compliance will be met (or production of the nonconforming vehicle will cease). Finally, the manufacturer must state the total number of vehicles produced by or on behalf of the manufacturer during the 12-month period prior to the petition, which is not to exceed 10,000. As stated in the notice of receipt of petition, Mosler has presented adequate information in order to be eligible to be considered for an exemption.

As discussed in the petition, Mosler is independently owned by a single American shareholder. The entire organization currently employs 25 people in the U.S. No other vehicle manufacturer has an ownership interest in Mosler. Mosler is an independent automobile manufacturer which does not have any common control nor is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer whose total production has ranged from 8 to 13 vehicles per year over the period from 2004 to 2006. According to its current forecasts, Mosler anticipates that approximately 75 vehicles would be sold in the U.S. during the period of its requested exemption, if its request were granted.

##### *b. Economic Hardship*

Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the company will suffer substantial financial losses unless Mosler obtains a temporary exemption from the advanced air bag requirements. According to the petition, the company has determined that it cannot finance the work necessary to develop and install advanced air bags in its vehicles unless U.S. sales continue. It argued that NHTSA has previously "confirmed the appropriateness of an exemption when the sales of exempted vehicles generate income to fund air bag development expenditures in order to comply with Standard 208 at the end of the exemption period. 64 FR 6736." Mosler stated that it "therefore needs USA exempted-vehicle sales to 'bridge the gap,'" until fully compliant vehicles can be funded, developed, tooled, and introduced for the U.S. market. The petitioner further stated that it "will suffer a significant market loss—the US—in the event it does not receive the exemption."

The petitioner argued that it tried in good faith, but could not bring the

vehicle into compliance with the advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. Mosler has an extremely long product cycle (for the MT900, the company estimates a lifespan of 11 years), which has thus far prevented it from recouping its \$600,000 investment in its current standard air bag occupant restraint system. Over the period 2004–2006, Mosler has had net operational losses totaling over \$3 million, and the retained deficit of the company exceeds over \$23 million. The petitioner stated that significant engineering and funding will be necessary to upgrade to an advanced air bag system, and that the projected overall cost of approximately \$2.0 to \$2.5 million is beyond the company's current capabilities given its current financial condition. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

Mosler stated that the estimated \$2.0 to \$2.5 million in costs associated with advanced air bag engineering and development included research and development, testing, tooling, and test vehicles, as well as internal costs. In its petition, Mosler reasoned that sales in the U.S. market must commence in order to finance this work and that non-U.S. sales alone cannot generate sufficient income for this purpose.

If the exemption is denied, Mosler projects a net loss of over \$3 million during the period from 2007–2009. However, if the petition is granted, the company anticipates a profit of nearly \$6.4 million during that same period. The petitioner argued that a denial of this petition could preclude financing of the project for U.S.-compliant vehicles, a development which would have a highly adverse impact on the company.

Upon review of the financial information submitted by Mosler, the agency has concluded that the company is undergoing significant economic hardship. Our review of documentation provided by Mosler indicates that Mosler has been and continues to operate at a substantial loss, and requires significant ongoing infusions of investor capital in order to stay solvent. NHTSA agrees with Mosler's statement that without the income generated by U.S. sales, it will not have the resources required to develop an air bag that is compliant with the advanced air bag requirements.

##### *c. Good Faith Efforts To Comply*

Mosler began production of the latest version of the MT900 in 2004, at which time it was certified for U.S. road use.

The company has invested over \$23 million on research and development and tooling for the MT900 program. This included \$600,000 to re-engineer the MT900 to include a standard air bag system, which it intended to develop into an advanced air bag system. In that time, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations, except for the advanced air bag provisions of FMVSS No. 208.

According to its petition, even though advanced air bags are beyond its current capabilities, Mosler is nonetheless planning for the introduction of these devices. The company stated that Siemens Restraint Systems GmbH will spearhead this effort, and current plans estimate a cost of between \$2.0 and \$2.5 million (excluding internal costs) and a minimum lead time of 24 months for the advanced air bag project. Mosler stated that the following engineering efforts are needed to upgrade the MT900's standard air bag system to an advanced air bag system: (1) Tooling for prototypes and production vehicles; (2) contractor engineering; (3) air bag system materials; (4) cost of test vehicles; (5) integration of air bag electronics; (6) radio frequency interference/electromagnetic compatibility testing; (7) significant design and development of interior components including seats and dashboard; (8) crash testing; and (9) system validation. In past reviews of petitions for exemption of advanced air bag systems, NHTSA has noted that OEM supplier quotes provided by Siemens to other small vehicle manufacturers, plus those manufacturers' internal development costs, have been in the range of \$2 to \$4 million. The program costs cited by Mosler, therefore, are consistent with previous submissions.

In addition, Mosler emphasized that finding suppliers willing to work with a manufacturer with very low production volumes has proven extremely difficult, and as a result, the company must wait for technology to "trickle down" from larger manufacturers and suppliers. Mosler further stated that, as a small volume manufacturer, the company simply does not have the internal resources to do full U.S. homologation projects without reliance on outside suppliers of advanced engineering technologies. We note that NHTSA has cited this argument previously when granting petitions for exemption from the advanced air bag requirements to other small vehicle manufacturers. See Koenigsegg, 72 FR 17608.

In short, Mosler argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. Mosler stated in its petition that it expects its advanced air bag system to be ready by the end of the requested exemption period, and that an exemption would allow it to maintain continued operations until then.

#### *d. Public Interest Considerations*

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, Mosler argued that the vehicle would be equipped with a fully compliant standard U.S. air bag system (*i.e.*, one meeting all requirements of FMVSS No. 208 prior to implementation of S14). Furthermore, the company emphasized that the MT900 will comply with all other applicable FMVSSs.

NHTSA agrees that granting the exemption will benefit U.S. employment, companies, and citizens, because Mosler is a U.S. company and employs 25 people at its Florida facility. Mosler also argued that denial of the exemption request would have an adverse impact on consumer choice. The agency also agrees that an exemption is unlikely to have a significant safety impact because these vehicles are not expected to be used extensively by their owners, due to their "second vehicle" nature, extreme design and high cost. Given the nature of the vehicle, it is less likely to be used to transport young children than most other vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, Mosler stated that the MT900 has an extremely strong chassis, which is composed of aluminum tubes and composite structural parts. According to Mosler, the vehicle design is such that occupants are effectively placed in a "protective 'cell'" with the chassis structure built around them. The petitioner asserts that this rigid "monocoque" structure stays firm during impact, providing a hard frame and resisting intrusion into the passenger compartment.

#### **V. Summary**

In conclusion, we are granting the Mosler petition to be exempted from portions of the advanced air bag

regulation required by FMVSS No. 208. Specifically, Mosler is exempted from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption does not extend to the provision requiring a 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Mosler must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)(1)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a substantial challenge due to the high cost of development for advanced air bags and the extremely low production numbers of the Mosler automobiles. Because Mosler produces only a handful of vehicles for sale, the estimated \$2.0 to \$2.5 million in development costs represents a significant sum on a cost-per-vehicle basis. Mosler's financial disclosures support its assertion that without the revenue generated by U.S. sales, Mosler will not be able to finance the development of a compliant advanced air bag system.

Based upon the information provided by the petitioner, we understand that Mosler made good faith efforts to bring the MT900 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. As a small specialty manufacturer, the company had a difficult time in gaining access to advanced air bag systems and components (which reflects restraint system suppliers' initial focus on meeting the needs of large volume manufacturers). Additionally, small manufacturers must amortize the development costs of advanced air bags into a much smaller number of produced vehicles, resulting in significantly higher per-vehicle costs. Because Mosler is an independent automobile manufacturer, there was no possibility of technology transfer from a larger parent company that also manufactures motor vehicles. Consequently, given Mosler's dependence on investor capital in order to sustain operations, the financial hardship is particularly acute.

Furthermore, we note that Mosler made several arguments as to the public interest considerations in granting the exemption. First, we note that there will be a limited effect on safety due to this exemption. This is because the MT900 will continue to be equipped with a standard air bag system, fewer than 100 vehicles are expected to be produced during the period of the exemption, and

the MT900 is utilized as a “second vehicle,” due to its extreme design and high cost, and therefore driven a limited amount and generally without child occupants. Second, we believe that allowing production of the MT900 will help further consumer choice, as well as help to preserve the jobs of Mosler’s 25 U.S. based employees.

#### VI. Issuance of Notice of Final Action

In sum, the agency concludes that Mosler has demonstrated good faith effort to bring the MT900 into compliance with the advanced air bag requirements of FMVSS No. 208 and has also demonstrated the requisite financial hardship. Further, we find these exemptions to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption from these provisions would be in the public interest and consistent with the objectives of traffic safety.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture “except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. \_\_\_\_\_” This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle’s certification label.

We note that the text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. Specifically in the case of FMVSS No. 208, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No.

208’s requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, “except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to \* \* \*.” We note that the phrase “Advanced Air Bag Requirements” is an abbreviated form of the title of S14 of Standard No. 208.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Mosler MT900 is granted NHTSA Temporary Exemption No. EX 08–02, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective immediately and continues in effect for thirty months.

Issued on: April 9, 2008.

**James F. Ports, Jr.,**

*Deputy Administrator.*

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**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 183X)]

#### Illinois Central Railroad Company— Abandonment Exemption—in Dyer County, TN

Illinois Central Railroad Company (IC)<sup>1</sup> has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.01-mile line of railroad between milepost 48.51 and milepost 47.50 in Dyersburg, Dyer County, TN. The line traverses United States Postal Service Zip Code 38024.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 28, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 6, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC’s representative: Thomas J. Healey, 17641 S. Ashland Avenue, Homewood, IL, 60430–1345.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 21, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board’s Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption’s effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption’s effective date.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

<sup>1</sup> IC is a wholly owned subsidiary of Canadian National Railway Company.