

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

[Docket No. NHTSA-2006-25592]

**Morgan Motor Company Limited; Receipt of Application for a Temporary Exemption From Air Bag Provisions of Federal Motor Vehicle Safety Standard No. 208**

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

**ACTION:** Notice of receipt of application for a temporary exemption from air bag provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection*.

**SUMMARY:** In accordance with the procedures of 49 CFR Part 555, Morgan Motor Company, Limited (Morgan) has applied for a Temporary Exemption from the air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," for the Morgan "traditional roadster." The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than August 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ed Glancy or Eric Stas in the Office of Chief Counsel, NCC-112, (Phone: 202-366-2992; Fax 202-366-3820).

**SUPPLEMENTARY INFORMATION:****I. Background**

Founded in 1909, Morgan is a small, privately-owned vehicle manufacturer producing approximately 600 specialty sports cars per year.<sup>1</sup> Morgan manufactures several models, but at present, only sells the Aero 8 in the U.S. Morgan intended to produce a vehicle line specific to the U.S. market, with Ford supplying the engine and transmission. However, for technical reasons, the project did not come to fruition, and Morgan temporarily stopped selling vehicles in the U.S. in

<sup>1</sup> 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)).

2004. In May 2005, Morgan obtained a temporary exemption from this agency's bumper standard and began selling the Aero 8 in the U.S.

On July 12, 2006 (71 FR 39386), NHTSA published a notice of receipt of five applications for temporary exemptions from the advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Among these petitions was one from Morgan, for the Aero 8, which is discussed at pages 39390-39391. Morgan's petition is included in the docket for that notice, i.e., Docket NHTSA-2006-25324.

That notice of receipt did not address a second request by Morgan. In a document dated February 6, 2006, Morgan petitioned for an exemption for a different vehicle, its "traditional roadster," from all air bag requirements in FMVSS No. 208 (i.e., the standard's requirement that vehicles be equipped with air bags as well as the advanced air bag requirements) from September 2006 through September 2009. That company titled this document "Supplement to Pending Morgan Part 555 Temporary Exemption." Morgan explained that it did not file a petition for the traditional roadster at the same time as it petitioned for the Aero 8 because in October 2005 (when the Aero 8 petition was filed), Morgan planned to sell only the Aero 8 in the U.S. from September 2006-September 2009. The company did not plan to sell the traditional roadster during that period because the Rover engine used in the U.S. version of the traditional roadster for 35 years was no longer able to meet more stringent U.S. emissions standards.

In late 2005, Morgan found a U.S.-certified Ford V6 engine for the U.S. traditional roadster and built a limited production run of 80 vehicles. The traditional roadster "immediately sold out." In order to maintain U.S. sales and to produce revenue, Morgan then decided to continue to sell the U.S. traditional roadster. However, while the traditional roadster had a mechanical Breed standard air bag system since 1996, those air bags are now out of production and are no longer available. Morgan indicated that the final limited production run of 80 vehicles using the Ford V6 engine used the last of these air bag systems. In addition, Morgan stated that the Aero standard air bag system cannot be fitted to the traditional roadster because the interiors and chassis are completely different.

We note that in its February 2006 document, Morgan asked that its exemption requests for the traditional roadster and Aero be considered independently. As indicated above, we

have already requested public comments on Morgan's petition concerning the Aero, and expect to issue a decision shortly on that request. The agency will make a decision concerning Morgan's petition concerning the traditional roadster after considering public comments submitted in response to this notice.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what is 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 are 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 complex nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further, the high costs of developing custom advanced air bag systems, compared to limited potential profits from selling those air bags to small volume manufacturers, discouraged some air bag suppliers from working with those 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 indicated above, for its traditional roadster, Morgan is requesting an exemption not only from the advanced

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

air bag requirements, but also from the standard's requirements for air bags altogether. As always, we are concerned about the potential safety implications of any temporary exemptions granted by this agency. The agency is accepting comment on whether to grant Morgan's application.

## II. Morgan's Statement of Economic Hardship

Morgan stated that without the sales of the U.S. traditional roadster from September 2006–September 2009, it would lose an additional \$315,000 on top of the losses estimated in the October 2005 petition for the Aero.<sup>3</sup> It further stated that if it were able to sell the traditional roadster in the U.S. during the exemption period, "the resulting revenues would also be critical to funding the development of the new advanced air bag for use in all Morgan vehicles destined for the U.S. after September 2009." Morgan's previous financial submission indicates that the company's losses over the last 5 years have totaled more than \$3,600,000. In 2004, Morgan made a small profit for the first time in three years. Morgan predicted a net loss for fiscal year 2005.

Morgan stated that even adding the projected sales of the traditional roadster, the total U.S. "exempted-car sales" forecast for September 2006–September 2009 remain about the same: For 2006, 50 vehicles; for 2007, 250 vehicles; for 2008, 250 vehicles; and for 2009, 250 vehicles. Morgan also provided information on the sales of the 80 model year 2005 traditional roadsters (with the Ford V6 engine).

We note that in commenting on the agency's July 2006 notice concerning its request for a temporary exemption for the Aero, Morgan indicated that the temporary exemptions it was seeking would involve 400 Aeros over three years, and 400 Roadsters over three years.

## III. Morgan's Statement of Good Faith Efforts To Comply

In its October 2005 submission, Morgan stated that it has been working with the air bag supplier Siemens to develop an advanced air bag system for the Aero 8. However, a lack of funds and technical problems precluded the implementation of an advanced air bag system for the Aero 8. It said that the minimum time needed to develop an advanced air bag system (provided that there is a source of revenue) is 2 years.

<sup>3</sup>Estimated to be between \$3,196,179 and \$5,066,938. When costs for interior redesign, crash cars, and tooling are included, the estimate rises to between \$5,648,679 and \$7,519,438. (See 71 FR at 39391.)

Specific technical challenges include the following matters. Morgan does not have access to the necessary sensor technology to pursue the "full suppression" passenger air bag option. Due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed. Chassis modifications are anticipated due to the originally stiff chassis design.

In its February 2006 petition, Morgan stated that it cannot install airbags in the U.S. traditional roadster to be built between September 2006–September 2009 even though the Aero 8 vehicles built during that period will have standard air bags. Morgan provided two reasons why the traditional roadster "cannot have air bags" while the Aero 8 can. First, since 1996, the traditional roadsters have had a mechanical Breed standard air bag system. In 1997, Breed stopped production of the air bags fitted to the traditional roadsters. Thus, these bags are no longer available. Morgan states that it cannot obtain any more components. The final run of the 80 traditional roadsters with the Ford V6 engine used the last of the air bags.

Second, the Aero 8 standard air bag system cannot be fitted into the traditional roadster because the interiors and chassis are completely different. Morgan asserts that it would not be possible to integrate the Aero 8 air bag components into the traditional roadster's design because of both physical and operational differences. The Aero 8 air bag steering wheel will not fit in the traditional roadster's design, and the Aero 8 passenger air bag will not fit into the traditional roadster's instrument panel. In terms of air bag operation, to use the Aero 8 system in the traditional roadster, there would have to be a new deployment control/trigger system developed due to the significantly different crash pulses between the Aero 8 aluminum tub and the traditional roadster steel chassis.

Morgan stated that the traditional roadster will have an advanced air bag system at the same time that the Aero 8 will. At present, the traditional roadster uses the same design as it has had since 1936, a steel chassis with a wooden frame for the body panels. As part of the development of the advanced air bag system, Morgan plans to switch the traditional roadster onto the aluminum tub chassis used by the Aero 8. In this way, the advanced air bag program (through Siemens) that Morgan outlined in its Part 555 exemption petition for the Aero 8 will also be applicable to the traditional roadster. Morgan believes that when its advanced air bag system is ready in 2009, the air

bag system will simultaneously be installed in both the Aero and traditional roadster models. Morgan asserts that it "obviously cannot expend the resources to develop an air bag system—advanced or standard" for the traditional roadster that is separate from the air bag system being developed for the Aero 8. Morgan cites this inability as the reason why there cannot be an interim standard air bag system for the traditional roadster during the period September 2006–September 2009.

## IV. Morgan's Statement of Public Interest

In its original petition, which concerned the Aero, Morgan put forth several arguments supporting its view that the requested exemption is consistent with the public interest. According to Morgan, if the exemption was denied and Morgan stops U.S. sales, Morgan's U.S. dealers would unavoidably have numerous lay-offs, resulting in U.S. unemployment. Denial of an exemption would reduce consumer choice in the specialty sports car market sector in which Morgan cars compete. That company argued that the Morgan vehicles will not be used extensively by owners, and are unlikely to carry small children. Finally, according to Morgan, granting an exemption would assure the continued availability of proper parts and service support for existing Morgan owners. Without an exemption, Morgan would be forced from the U.S. market, and Morgan dealers would find it difficult to support existing customers.

We note that in its February 2006 document requesting an exemption for the traditional roadster, that company generally did not discuss whether or how these arguments would apply to its request concerning the traditional roadster. We invite Morgan to address this issue. As indicated above, Morgan did argue that revenues from selling the traditional roadster would be critical to funding the development of the new advanced air bag for use in all Morgan vehicles destined for the U.S. after September 2009.

## V. How You May Comment on the Morgan "Traditional Roadster" Application

We invite you to submit comments on the application described above.

You may submit comments (identified by the DOT Docket number in the heading of this document) by any of the following methods:

- Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket

site by clicking on "Help and Information" or "Help/Info."

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., 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 for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

**Docket:** For access to the docket in order to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**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 are providing a 15-day comment period in light of the short period of time between now and September 1, 2006. We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

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

Issued on: August 9, 2006.

**H. Keith Brewer,**

Director, Crash Avoidance Standards.

[FR Doc. E6-13314 Filed 8-14-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 267X)]

### Norfolk Southern Railway Company—Abandonment Exemption—in Kanawha County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 12.22-mile line of railroad between milepost TP 14.69 at Blue Creek, and milepost TP 26.91 at Acup (Sanderson), in Kanawha County, WV. The line traverses United States Postal Service Zip Codes 25026 and 25045.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be 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 Surface Transportation 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 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment 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 September 14, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR

<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 25, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 5, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

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

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 18, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 15, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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

Decided: August 7, 2006.

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

**Vernon A. Williams,**

Secretary.

[FR Doc. E6-13244 Filed 8-14-06; 8:45 am]

**BILLING CODE 4910-01-P**

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. *See* 49 CFR 1002.2(f)(25).