

**Authority:** 44 U.S.C. 3506(c)(2)(A).

**Marilena Amoni,**

*Associate Administrator for Research and Program Development.*

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**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-0020, Notice 1]

#### Ferrari S.p.A. and Ferrari North America; 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, Ferrari S.P.A. and Ferrari North America (collectively, "Ferrari") have 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.

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 December 26, 2007.

**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:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** DOT Docket Management Facility, M-30, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery or Courier:** U.S. Department of Transportation, West

Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

- **Fax:** 1-(202)-493-2251

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**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>.

**Docket:** For access to the docket in order to read background documents or comments received, go to <http://www.regulations.gov>, at any time or to M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**Confidential Business Information:** If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. **Telephone:** (202) 366-2992; **Fax:** (202) 366-3820.

#### Discussion

##### 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>1</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 earlier. 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.

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 an extension of a temporary exemption from the advanced air bag requirements submitted by a manufacturer of high-performance 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, Ferrari has petitioned the agency for an extension of 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

<sup>1</sup> See 65 FR 30680 (May 12, 2000).

with the standard. The requested exemption would apply to Ferrari F430 model vehicles and would extend for a period of one year beginning on August 1, 2008. A copy of the petition<sup>2</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 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 Ferrari

*Background.* NHTSA notes that 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)). While Fiat S.p.A., a major vehicle manufacturer, holds a majority interest in Ferrari, NHTSA still considers that Ferrari's production will not exceed that number. Consistent with past determinations, NHTSA has determined that Fiat's interest in Ferrari does not result in the production threshold being exceeded<sup>3</sup> (see 70 FR 71372). In its current petition, Ferrari states that

during the twelve month period from June 1, 2006 to June 1, 2007, Ferrari's worldwide production of motor vehicles was 6,249. If the requested exemption is granted, Ferrari anticipates that its production that year will be approximately 7,200 vehicles.

In response to Ferrari's original petition for exemption in 2005,<sup>4</sup> the agency stated that the Ferrari F430 bears no resemblance to any motor vehicle designed or manufactured by Fiat, and that the agency understood that the F430 was designed and engineered without assistance from Fiat. Further, the agency stated 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. Therefore, NHTSA concluded that Fiat was not a manufacturer of Ferrari vehicles by virtue of being a sponsor. We continue to believe this is the case.

*Requested exemption.* Ferrari is requesting an extension of the temporary exemption that it previously received, exempting it from the advanced air bag provisions of FMVSS No. 208 with respect to the Ferrari F430 vehicles. Specifically, Ferrari is requesting an exemption from the requirements in S19, S21, and S23 of the Standard, which establish requirements using infant, three-year-old child, and six-year-old child dummies, respectively. Ferrari originally planned to produce the F430 only until late 2008. Thus, Ferrari only sought and received the current exemption, which extends until August 31, 2008. However, Ferrari states that unexpected developments, including the need to assure that the replacement model complies with new, more stringent European carbon dioxide and noise regulations and new requirements promulgated by the California Air Resources Board, have delayed the replacement vehicle until late 2009. Therefore, Ferrari is requesting a one year extension of the current exemption, through August 31, 2009.

The petitioner indicated that it intends to replace the F430 in 2009 with a new model, which will comply with all applicable FMVSSs. Therefore, need for the exemption is not expected to last beyond the date of the exemption.

*Economic hardship.* The petitioner states that the inability to sell F430 vehicles manufactured after August 31, 2008 would have severe economic consequences for Ferrari S.p.A. and Ferrari North America (FNA). Specifically, Ferrari S.p.A., while remaining a profitable enterprise, would

suffer approximately \$77 million in lost sales in 2009, and additional lost sales in later years. Furthermore, FNA would suffer \$9 million in lost sales in 2009, and would suffer an overall loss in that year. Additionally, failure to obtain the exemption would cause an adverse financial effect through lost sales of replacement parts for several years in the future.

*Good faith efforts to comply.* Ferrari states that it considered alternate means of compliance, but found that compliance with the advanced air bag requirements of FMVSS No. 208 was not possible. As described in the notice of Ferrari's original petition for exemption, the F430 was originally designed in the mid-1990s as the 360 model, and was designed to comply with all of the requirements 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. The F430, a derivative of the 360 model, was introduced in 2004. Ferrari had originally intended to replace the F430 in 2008, but now anticipates the replacement model being ready in 2009.

As described in the notice of receipt of Ferrari's previous petition, 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). Ferrari also noted that despite efforts to involve numerous potential suppliers, it was unable to identify any that are willing to work with the company to develop an occupant classification system that would comply with the requirements in S19, S21, and S23. Moreover, Ferrari had stated that it was unable to reconfigure the F430 to accommodate an occupant classification system and air bag design that would comply with these requirements.

In its current request, Ferrari states that when it realized that it would need to continue production of the F430 beyond September 1, 2008, it again contacted several potential suppliers regarding the procurement of advanced air bag systems. This attempt, Ferrari states, was also unsuccessful. Additionally, Ferrari notes that since filing its initial petition, it has continued to work on compliance issues, and has been able to bring the F430 into full compliance with S25 of the standard. Paragraph S25 specifies

<sup>2</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 such information that the agency has determined to be confidential.

<sup>3</sup> 54 FR 46321; November 2, 1989.

<sup>4</sup> 70 FR 71372, November 28, 2005.

the crash test requirements for using an out-of-position 5th percentile adult female dummy at the driver position.

Ferrari states that further efforts to bring the F430 vehicles into full compliance with FMVSS No. 208 during the term of the requested exemption would be futile. However, Ferrari states that it is taking steps to minimize the negative safety consequences of the exemption. First, Ferrari will continue to equip the F430 with a manual air bag on/off switch for the passenger air bag as standard equipment, in order to prevent the possibility of an air bag deployment when a child is present. Second, Ferrari will continue to offer to provide purchasers with child restraint systems designed to automatically suppress the passenger air bag when the restraint is present, at no cost.

*Ferrari 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, Ferrari argues that the public interest is served by four factors. These include: (1) Satisfying the public interest in offering consumers a wider variety of motor vehicle choices; (2) affording continued employment to the petitioner's U.S. workforce; (3) there would be minimal safety impact from granting this exemption; and (4) that it would be inequitable to prevent Ferrari from importing the F430 until 2009, when other vehicles have been granted similar exemptions.

Ferrari states that there is consumer demand in the United States for high-performance sports cars such as the F430. It argues that compliance with the advanced air bag requirements is virtually impossible for vehicles such as the F430, which was designed before the advanced air bag rule was proposed. Ferrari notes that NHTSA has, in the past, stated that it believes the public interest is often served by affording consumers a wider variety of motor vehicle choices. The petitioner also states that the public interest will be served in affording continued employment to the petitioner's U.S. work force, which would be affected by the granting or denial of the exemption.

Ferrari also argues that the safety drawbacks of granting an exemption will be minimal. The F430 is designed and marketed as a high performance vehicle, and therefore would have relatively little on-road operation compared with other motor vehicles. Furthermore, the petitioner states that it is unlikely that young children would be passengers in the vehicle, and that

other safety measures, such as passenger air bag on/off switches and child restraint systems, are available at no cost. In addition, in its original petition for exemption, the petitioner stated that the F430 also has a variety of passive safety features not required under the FMVSS, including seat belt pretensioners, among other systems. Thus, Ferrari argues, an exemption would have a minimal impact on safety.

Finally, the petitioner suggested that this petition is similar to other petitions for exemptions from the advanced air bag standards for similar vehicles. Specifically, Ferrari stated that NHTSA has granted exemptions to several of Ferrari's competitors that extend until at least August 31, 2009. These exemptions extend to the Lamborghini Murcielago, the Lotus Elise, the Morgan Aero 8, the YES! Roadster, and the Koenigsegg CCX.<sup>5</sup> Ferrari argues that it would be inequitable for the agency to deny its petition for an extension of the F430 exemption until August 31, 2009.

#### 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: October 29, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E7-22966 Filed 11-23-07; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-591X]

#### Laurinburg & Southern Railroad Co., Inc.—Discontinuance of Service Exemption—in Hoke and Scotland Counties, NC

Laurinburg & Southern Railroad Co., Inc. (LRS) has filed a verified notice of exemption under 49 CFR Part 1152 Subpart F-*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 17.3-mile line of railroad between milepost 8.9, in or near Laurinburg, Scotland County, NC, and milepost 26.2, in or near Raeford, Hoke County, NC. The line traverses United States Postal Service Zip Codes 28352, 28353, 28376, 28396, and 27812, and includes the stations of Wagram and Raeford.

<sup>5</sup> See 71 FR 52951; 71 FR 68888; and 72 FR 17609.

LRS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) that all overhead traffic, if any, can be or already has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

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

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 26, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),<sup>1</sup> must be filed by December 6, 2007.<sup>2</sup> Petitions to reopen must be filed by December 17, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to LRS's representative: Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036-1609.

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

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

Decided: November 19, 2007.

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

<sup>2</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.