

LIST OF APA MEMBERS COVERED BY EXEMPTION FROM 14 HOUR RULE IN HOURS OF SERVICE FOR DRIVERS
REGULATION—Continued

Company name	Address	Address 2	DOT #
Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
Young Explosives Corp	P.O. Box 18653	Rochester, NY	450304
Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167

[FR Doc. E7-9841 Filed 5-21-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2006-26424; Notice 2]

Maxon Industry, Inc. DBA Maxonlift Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance

Maxon Industry Inc. DBA Maxonlift Corp. (Maxonlift) has determined that certain wheelchair lifts that it produced in 2005 and 2006 do not comply with paragraph S6.4.7.3 of 49 CFR 571.403, Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform Lift Systems for Motor Vehicles*. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Maxonlift has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports." Notice of receipt of the petition was published, with a 30 day public comment period, on December 13, 2006 in the **Federal Register** (71 FR 74996). The National Highway Traffic Safety Administration (NHTSA) received no comments. To view the petition and all supporting documents, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter Docket No. NHTSA-2006-26424.

Affected are a total of approximately 197 Model WL-7 and WL-7A wheelchair lifts produced by Maxon between April 1, 2005 and May 30, 2006. Specifically, paragraph S6.4.7.3 of FMVSS No. 403 requires:

The deployed wheelchair retention device(s) must be capable of sustaining 7,117 N (1,600 lb force) when tested in accordance with S7.13. No separation, fracture, or breakage of the wheelchair retention device may occur as a result of conducting the test in S7.13.

On the subject wheelchair lifts, the outer barrier wheelchair retention device does not comply. In NHTSA's compliance test on the Maxon lift, the outer barrier sustained 5,502 N (1,237 lb. force). Bending occurs on the locking

bracket attachments and in the ramp extrusion, and potentially the outer barrier can unfold or break. Maxonlift has corrected the problem that caused these errors so that they will not be repeated in future production.

Maxonlift believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Maxonlift states:

For the units built with seat belts [all except for 63] we have an electronic feature that does not allow the unit to travel up and down without the seat belts fastened. The seat belt is an added restraint that takes force off of the outboard roll stop. If an electric wheelchair is accidentally moved forward it will hit the seat belt first keeping the person in place. We have had zero failure reports or warranty claims relating to an outboard roll stop failure.

With respect to the lifts that were provided with seat belts and an associated electronic feature that prevents lift platform up and down travel unless the seat belt is fastened, NHTSA agrees with Maxonlift that the noncompliance of the outer barrier is inconsequential to motor vehicle safety. NHTSA does not agree with Maxonlift with regard to the remainder of the lifts that do not have seat belts (secondary wheelchair retention devices). Lifts without seatbelts would rely solely on the inadequate noncompliant outer barrier to prevent a wheelchair from rolling off the lift platform. A failure of the outer barrier would therefore present a potential for severe injury to both the wheelchair occupant and attendants.

On the basis of the foregoing, NHTSA has determined that Maxonlift has adequately demonstrated that, under the specific facts and circumstances presented here, the noncompliance with FMVSS No. 403 in the lifts *with seat belts* is inconsequential to motor vehicle safety and no further action is warranted. Conversely, the noncompliance in the lifts *without seat belts* is not inconsequential.

Accordingly, Maxonlift's petition for an exemption from the duty to recall these noncompliant lifts equipped with seat belts is granted in part. However, the case of the noncompliant lifts without seat belts, the petition is denied

and Maxonlift must notify according to 49 U.S.C. 30118 and remedy according to 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 16, 2007.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E7-9858 Filed 5-21-07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2006-26109]

Panoz Auto-Development Company; Grant 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: Grant of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection.

SUMMARY: This document grants the application of Panoz Auto-Development Company for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The exemption applies to the Panoz Esperante. 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 effect on motor vehicle safety.

The notice of receipt of an application for temporary exemption from Panoz was published in the **Federal Register** on October 20, 2006. We received no comments in response to the publication.

DATES: The exemption for the Panoz Esperante from the specified provisions of FMVSS No. 208 is effective immediately and remains in effect through August 31, 2009.

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.

SUPPLEMENTARY INFORMATION:

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."¹ 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 addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a low volume, exotic sports car.

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 was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

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, 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.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"² 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.

IV. Petition of Panoz Auto-Development Company

Panoz stated 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 stated that "[t]he Esperante is the only passenger car currently being produced by Panoz, a small volume manufacturer." Panoz stated 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 stated 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, which 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.

¹ See 65 FR 30680 (May 12, 2000).

² 49 U.S.C. 30113(b)(1).

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 Ford S197 Mustang 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 stated 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 estimated 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"³ and with Environmental Protection Agency and California Air Resources Board requirements, the manufacturers' 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 2006.⁴

Panoz also stated: "The total production of Panoz Esperante vehicles 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
12. 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 is to "provide the safest vehicles possible to the public." The three year exemption from the advanced 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"⁵ 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

³Panoz did not specify whether it meant the advanced air bag or requirements or other FMVSS No. 208 air bag requirements.

⁴Panoz did not provide actual sales figures or production figures for the Esperante for any of these years.

⁵Panoz did not explain what it means by the term "package."

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 the 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 stated 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 stated 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 stated 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 stated 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 stated that the Esperante remains as the only vehicle developed and sold in the U.S. which uses extensive aluminum technology. Panoz stated 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 asserted that "[w]ith the probable mandate for greater fuel efficiency, the use of aluminum technology should continue to escalate." Panoz stated that the Esperante is a "showcase" for aluminum technology. Several companies have used some of the Esperante technology in their products. Panoz stated that it is an innovator in vehicle technology. Panoz further stated that it continues to provide the public with "a classic alternative" to current production vehicles.

VIII. Federal Register Notice of October 20, 2006

In the **Federal Register** of October 20, 2006 (71 FR 62038), we published a notice announcing receipt of an application from Panoz for a temporary exemption from the advanced air bag requirements of FMVSS No. 208 for the Esperante. We invited public comment on Panoz's application. We received no comments in response to this publication.

IX. Final Decision

The following discussion provides our decision regarding Panoz's temporary exemption request pertaining to the advanced air bag requirement of FMVSS No. 208.

We are granting Panoz's petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Panoz must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). 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 unique challenge because they would require Panoz to undertake a major redesign of the Esperante, in order to overcome its engineering limitations. While the petitioner was aware of the new requirements for some time, its business plans to introduce a fully compliant vehicle did not materialize due to the fact that it has to rely on components produced by large volume manufacturers in order to meet safety and emissions standards. Consequently, Panoz had to accommodate the delivery schedule of these large manufacturers.

Panoz explained the main engineering challenges precluding incorporation of advanced air bag into the Esperante at this time, as follows. The company does not have access to necessary sensor technology to pursue the "full suppression" passenger air bag option. In addition, due to the redesign of the Mustang platform, resulting in a new S197 Ford platform, chassis modifications are anticipated. The petitioner stated that it would take approximately two years to resolve these technical issues surrounding advanced air bags, given adequate funding. Panoz estimated that the total cost to adapt an advanced driver and passenger-side air bag system within one or two years to be \$1,928,000. Panoz has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Panoz made good faith efforts to bring the Esperante into compliance with the applicable requirements. The company had a difficult time in gaining access to advanced air bag technology (which

presumably reflects suppliers' initial focus on meeting the needs of large volume manufacturers), and this further reduced the lead time available for development. Furthermore, because Panoz is a fully independent company, there was no possibility of technology transfer from a larger parent company. Consequently, no viable alternatives remain. The petitioner was unable to redesign its vehicle by the time the new advanced air bag requirements went into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties. Panoz has estimated that adding the advanced air bag system adds approximately \$6,129 to the cost of each vehicle, and could reduce vehicle sales by approximately 8 percent. Panoz stated that as a result of development costs necessary to meet the "airbag mandate" and to meet Federal and State emissions control requirements, the manufacturer's suggested retail price of the Esperante was increased to \$121,326. If the exemption is not granted by NHTSA, Panoz stated that it will lose \$6,339,180 in 2007 based on the projected sales of 60 units, \$10,565,300 in 2008 based on the projected sale of 100 units, and \$15,847,950 in 2009 based on the projected sale of 150 units. 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.

According to Panoz, its problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Esperante over the next three years to finance development of a fully compliant vehicle for sale. Granting the exemption will allow Panoz to earn the resources necessary to bridge the gap in terms of development of a vehicle that meets all U.S. requirements.

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 Panoz'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. Cost of tooling needed to make the vehicle meet advanced air bag requirements.

4. Costs of testing to ensure the redesigned vehicle meets the advanced air bag requirements.

5. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Panoz's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Panoz dealers and repair specialists, negatively impacting their ability to provide parts and services to current Panoz owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, 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 believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (approximately 300 for the duration of the exemption), and because Panoz vehicles are not typically used for daily transportation. Their annual usage is substantially lower compared to vehicles used for everyday transportation.

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. We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Panoz has demonstrated good faith effort to bring the Esperante into compliance with the advanced air bag requirements of FMVSS No. 208 and has also demonstrated the requisite financial hardship. Further, we find this exemption 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.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Panoz Esperante is granted NHTSA Temporary Exemption No. EX 07-01, 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 through August 31, 2009.

Issued on: May 15, 2007.

Nicole R. Nason,
Administrator.

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