

appropriate representation to achieve informed consensus and foster successful completion of the task. This may also allow the participation of a large number of cross-functional subject matter experts. The working group members should have the appropriate subject matter knowledge, broad maintenance curriculum development experience and responsibility within their organization and authority to represent their respective part of the aviation community.

If you have expertise in the subject matter and wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by July 17, 2007. The Executive Committee and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings, and providing written comments when requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure that the proposed technical solutions don't conflict with your sponsoring organization's position when the subject is presented to the Executive Committee for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the Executive Committee, FAA and the working group chair.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the Executive Committee of ARAC are open to the public. Meetings of the Aviation Maintenance Technician Schools Curriculum and Operating Requirements Working Group will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on June 1, 2007.

**Pamela Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-28430, Notice 1]

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

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

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

**SUMMARY:** In accordance with the procedures in 49 CFR Part 555, Mosler Automotive has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.<sup>1</sup>

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

**DATES:** You should submit your comments not later than July 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ed Glancy or Ms. Rebecca Schade, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-326, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

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

- **Web Site:** <http://dms.dot.gov>. Follow the instructions for submitting

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

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

- **Fax:** 1-202-493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act discussion under the Public Participation heading.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 366-9826.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

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

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

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air

bags.”<sup>2</sup> The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

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

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years 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 seeking comments on a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of very expensive, low volume, exotic sports cars.

## II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555,

Mosler Automotive has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A copy of the petition<sup>3</sup> is available for review and has been placed in the docket for this notice.

## III. Statutory Background for Economic Hardship Exemptions

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

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as 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, 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.

## IV. Petition of Mosler Automotive

**Background.** Mosler Automotive 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 (MY 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.

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 Automotive stated that it “therefore needs USA exempted-vehicle sales to ‘bridge the gap.’” The petitioner further stated that it “will suffer a significant market loss—the U.S.—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 Automotive 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. The petitioner states 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.

**Eligibility.** As discussed in the petition, Mosler Automotive 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 Automotive. Stated another way, Mosler Automotive 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 Automotive anticipates that approximately 75 vehicles would be sold in the U.S. during the three-year period for its requested exemption, if such request were granted.

**Requested exemption.** Mosler Automotive is requesting an exemption

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

<sup>3</sup> The company requested confidential treatment under 49 CFR Part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain information subject to a claim of confidentiality.

for the MT900 from all of the advanced air bag requirements in S14 of FMVSS No. 208, 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 Automotive stated its intention to have its advanced air bag system ready in 2009. Accordingly, the company seeks an exemption from the above-specified requirements of FMVSS No. 208 from June 1, 2007 to December 31, 2009.

*Economic hardship.* Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the MT900 project will result in financial losses unless Mosler Automotive obtains a temporary exemption.

Over the period 2004–2006, Mosler Automotive has had net operational losses totaling over \$3 million, and the retained deficit of the company exceeds over \$23 million. The costs associated with development of an advanced air bag system for the vehicle have been estimated at about \$2.0 to \$2.5 million. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

Mosler Automotive 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 Automotive 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. In essence, Mosler Automotive argued that the exemption is necessary to allow the company to “bridge the gap” until fully compliant vehicles can be funded, developed, tooled, and introduced for the U.S. market.

If the exemption is denied, Mosler Automotive 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.

*Good faith efforts to comply.* Mosler Automotive 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. 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.

In light of limited resources, the petitioner stated that it was necessary to first develop the vehicle with a standard U.S. air bag system. The company has spent \$600,000 to re-engineer the MT900 to include a standard air bag system, which it stated will then be developed into an advanced air bag system.

According to its petition, even though advanced air bags are beyond its current capabilities, Mosler Automotive is nonetheless planning for the introduction of these devices. The company stated that Siemens Restraint Systems 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 Automotive 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. NHTSA notes that this estimate is based on a quotation from Siemens that appears to have expired, and has requested updated information from the petitioner to ensure that the estimate is still accurate.

In addition, Mosler Automotive 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 Automotive 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.

In short, Mosler Automotive 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 Automotive stated in its petition that it expects its advanced air bag system to be ready in 2009, and that an exemption would allow it to maintain continued operations until then.

*Mosler Automotive argues that 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 and would not have a significant adverse impact on safety. Specifically, Mosler Automotive 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.

The company asserted that granting the exemption will benefit U.S. employment, companies, and citizens, because Mosler Automotive is a U.S. company and employs 25 people at its Florida facility. Mosler Automotive also argued that denial of the exemption request would have an adverse impact on consumer choice. The company also argued 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. The company also reasoned that 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 Automotive stated that the MT900 has an extremely strong chassis, which is composed of aluminum tubes and composite structural parts. According to Mosler Automotive, the vehicle design is such that occupants are effectively placed in a “protective ‘cell’” with the chassis structure built around them.

#### V. Issuance of Notice of Final Action

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of

final action on the application in the **Federal Register**.

Issued on: June 5, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E7-11259 Filed 6-11-07; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF VETERANS AFFAIRS

### Health Outcomes Not Associated With Exposure to Certain Herbicide Agents

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under authority of the Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103, Section 201(d), has determined that a presumption of service connection is not warranted based on exposure to herbicides used in the Republic of Vietnam during the Vietnam Era for the following health outcomes: Hepatobiliary cancers; oral, nasal, and pharyngeal cancer; bone and joint cancer; skin cancers (melanoma, basal, and squamous cell); breast cancer; female reproductive cancer (cervix, uterus, and ovary); testicular cancer; urinary bladder cancer; renal cancer; leukemia (other than chronic lymphocytic leukemia (CLL)); abnormal sperm characteristics and infertility; spontaneous abortion; neonatal or infant death and stillbirth in offspring of exposed individuals; low birthweight in offspring of exposed individuals; neurobehavioral disorders (cognitive and neuropsychiatric); movement disorders including Parkinson's disease and amyotrophic lateral sclerosis (ALS); chronic peripheral nervous system disorders; respiratory disorders; gastrointestinal, metabolic, and digestive disorders (changes in liver enzymes, lipid abnormalities, ulcers); immune system disorders (immune suppression, autoimmunity); circulatory disorders; amyloid light-chain (AL) amyloidosis; endometriosis; effects on thyroid homeostasis; gastrointestinal tumors (esophagus, stomach, pancreas, colon, rectum; brain tumors; and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

The Secretary's determinations regarding individual diseases are based on all available evidence in a 2004 report of the National Academy of

Sciences (NAS) and prior NAS reports. This notice generally states specific information only with respect to significant additional studies that were first reviewed by NAS in its 2004 report. Information regarding additional relevant studies is stated in VA's prior notices following earlier NAS reports, and will not be repeated here.

**FOR FURTHER INFORMATION CONTACT:**

Rhonda F. Ford, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

**SUPPLEMENTARY INFORMATION:** Section 3 of the Agent Orange Act of 1991, Public Law 102-4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam Era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam Era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the health outcome. Section 3 of Public Law 102-4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Public Law 102-4, codified in pertinent part at 38 U.S.C. 1116(b) and (c), provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e. the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e. a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam Era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the

Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Section 2 of the Agent Orange Act of 1991 provided that the Secretary's authority and duties under that section would expire 10 years after the first day of the fiscal year in which NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, VA's authority under section 2 of the Agent Orange Act of 1991 expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103. Section 201(d) of that Act extended VA's authority under 38 U.S.C. 1116(b)-(d) through September 30, 2015.

Although 38 U.S.C. 1116 does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." The Secretary reviews studies that report a positive relative risk and studies that report a negative relative risk of a particular health outcome. He then determines whether the weight of evidence supports a finding that there is or is not a positive association between herbicide exposure and the subsequent health outcome.

The Secretary does this by taking into account the statistical significance, capability of replication, and whether that study will withstand peer review. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are more credible than others. The Secretary gives weight to more credible studies in evaluating the overall evidence concerning specific health outcomes.

### Chronology

NAS issued its initial report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam," (VAO) on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple