DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23093]

Ferrari S.p.A and Ferrari North America, Inc. Grant of Application for a Temporary Exemption From S14.2 of Federal Motor Vehicle Safety Standard No. 208

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

ACTION: Grant of Application for a Temporary Exemption from S14.2 of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the Ferrari S.p.A. and Ferrari North America (collectively, ''Ferrari'') application for a temporary exemption from the requirements of S14.2 of Federal Motor Vehicle Safety Standard (''FMVSS'') No. 208, *Occupant Crash Protection*. The exemption applies to the Ferrari F430 vehicle line. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety. The exemption is effective September 1, 2006 and will remain in effect until August 31, 2008.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the application [1] and asked for public comments.[2] We received no comments on the application.

DATES: The exemption from S14.2 of FMVSS No. 208 is effective from September 1, 2006 until August 31, 2008.

FOR FURTHER INFORMATION CONTACT: George Feygin in the Office of Chief Counsel at NHTSA NCC–112, 400 7th Street, SW., Room 5215, Washington, DC 20590 (Phone: 202–366–2992; Fax 202–366–3820; E-mail: *George.Feygin@dot.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

Ferrari applied for an exemption in July of 2005. Ferrari is a well-known small volume manufacturer of high performance automobiles. Its vehicles have been sold in the United States for several decades. Because of high costs of development and because of very small sales volumes, the product cycles of Ferrari vehicles last longer that those of mass-produced vehicles. One of these vehicles is the Ferrari F430, which was originally designed in the mid-1990s, and is scheduled for production until late 2008.

On September 1, 2006 certain ''advanced'' air bag requirements will go into effect for small volume manufacturers. Despite good-faith efforts, Ferrari has been unable to find a practicable way to bring the current F430 into compliance with these new ''advanced'' air bag requirements. Because the sales of F430 account for approximately 85 percent of its U.S. sales, Ferrari's inability to sell that vehicle until the new fully compliant model is introduced would result in substantial economic hardship.

II. Why Ferrari Is Eligible To Petition for a Temporary Exemption

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Ferrari's total production is approximately half of that amount. Fiat S.p.A., a major vehicle manufacturer, holds a 56% interest in Ferrari. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded.[3]

The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a person is a manufacturer of a vehicle by virtue of ownership or control of another person that is a manufacturer. NHTSA has stated, however, that a person may be a manufacturer of a vehicle manufactured by another person if the first person has a substantial role in the manufacturing process that it can be deemed the sponsor of the vehicle. The agency considers the statutory definition of ''manufacturer'' (15 U.S.C. 1391(5)) to be sufficiently broad to include sponsors, depending on the circumstances.

In the present instance, the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and the agency understands based on the information in the petition, that the F430 was designed and engineered without assistance from Fiat. Further, the agency understands that such assistance as Ferrari may receive from Fiat relating to use of test facilities and the like is an arms length transaction for which Ferrari pays Fiat. Accordingly, NHTSA concludes that Fiat is not a manufacturer of Ferrari vehicles by virtue of being a sponsor.

III. Why Ferrari Needs a Temporary Exemption and How Ferrari Has Tried in Good Faith To Comply With FMVSS No. 208

Ferrari states that the F430 was originally designed in the mid-1990s and designated as the 360 model. The petitioner states that the Modena (coupe) version of the 360 was launched in 1999, followed by the Spider (convertible) version in 2000, and the Challenge Stradale in 2003. Production of these vehicles continued until the end of 2004. According to the petitioner, shortly thereafter Ferrari began an aesthetic redesign of the vehicle, relying on the same chassis. Ferrari stated that the redesigned vehicle, the F430, will be produced until late 2008. According to Ferrari, 2008 will mark the end of the life cycle for the 360/F430 vehicle. The petitioner states that the 360 and F430 were designed to comply, and do comply, with all of the FMVSSs in effect at the time the 360 was originally designed. The petitioner stated that the provisions of FMVSS No. 208 established in 2000 (65 FR 30680; May 12, 2000; Advanced Air Bag rule) were not anticipated by Ferrari when the 360 vehicle model was designed.

Ferrari stated that it has been able to bring the F430 into compliance with all of the high-speed belted and unbelted crash test requirements of the Advanced Air Bag rule. However, it stated that it has not been able to bring the vehicle into compliance with the child out-of-position requirements (S19, S21, and S23), and the 5th percentile adult female out-of-position requirements for the driver seat (S25).

Ferrari stated that despite efforts to involve numerous potential suppliers, it has not identified any that are willing to work with the company to develop an occupant classification system that would enable the vehicle to comply with S19, S21, S23, and S25. Moreover, Ferrari stated that it is unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

Ferrari has requested an exemption for the F430 from the advanced air bag provisions in FMVSS No. 208 during model years 2007 and 2008 (*i.e.*, September 1, 2006 through August 31, 2008). Ferrari claims that compliance with the advanced air bag provisions would result in substantial economic

[1] To view the application please got to: *http://dms.dot.gov/search/searchFormSimple.cfm* (Docket No. NHTSA–2005–23093).

[2] *See* 70 FR 71372 (November 28, 2005).

[3] *See* 54 FR 46321; November 2, 1989.

hardship and has filed this petition under 49 CFR 555.6(a).

Ferrari stated that its inability to sell the F430 in the United States through 2007 would lead to a substantial loss of sales and revenue. Ferrari stated that in 2004, sales of the 8-cylinder 360 models, those models being replaced by the F430, accounted for 86 percent of its U.S. sales. Ferrari projected that if it were unable to sell the F430 model in the U.S., it would realize a decrease in net profit of approximately 44 million Euros ($53,000,000) in 2007. Ferrari stated that such consequences demonstrate ''substantial economic hardship'' within the meaning of 49 U.S.C. 30113(b)(3)(B)(i).

Ferrari has requested that additional specific details regarding its finances and financial forecasts be afforded confidential treatment under 49 CFR 512.4, *Asserting a claim for confidential information*. We have determined that this information is to be afforded such treatment.

IV. Why an Exemption Would Be in the Public Interest

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

1. Ferrari states that the vehicle is equipped with a variety of ''active safety'' systems beyond that required by the FMVSSs and that these systems ''significantly improve vehicle handling and enhance controllability.'' Such systems include the Manettino control system, which adjusts vehicle handling and stability to specific driving conditions; the Control Stability System, an electronic stability control system; Electro-Hydraulic Differential, a system that manages torque distribution between the two rear wheels to improve stability; Continuous Damping Control, a system that adjusts to road conditions in order to improve braking; and a ''Sky-Hook'' strategy [4].

2. The petitioner states that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners and a fuel system that complies with the upgraded fuel system integrity requirements in advance of the compliance date.

3. Ferrari notes that the requirements for which the F430 does not comply are primarily designed to protect children from injuries due to air bag deployment. Ferrari argues that it is unlikely that young children would be passengers in the vehicles covered by the exemption.

4. Ferrari states that the F430 will have a manual on/off switch for the passenger air bag. Ferrari also notes that a child restraint system that automatically suppresses the passenger air bag when properly installed would be available upon request of a consumer at no cost.

5. Ferrari states that the F430 was designed and marketed as a high performance, racing type vehicle, and therefore would have negligible on-road operation. Thus, Ferrari states the impact of the exemption is expected to be minimal.

6. Ferrari argues that granting the exemption would increase choices available to the U.S. driving population in the high-performance vehicle segment.

7. The petitioner argues that granting the exemption would maintain the viability of U.S. firms associated with the sales and maintenance associated with the F430. Ferrari projects the F430 to be a major part of Ferrari sales in the U.S. during the two-year period for which an exemption has been requested.

V. Agency Decision

We are granting the petition. The ''Advanced Air Bag'' requirements present a unique challenge because they would require Ferrari to completely redesign its vehicles two years before it planned to do so. While the petitioner was aware of the new requirements for some time, it continued its good faith efforts to bring the F430 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to design a new vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006. If the petitioner is forced to discontinue selling the current model, the resulting loss of sales would cause substantial economic hardship. In addition to loss of prospective sales in the United States, its biggest market, Ferrari would also be unable to recoup all of its investment into developing the current model.

While some of the information submitted by Ferrari has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Ferrari's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.
4. List of air bag suppliers that were approached in hopes of procuring necessary components.
5. Explanation as to why components from newer, compliant vehicle lines could not be borrowed.
6. Corporate balance sheets for the past 3 years, and projected balance sheets if the petition is denied.

We note that Ferrari is a well-established company with a small but not insignificant U.S. presence and we believe that an 85 percent sales reduction would negatively affect U.S. employment. Specifically, reduction in sales would likely affect employment not only at Ferrari North America, but also at Ferrari dealers, repair specialists, and several small service providers that transport Ferrari vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. As discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the F430 features several advanced ''active'' safety features. These features are listed in the petitioner's application.[5] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We also believe this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 2,000 for the duration of the exemption), and because Ferrari vehicles are not typically used for daily transportation. Their yearly usage is substantially lower compared to vehicles used for everyday transportation.

In addition, Ferrari has voluntarily included two alternative means for passenger air bag suppression for the protection of children being transported in the right front seating position. First,

[4] The ''Skyhook'' strategy detaches the vehicle body, as a sprung mass, from what is taking place on the axles and wheels by calming the movement of the body * * * In addition to improved comfort, this provides for optimal control of the vehicle body at all times.'' Page 10 of the petition.

[5] *See* page 10 of the petition.

Ferrari has provided a manual on/off switch. This will enable the passenger air bag to be manually turned off when a child is present. Second, Ferrari offers a special child restraint system that automatically suppresses the passenger air bag when it is properly installed in the right front passenger seat. Ferrari offers this automatic child restraint system at no cost to the consumer, upon request. Both of these features offer passenger air bag suppression capability in the event a child needs to be transported in the right front seating position, and support our findings that this exemption will have negligible impact on motor vehicle safety.

We note that the agency examined the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) data for years 1995–2004. These data indicate that over the past 10 years, there were no NASS CDS cases, and two FARS cases involving 360 Modena or the F430. Neither of the two FARS cases involved children or small women. Thus, there were no children or small women involved in crashes of Ferrari 360 or F430 included in these databases.

We also note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the 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 Standards 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.

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. In this case, 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 S14.2, 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 S14.2 without an indication of its subject matter would be of little use to consumers, since they would not know the subject of S14.2. For these reasons, we believe the two labels should read, in relevant part, ''except for S14.2 (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. We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Ferrari has demonstrated good faith effort to bring the F430 into compliance with S14.2 of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the requirements of S14.2 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 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), Ferrari F430 is granted NHTSA Temporary Exemption No. EX 06–1, from S14.2 of § 571.208. The exemption is effective September 1, 2006 to August 31, 2008.

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

Issued on: May 17, 2006.

Jacqueline Glassman,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34812 (Sub–No. 2)]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and BNSF Railway Company (BNSF), has agreed to grant BNSF temporary overhead trackage rights, to expire on May 15, 2006, over UP's Chester Subdivision between milepost 131.3, Rockview Junction, MO, and milepost 0.0, Valley Junction, IL, a distance of approximately 132 miles. The original grant of temporary overhead trackage rights exempted in *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34812 (STB served Jan. 6, 2006), covered the same line, but expired on March 21, 2006. The expiration date was extended to April 30, 2006 in the (Sub–No. 1) proceeding in this docket. The purpose of this transaction is to modify the temporary overhead trackage rights previously exempted by extending the expiration date from April 30, 2006, to May 15, 2006.

The transaction was scheduled to be consummated on May 9, 2006, the effective date of this notice. The temporary overhead trackage rights will allow BNSF to continue to bridge its train service over UP's Chester Subdivision while BNSF's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34812 (Sub–No. 2), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–7762 Filed 5–19–06; 8:45 am]

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