

**501.403 Individual deviations.**

(a) An individual deviation affects only one contract action.

(1) The HCA must approve an individual deviation from the FAR. The authority to grant an individual deviation from the FAR may not be re-delegated.

(2) An individual deviation from the GSAR must be approved by the HCA. The authority to grant an individual deviation from the GSAR may be re-delegated to the Contracting Director.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the Contracting Director in the agency receiving the delegation may approve individual deviations from the GSAR unless the agency head receiving the delegation designates another official.

(c) A copy of the deviation must be provided to GSA's SPE.

11. Revise section 501.404 to read as follows:

**501.404 Class deviations.**

(a) A class deviation affects more than one contract action. A deviation for any solicitation that will result in multiple awards, or any solicitation under the Multiple Award Federal Supply Schedule program is considered to be a class deviation, as more than one contract action is affected. Each award under such a solicitation is considered an individual contract action.

(1) A proposed class deviation from the FAR must be forwarded by the cognizant HCA to GSA's SPE for approval. Prior to approving a class deviation from the FAR, the SPE will consult with the Chairman of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a)(1).

(2) A proposed class deviation from the GSAR must be forwarded by the cognizant HCA to GSA's SPE for approval.

(3) When an HCA knows that a proposed class deviation will be required on a permanent basis, the HCA should propose or recommend an appropriate FAR or GSAR revision.

(b) If GSA delegates authority to another agency and requires compliance with the GSAR as a condition of the delegation, the HCA in the agency receiving the delegation may approve class deviations from the GSAR unless the agency head receiving the delegation designates another official. A copy of the class deviation must be provided to GSA's SPE.

(c) A request for class deviations must fully describe the need for and the nature of the deviation and be supported by appropriate documentation.

(d) Class deviations from the GSAR—  
(1) Expire in 12 months, if not extended; and

(2) May be rescinded earlier by GSA's SPE or by officials designated under paragraph (a) of this section without prejudice to any action taken previously.

**501.404-71 [Removed]**

12. Remove section 501.404-71.

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**BILLING CODE 6820-61-S**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 531**

[Docket No. NHTSA-2008-0115]

**Exemptions From Average Fuel Economy Standards; Passenger Automobile Average Fuel Economy Standards**

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

**ACTION:** Proposed rule; proposed decision to grant exemption.

**SUMMARY:** This proposed decision responds to a petition filed by Mosler Automotive (Mosler) requesting that it be exempted from the generally applicable corporate average fuel economy (CAFE) standard of 27.5 miles per gallon (mpg) for model years 2008, 2009 and 2010, and that, for Mosler, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to Mosler and that an alternative standard of 22.1 mpg be established for MYs 2008 through 2010.

**DATES:** Comments must be received on or before July 17, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-001.
- **Hand Delivery:** The Docket Management Facility is on the ground

floor of the West Building, 1200 New Jersey Ave., SE. The Docket Management Facility is open 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 for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading at the end of this notice.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room W12-140 on the ground floor of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, contact Ken Katz, Lead Engineer, Fuel Economy Division, Office of International Policy, Fuel Economy, and Consumer Programs, at (202) 366-0846, facsimile (202) 493-2290, electronic mail [kkatz@nhtsa.dot.gov](mailto:kkatz@nhtsa.dot.gov). For legal issues, contact Rebecca Yoon of the Office of the Chief Counsel, at (202) 366-2992.

**SUPPLEMENTARY INFORMATION:****Statutory Background**

Pursuant to 49 U.S.C. 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

- (1) Technological feasibility,
- (2) Economic practicability,
- (3) The effect of other motor vehicle standards of the government on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers (49 U.S.C. 32902(d)(2)).

#### Background Information on Mosler

Mosler is a U.S. company, organized as a Florida corporation, formed in 1987 and owned by a single American shareholder. The company headquarters are in Riveria Beach, Florida. There is an engineering/assembly facility in Norfolk, England. The company has 25 U.S. employees. Race car development was initiated by the company in 1998, and the first street vehicle for the U.S. market was produced in 2004. Subsequently, U.S. street production was suspended because of issues with compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

The petitioner stated that it manufactured 15 vehicles in 2004. The petitioner estimates that it will produce 40 vehicles in 2008, 50 vehicles in 2009, and 60 vehicles in 2010.<sup>1</sup>

#### The Mosler Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption must be submitted "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown" (49 CFR 525.6(b)).

NHTSA received the petition from Mosler on June 19, 2007, seeking exemption from the passenger automobile fuel economy standards for MYs 2008 through 2010. This petition was filed less than 24 months before the beginning of MYs 2008 and 2009, and was therefore untimely under 49 CFR part 526 for those model years. Mosler indicated that it only decided to resume production for the U.S. market after it filed a petition for an exemption from the advanced air bag requirements in January 2007. The decision to file for this exemption was only made after NHTSA granted similar exemptions in September 2006.

<sup>1</sup> As explained later in this notice, Mosler's production of any vehicles is contingent upon the grant of a pending petition for exemption under 49 CFR part 555.

Under the circumstances, NHTSA concludes that Mosler took reasonable measures to submit a petition in as timely a manner as possible. The agency notes that Mosler's ability to enter the U.S. market apparently hinges on a favorable decision regarding its petition for an exemption from the advanced air bag requirements. Mosler has filed this petition while awaiting a decision on the other petition. Therefore, the agency has determined that good cause exists for the late submission of the petition. This is consistent with previous determinations made by the agency with regard to the timeliness of petitions submitted by Spyker Automobielen B.V. (see 71 FR 49407; August 23, 2006; Docket No. NHTSA-2006-25593) and DeTomaso Automobiles, Ltd. (see 64 FR 73476; December 30, 1999; Docket No. NHTSA-99-6676).

#### Methodology Used To Project Maximum Feasible Average Fuel Economy Level for Mosler

##### Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Mosler in the 2008 through 2010 model years, NHTSA considered whether there were technical or other improvements that would be feasible for these vehicles, and whether the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning technology which would be available to Mosler for use on its 2008 through 2010 model year automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" for the purpose of petitions filed under 49 CFR part 525 as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 2008 through 2010 model year automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability.

In accordance with the concerns of economic practicability, NHTSA has considered only those potential fuel economy improvements that would be compatible with the basic design concepts of Mosler's automobiles. Since NHTSA assumes that Mosler will

continue to build high performance cars, design changes that would remove items traditionally offered on these types of vehicles were not considered. Such changes to the basic design would be economically impracticable since they could significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

##### Technology for Fuel Economy Improvement

Mosler states that the requested fuel economy value of 22.1 mpg<sup>2</sup> represents the best possible CAFE that Mosler can achieve for the 2008 through 2010 model years. Mosler argues that, as racing-derived sports cars, its vehicles by their nature cannot maximize fuel economy at the expense of speed or power. Also, Mosler lags in being able to apply the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers. Mosler argues that it cannot achieve substantial fuel economy gains from changes to its chassis or body design.

Mosler is producing innovative sports cars using state-of-the-art design. Mosler's current vehicle, the MT900, is ultra lightweight. The double-wishbone suspension is unique. For its primary structure, the MT900 utilizes a high tech, high strength, lightweight advanced composite over an aluminum honeycomb monocoque chassis. The MT900 is aerodynamic, with a drag coefficient of 0.34cd. The weight of the vehicle is only 2440 pounds. Since the chassis/body configuration is small, aerodynamic, and lightweight, further fuel economy improvements through changes to the chassis and body appear to be limited.

Mosler also stated that it is unable to change the supplier of the vehicle's Corvette V8 engine. Mosler stated that it has revised the gear ratios in the transmission so that the average operating engine RPM is 15% lower, improving gas mileage compared to the 2004 model year vehicle. Mosler also stated that the fuel economy label values of the vehicle (15 mpg city and 22 mpg highway) are equal to or better than those of similar vehicles, e.g., Cadillac XLR (15/22), MB 550 SL (14/22), Lamborghini Gallardo (12/18), Ferrari F 430 (13/17), and Aston Martin V8 (13/19).

<sup>2</sup> This number is .05 mpg less than forecasted in order to allow for potential development and production variation. NHTSA also notes that fuel economy compliance is determined in tenths of mpg.

### Model Mix

Mosler has no opportunity to improve its fuel economy by changing its fleet mix since it has stated that it will only export one model to the U.S. during the years for which this petition was filed.

### Effect of Other Motor Vehicle Standards of the Government

The need to comply with the FMVSS and other regulations are anticipated to have an adverse effect on the fuel economy of Mosler's vehicles and on Mosler's ability to improve its fuel economy. These standards include FMVSS No. 208, *Occupant Crash Protection*, and FMVSS No. 214, *Side Impact Protection*, and upcoming amendments to FMVSS No. 216, *Roof Crush Resistance*. These standards may reduce achievable fuel economy values, since they result in increased vehicle weight. Mosler's projection reflected the impact of these standards. Mosler is a small company and engineering resources are limited, limiting the amount of resources Mosler can apply to comply with both the mandatory standards and the fuel economy requirements.

Additionally, as a small volume manufacturer, the more stringent California evaporative emission standards and the U.S. EPA Tier 2-LEV II exhaust standards will be applicable. A portion of Mosler's limited engineering resources will have to be expended to comply with these more stringent standards.

### The Need of the United States To Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Mosler to achieve an average fuel economy in model years 2008 through 2010 above the levels set forth in this proposed decision. Granting an exemption to Mosler and setting an alternative standard at that level would not result in an increase in fuel consumption since Mosler cannot attain the generally applicable standards. Nevertheless, the agency estimates that the additional fuel that could be consumed by operating the MYs 2008 through 2010 fleets of Mosler's vehicles for the expected lifetime of these vehicles at the CAFE of 22.1 mpg (compared to a 27.5 mpg fleet) is 10,315 barrels of fuel, or about 1.09 barrels per day for the entire fleet of

Mosler vehicles.<sup>3</sup> This is insignificant compared to the fuel used daily by the entire motor vehicle fleet, which amounts to over 9 million barrels per day for motor vehicles in the United States (USDOE/EIA, *Monthly Energy Review*, September 2007, Table 5.13c).<sup>4</sup>

### Maximum Feasible Average Fuel Economy for Mosler

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for Mosler to improve the fuel economy of its MY 2008 through 2010 fleets above an average of 22.1 mpg for those years, that Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Mosler's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Mosler should be 22.1 mpg for MYs 2008, 2009 and 2010.

As discussed above, 49 U.S.C. chapter 329 permits NHTSA to establish an alternative average fuel economy standard applicable to exempted manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price or other factors, may be established for the automobiles of exempted manufacturers, with a separate fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers (49 U.S.C. 32902(d)(2)). The agency tentatively concludes that it would be appropriate to establish a separate standard for Mosler.

While the agency has the option of establishing a single standard for all exempted manufacturers, we note that previous exemptions have been granted to manufacturers of high-performance cars, luxury cars and specialized vehicles for the transportation of

<sup>3</sup> To estimate the additional fuel that could be consumed, NHTSA uses estimates of the average number of vehicles miles traveled (VMT) for the entire vehicle fleet over the lifetime of the vehicle (26 years). We then divide this figure by 22.1 mpg and 27.5 mpg, and the difference between the two amounts is the additional fuel usage per vehicle over its lifetime at the reduced CAFE standard. The total additional fuel usage figure for the Mosler fleet is determined by multiplying this figure by the estimated sales figures provided by Mosler. It is likely that this is actually an overestimate of the additional fuel that will be consumed, as these vehicles will likely have a VMT below the fleet average.

<sup>4</sup> <http://www.eia.doe.gov/emeu/mer/>

persons with physical impairments. The agency's experience in establishing exemptions indicates that selection of a single standard would be inappropriate. Such a standard would have little impact on energy conservation while doing little to ease the burdens faced by small manufacturers which cannot meet the fuel economy standards applicable to larger manufacturers. Similarly, the agency is not proposing to establish alternative standards based on different classes of vehicles. Again, the agency's experience has been that vehicles manufactured by low volume manufacturers may differ widely in size, price, design or other factors. Based on the information available at this time, we do not believe it would be appropriate to establish class-based alternative standards.

### Regulatory Impact Analyses

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the decision would not establish a rule, which is defined in the Executive Order as "an agency statement of general applicability and future effect." The decision is not generally applicable, since it would apply only to Mosler, as discussed in this notice. Under DOT regulatory policies and procedures, the decision would not be a "significant regulation." If Departmental policies and procedures were applicable, the agency would have determined that this decision is not significant. The principal impact of the decision to exempt Mosler from the 27.5 mpg standard is that they would not be required to pay civil penalties if its maximum feasible average fuel economy (22.1 mpg) were achieved. Since this tentative decision sets an alternative standard at the level determined to be the maximum feasible levels for Mosler for MYs 2008 through 2010, no fuel would be saved by establishing a higher alternative standard.

NHTSA found in the Section on "The Need of the United States To Conserve Energy" that because of the small size of the Mosler fleet, that incremental usage of gasoline by Mosler's customers would not affect the United States' need to conserve gasoline. Mosler is planning to produce 150 vehicles for the U.S. market by MY 2010. Given that over 7,602,000 passenger cars were produced for sale in the U.S. market in MY 2006,<sup>5</sup> Mosler's production of these vehicles would amount to .001% of the U.S.

<sup>5</sup> "Summary of Fuel Economy Performance, March 2007" (Docket NHTSA-2007-28040-1).

market. Thus, there are not any impacts for the public at large.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act (NEPA) and determined that it would not significantly affect the quality of the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass EPA emissions standards which measure the amount of regulated pollutant emissions per mile traveled. The incremental carbon dioxide emissions that might result from the proposed alternative standards would have a de minimus effect on air quality, due to the extremely small size of the Mosler vehicle fleet and the difference in miles per gallon required by the proposed alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than provided, the decision does not affect the amount of fuel used or the amount of carbon dioxide emitted.

**Privacy Act**

Please note that 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 at <http://www.regulations.gov>.

**List of Subjects in 49 CFR Part 531**

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is proposed to be amended to read as follows:

**PART 531—[AMENDED]**

1. The authority citation for part 531 continues to read as follows:

**Authority:** 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. Section 531.5 is amended by adding paragraph (b)(15) to read as follows:

**§ 531.5 Fuel economy standards.**

\* \* \* \* \*  
 (b) \* \* \*  
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(16) Mosler Automotive.

**AVERAGE FUEL ECONOMY STANDARD**

Model year	Miles per gallon
2008 .....	22.1
2009 .....	22.1
2010 .....	22.1

Issued on: June 10, 2008.

**Stephen R. Kratzke,**  
*Associate Administrator for Rulemaking.*  
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