

for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

#### Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 31 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 77069; 68 FR 1654; 64 FR 27027; 64 FR 51568; 67 FR 67234; 64 FR 40404; 64 FR 66962; 67 FR 17102; 65 FR 45817; 65 FR 77066; 67 FR 71610; 65 FR 66286; 66 FR 13825; 68 FR 13360; 65 FR 78256; 66 FR 16311; 67 FR 76439; 68 FR 10298; 68 FR 10301; 68 FR 19596; 68 FR 19598; 68 FR 33570). Each of these 31 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

#### Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 15, 2005.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's

procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued: May 10, 2005.

**Pamela M. Pelcovits,**

*Office Director, Policy, Plan, and Regulation.*

[FR Doc. 05-9709 Filed 5-13-05; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-20053, Notice 2]

#### Morgan Motor Company Limited Grant of Application for a Temporary Exemption From Part 581 Bumper Standard

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

**ACTION:** Grant of application for a temporary exemption from Part 581 Bumper Standard.

**SUMMARY:** This notice grants the Morgan Motor Company Limited ("Morgan") application for a temporary exemption from Part 581 *Bumper Standard*. 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.<sup>1</sup>

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on January 13, 2005, and afforded an opportunity for comment.<sup>2</sup>

**DATES:** The exemption is effective from May 1, 2005, until May 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** George Feygin in the Office of Chief Counsel, NCC-112, (Phone: 202-366-2992; Fax 202-366-3820; e-mail: [George.Feygin@nhtsa.dot.gov](mailto:George.Feygin@nhtsa.dot.gov)).

<sup>1</sup> To view the petition, please go to: <http://dms.dot.gov/search/searchFormSimple.cfm> (Docket No. NHTSA-2005-20053).

<sup>2</sup> See 70 FR 2462.

## I. Background

Founded in 1910, Morgan is a small privately owned vehicle manufacturer producing approximately 400 to 500 vehicles per year. The vehicles manufactured by Morgan are uniquely styled open top roadsters. In recent years, the only model exported into the United States was the Morgan Plus 8.<sup>3</sup>

Petitioner states that in preparing to replace the Morgan Plus 8 with a new model in the U.S., Morgan sought to use a V6 engine and a manual transmission supplied by Ford Motor Company (Ford). However, it later became apparent that Ford would be unable to supply a suitable engine and manual transmission due to the change in the production plans. The planned Morgan replacement vehicle for the U.S. market could not accommodate an automatic transmission. Because no other alternatives were available, Morgan was unable to proceed with designing a replacement vehicle for the U.S. market. Thus, petitioner stopped selling vehicles in the United States in January of 2004.

After an unsuccessful attempt to manufacture a new vehicle that would replace the Morgan Plus 8, Morgan turned its attention to an existing vehicle designed specifically for the European market, the Morgan Aero 8 (Aero 8).<sup>4</sup> The petition stated, that after prolonged efforts to develop an air bag system and to make other changes to the vehicle, Morgan was able to bring the Aero 8 into compliance with all the Federal motor vehicle safety standards. However, because Aero 8 was not originally intended for the U.S. market and because the petitioner was working on a different vehicle intended for the U.S. market, this latest effort required significant financial expenditures in a short period of time. Petitioner stated that as a consequence, it had not been able to develop bumpers that comply with the requirements of Part 581, *Bumper standard*.

## II. Why Morgan Needs a Temporary Exemption

Petitioner indicated that it has experienced substantial economic hardship, especially in light of decreasing sales and substantial costs incurred in bringing Aero 8 into compliance with FMVSSs. Specifically, Morgan indicated that it spent a total of

<sup>3</sup> See <http://www.morgan-motor.co.uk/>.

<sup>4</sup> A description of the Aero 8 vehicle is attached to the petition and can be viewed online at <http://dms.dot.gov/search/searchFormSimple.cfm> (Docket No. NHTSA-2005-20053).

£8,000,000 (≈ 15,232,811)<sup>5</sup> on developing Aero 8 for the U.S. market. Petitioner's financial submission showed a net loss of £1,947,456 (≈ \$3,739,109) for the fiscal year 2003; a net loss of £582,446 (≈ \$1,118,203) for the fiscal year 2002; and a net gain of £148,425 (≈ \$284,952) for the fiscal year 2001. This represented a cumulative net loss for a period of 3 years of £2,381,477 (≈ \$4,572,664).<sup>6</sup>

According to the petitioner, the cost of making the Aero 8 compliant with the bumper standard was beyond the company's current capabilities because developing and building a compliant bumper requires redesigning the entire body structure of the Aero 8. Morgan estimated the cost of developing a Part 581-compliant bumper to be approximately £3,000,000 (≈ \$5,710,407).

Morgan requested a three-year exemption in order to develop compliant bumpers. Petitioner anticipates the funding necessary for these compliance efforts will come from immediate sales of Aero 8 in the United States.

### III. Why Compliance Would Cause Substantial Economic Hardship, and How Morgan Has Tried in Good Faith To Comply With the Bumper Standard

Petitioner contends that it cannot return to profitability unless it receives a temporary exemption from the bumper standard for the Aero 8. Specifically, if the exemption is granted, Morgan anticipates a net profit of £596,923 (≈ \$1,136,444) for the first year of Aero 8 being sold in the U.S. Morgan also projects that an exemption would have a similar impact in the next year. If the exemption is denied, Morgan will not be able to sell Aero 8 in the U.S. Resulting loss in sales revenue will result in a projected net loss of £2,242,527 (≈ \$4,269,536.37). Morgan indicates that a temporary exemption would provide U.S. Morgan dealers with a source of revenue. Without Aero 8 being available in the U.S., some dealers will find it difficult to remain in business and support existing customers. The petitioner will also be forced to cut back on existing customer support in the U.S.

According to its petition, Morgan examined a number of bumper solutions in order to bring the Aero 8 into compliance with Part 581. First, Morgan considered mounting bumpers from another Morgan vehicle onto Aero 8. However, because of Aero 8's unique

shape, there were no structures that would accommodate suitable bumper mountings without interference with headlamps. Second, Morgan considered installing rubber bumpers. However, they too caused interference with lighting equipment. Finally, Morgan considered foam-based bumpers. This proved to be the only solution that did not result in interference with lighting equipment. However, it required a change to front and rear aluminum body panels and chassis at a cost of approximately £3,000,000.

### IV. Why an Exemption Would Be in the Public Interest

Petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically:

1. Petitioner noted that Aero 8 complies with all Federal motor vehicle safety standards and therefore, the exemption would not increase the safety risks on U.S. highways.

2. Although the Aero 8 bumpers do not comply with Part 581, the cost of bumper repairs is comparable to similarly priced vehicles.

3. Petitioner argues that denial of the petition would limit consumer choices by permanently eliminating Morgan from the marketplace.<sup>7</sup>

4. Morgan remarks that due to the nature of the Aero 8, it will, in all likelihood, be utilized infrequently and each car would not travel in excess of 3,000–4,000 miles annually.

5. Morgan does not anticipate selling more than 100 vehicles annually, and therefore, the impact of the exemption is expected to be minimal.

### V. Comments Regarding the Morgan Application

The agency received ten comments in response to the notice of the application. The commenters were: The Coalition of Small Volume Auto Manufacturers (COSVAM); Stephen Stierman; Peter S. Roberts; Andrew Bradley; W. James Franks; Dave Houser; Mark Jehan; Jeff Smith; Thomas Ellsworth; Carlton Shriver.<sup>8</sup> All commenters were in favor of granting the exemption. COSVAM indicated that current U.S. owners of Morgan vehicles are entirely dependent on Morgan for their continued support in the routine maintenance and restoration. COSVAM also stated that the denial of the petition would restrict consumer choice in the U.S. COSVAM noted that specialized

vehicles like Aero 8 are used only occasionally and do not average more than 4,000 to 5,000 thousand miles annually. The individual commenters urged the agency to grant the exemption because of Aero 8's unique characteristics would make the car a collector's item, and because they believed that Morgan's low production output would have a negligible effect on motor vehicle safety in the United States. Others indicated that they were in favor of the exemption because the purchasers would be aware that their vehicles do not comply with the Federal bumper standards, and would not drive these rare and expensive cars frequently.

### VI. The Agency's Findings

The agency concludes that the Morgan application for a temporary exemption demonstrates that the company has made a good faith effort to bring the Aero 8 into compliance with the Bumper Standard. Morgan has also demonstrated the requisite financial hardship.

Traditionally, the agency has found that the public interest is served in affording continued employment to a small volume manufacturer's work force. The agency has also found that the public interest is served by affording the consumers a wider variety of motor vehicles. In this instance, denial of the petition is likely to put Morgan out of business in the U.S. and cause the company to suffer losses in excess of \$4,000,000. Further, an exemption would assure an adequate supply of spare parts to existing U.S. Morgan owners.

The term of this exemption will be limited to three years and the agency anticipates that the Aero 8 will be sold in very limited quantities. We anticipate that with the help of revenues derived from U.S. sales, Morgan will be able to introduce a fully compliant vehicle by the time this exemption expires.

Because Morgan Aero 8 will be manufactured in limited quantities and because each vehicle is likely to be operated only on a limited basis, the agency finds that this exemption will likely have a negligible impact on the overall safety of U.S. highways. The agency notes that the vehicle subject to this petition complies with all applicable Federal motor vehicle safety standards.

In consideration of the foregoing, it is hereby found that compliance with the requirements of 49 CFR part 581 *Bumper Standard* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is

<sup>5</sup> All dollar values are based on an exchange rate of £1 = \$1.90 as of 4/18/2005.

<sup>6</sup> See April 16, 2005 supplement to the Morgan application (Docket No. NHTSA-2005-20053-13).

<sup>7</sup> As previously discussed, Morgan manufactures unique automobiles for which there is no direct competition or a substitute.

<sup>8</sup> See Docket No. NHTSA-2005-20053.

further found that the granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. § 30113(b)(3)(B)(i), Morgan Aero 8 is granted NHTSA Temporary Exemption No. EX 05-1, from 49 CFR part 581 *Bumper Standard*. The exemption shall remain in effect until May 1, 2008.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: May 9, 2005.

**Jeffrey W. Runge,**  
*Administrator.*

[FR Doc. 05-9707 Filed 5-13-05; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Office of Hazardous Materials Safety; Notice of Application for Exemptions**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** List of applications for exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before June 15, 2005.

**ADDRESS COMMENTS TO:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 10, 2005.

**R. Ryan Posten,**

*Exemptions Program Officer, Office of Hazardous Materials Safety, Exemptions & Approvals.*

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
14183-N .....	PHMSA-21128 ..	LND, Inc., Oceanside, NY	49 CFR 173.302a, 172.101(9A).	To authorize the manufacture, marking, sale and use of non-DOT specification sealed electron tube radiation sensors to transport Division 2.1 and 2.2 materials. (Modes 1, 2, 3, 4, 5.)
14184-N .....	PHMSA-21129 ..	Global Refrigerants, Inc., Denver, CO.	49 CFR 173.301(j) .....	To authorize the one-time, one-way, transportation in commerce of approximately 250 non-DOT specification cylinders of refrigerant gas. (Mode 1.)
14185-N .....	PHMSA-21123 ..	U.S. Department of Energy, Washington, DC.	49 CFR 173.420 .....	To authorize the transportation in commerce of uranium hexafluoride in non-DOT specification cylinders. (Mode 1.)
14186-N .....	PHMSA-21132 ..	Dow Chemical Company, Midland, MI.	49 CFR 179.13 .....	To authorize the transportation in commerce of Class 3 and 8 and Division 2.1 and 6.1 hazardous materials in DOT specification 105J300W tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (Mode 2.)
14187-N .....	PHMSA-21127 ..	Space Systems/Loral, Palo Alto, CA.	49 CFR 173.302a .....	To authorize the transportation in commerce of nickel-hydrogen batteries in non-DOT specification packaging. (Mode 1.)
14188-N .....	PHMSA-21126 ..	Interdynamics, Inc., Tarrytown, NY.	49 CFR 173.304(d), 173.306(a) (3) and 178.33a.	To authorize the manufacture, marking, sale and use of non-DOT specification inner nonrefillable metal receptacles similar to DOT specification 2Q containers for certain Division 2.2 materials. (Modes 1, 2, 3, 4.)
14189-N .....	PHMSA-21124 ..	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 172.302, 172.326, 172.504, 173.242.	To authorize the transportation in commerce of the residue of certain Class 3 materials in non-DOT specification portable tanks without marking and placarding. (Mode 1.)
14190-N .....	.....	Cordis Corporation, Miami Lakes, FL.	49 CFR 172.200, 172.300, 172.400.	To authorize the transportation in commerce of certain Class 3 and 9 materials across a public road without shipping papers, marking or labeling. (Mode 1.)