

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

[Docket No. NHTSA-2006-25323; Notice 2]

Saleen, Inc.; Response to Application for Temporary Exemption From Certain Provisions of Federal Motor Vehicle Safety Standard No. 208**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).**ACTION:** Grant in part and denial in part of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*.

SUMMARY: This document grants in part and denies in part the Saleen application for an extension of a temporary exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, and grants an additional exemption from the advanced air bag requirements of that standard, both for the Saleen S7. The basis for the request was that compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard. The extension of the exemption from the automatic restraint requirements is effective September 1, 2006 and will remain in effect until August 31, 2007. The exemption from the advanced air bag requirements is effective September 1, 2006 and will remain in effect until August 31, 2009.

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**

Under 49 U.S.C. 30113(b), NHTSA may grant a temporary exemption from a motor vehicle safety standard in situations where compliance would cause substantial economic hardship to a low-volume manufacturer that has tried in good faith to comply with the standard. A manufacturer is eligible to apply for an economic 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 (49 U.S.C. 30113(d)). Saleen has manufactured less than 20 Saleen S7's a year between model years 2003 and 2005. The applicant's other line of business consists of altering vehicles. Saleen stated that it produced

approximately 1500 Saleen Mustangs in model year 2005. It indicated that sales of these vehicles are expected to increase in 2006. Saleen also stated that it is adding new models such as the 2007 Ford 150-based Saleen S331. Saleen will also be considered an alterer for these new vehicles (other than the S7).

In June 2001, NHTSA granted Saleen a two-year hardship exemption from the automatic restraint requirements of FMVSS No. 208, expiring on April 16, 2003 (66 FR 33298; June 21, 2001). On January 22, 2004, we granted a renewal of the exemption for an additional three years, expiring on September 1, 2006.¹

In September of 2005, Saleen submitted an application for further exemption from the automatic restraint requirements of FMVSS No. 208, as well as an exemption from the advanced air bag requirements of the standard. Saleen subsequently withdrew the petition, and later resubmitted the application in January of 2006. Saleen then provided supplemental information on May 11, 2006. In its petition, Saleen requested that both the further exemption for the automatic restraint requirements ("basic" air bag requirements) and the exemption for the advanced air bag requirements remain in effect for three years, *i.e.*, until September 1, 2009.

We note that, in 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what is commonly known as "advanced air bags."² 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-scale 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 de-powered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As indicated above, Saleen requested not only an exemption from the advanced air bag requirements, but also a continued exemption from the automatic restraint requirements altogether.

On July 12, 2006, NHTSA published in the **Federal Register** (71 FR 39392) a notice of receipt of Saleen's application for temporary exemption, and invited public comments.

II. Saleen's Statement of Need and Good Faith Effort

Saleen stated that its previous exemption extension request was intended to provide sufficient time for Saleen to sell and ship the Saleen S7 vehicles to generate the necessary cash flow to support the development of an air bag system that would be compliant with the advanced air bag requirements. The applicant stated that it intended to produce and sell a total of 36 vehicles by the end of 2003, with production slowly increasing to a rate of 50 vehicles per year. Saleen projected that this sales rate would have generated approximately \$12.8 million in annual gross revenue by the end of 2003, which would then increase to approximately \$17.8 million in annual gross revenue with the annual production of 50 vehicles. Saleen presented its actual annual sales as 13 vehicles, 8 vehicles, and 14 vehicles, in model years 2003, 2004, and 2005, respectively.

In the January 2006 application, Saleen stated that it intended to sell a total of 25 vehicles in the United States per year, and an additional 10 vehicles in Europe. Maintaining an annual sales level of 35 vehicles, Saleen would

¹ In accordance with 49 CFR 555.8(e), Saleen's original exemption remained in effect until the publication of the 2004 grant notice because the application for renewal was filed more than 60 days prior to the expiration of the exemption.

² See 65 FR 30680; May 12, 2000.

generate a total of approximately \$17.8 million. Saleen subsequently revised these projections stating that it was uncertain whether it would manufacture the Saleen S7 for international sale, as European homologation is pending.

However, Saleen stated that increased sales of its other products in conjunction with the sales of the Saleen S7 will allow it to develop an air bag system that is compliant with FMVSS No. 208 by the end of calendar year 2008 at a cost of approximately \$3.8 million. Saleen stated that this timeframe does not account for any delays, and as such, it is requesting a three year exemption, expiring September 1, 2009.

Saleen noted that in its previous application it explained that Saleen's relationship with Ford Motor Company in assisting in the manufacture of the Ford GT, an exotic sports car, would allow Saleen to rely on many of the components from the Ford GT. However, Saleen stated that the Ford GT was not manufactured as complying with the advanced air bag requirements. As such, Saleen stated that it was not able to rely on the advanced air bag technology used in the Ford GT.

Since the original air bag exemption, Saleen stated that it has hired an engineering project manager responsible for air bag development, has been working with engineers at Takata, Autoliv, and Bosch in researching all of the program requirements as well as developing a test plan and component designs for development of a system compliant with the advanced air bag requirement. Saleen also stated that it is working with Kettering University in Flint Michigan for additional research and testing.

III. Saleen's Statement of Public Interest

The applicant put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Saleen stated that the Saleen S7 is a unique vehicle designed and produced in the United States utilizing many domestic sourced components. If an exemption were granted, Saleen stated that it would be able to maintain its current payroll of 150 full time employees and continue the purchase of domestic sourced components. Further, Saleen stated that the Saleen S7 otherwise conforms to all applicable FMVSSs.

IV. Public Comments

NHTSA received eight comments concerning Saleen's application for a temporary exemption. All were from

private individuals, and all favored granting the petition.

Commenters argued that S7 is constructed to provide driver and passenger safety at levels well above those of other passenger vehicles. They cited a fully welded roll cage, aluminum honeycomb passenger compartment, and carbon fiber bodywork. They stated that the vehicle is used in racing applications. They cited the extremely small number of S7's that are produced, and that they are driven very few miles. They cited economic hardship to Saleen if the petition is denied, and stated that jobs would be lost.

V. Agency Decision

NHTSA has decided to grant Saleen's petition in part and deny it in part. In particular, we are granting Saleen a one-year extension of its existing exemption from the automatic restraint requirements of FMVSS 208, and denying its request as to the additional two years. This extension will begin on September 1, 2006 and will remain in effect through August 31, 2007. We are granting Saleen's request for a three year exemption from the standard's advanced air bag requirements. This exemption will begin September 1, 2006, and remain in effect through August 31, 2009.

In discussing this decision, we begin by noting that, in order to grant an economic hardship petition, the agency must, under 49 U.S.C. 30113(b), find both that compliance with a standard would cause substantial economic hardship and that the manufacturer has tried to comply with the standard in good faith, as well as that the exemption is in the public interest and consistent with the Safety Act.³

In this case, Saleen has previously received a temporary exemption from FMVSS No. 208's automatic restraint requirements (the standard's "basic" air bag requirements), as well as an extension of that temporary exemption. These previous exemptions covered the period from June 2001 through August 31, 2006.

In granting the first application in June 2001, NHTSA noted that Saleen estimated that it would take up to 20 months to fully develop an automatic restraint system. 66 FR 33298, June 21, 2001. In granting the application for extension of that exemption in January 2004, NHTSA noted that Saleen then anticipated that it would be able to begin developing advanced air bags by July 2004 and expected full compliance with the requirements of FMVSS No.

208 by September 1, 2006. 69 FR 3192, January 22, 2004.

Since this type of exemption is temporary, and given the important safety benefits provided by air bags, in evaluating Saleen's latest application we particularly considered whether a further extension would be in the public interest and consistent with the Safety Act, and whether Saleen has continued to make good faith efforts to comply with this requirement.

In considering this issue, we recognize that Saleen was only able to take limited advantage of the original exemption, granted on June 21, 2001, due to production delays. Sales did not commence until March of 2003, only a few months before the July 1, 2003 expiration date for the original exemption. We also recognize that by September 1, 2006, Saleen faced the need (absent a new temporary exemption) to meet the advanced air bag requirements.

That company indicated in its petition that it considered implementing a "basic" air bag system. However, it determined that "such a system would only provide approximately \$500,000.00 in savings, with a resulting estimated development cost of \$3,300,000.00." Saleen concluded that this cost was prohibitive, given that the system would be outdated as of September 1, 2006.

While we understand that Saleen prefers for economic reasons to go directly to advanced air bags, NHTSA must also consider the safety benefits provided by "basic" air bags in assessing whether a further extension of the exemption from the "basic" air bag requirements is consistent with the Safety Act and the public interest, and in whether Saleen has made good faith efforts to meet these particular requirements.

Given the facts before us, including the previous exemptions granted to Saleen, and taking account of all of the efforts Saleen has made, we have decided to grant a one year extension of Saleen's exemption from FMVSS No. 208's "basic" air bag requirements, and to deny its request as to the additional two years. We believe that extending this exemption further would not be in the public interest or consistent with the Safety Act. We believe that there is a considerable difference between providing a company such as Saleen some additional time to develop an air bag system, and granting repeated "temporary" exemptions. With the one-year extension, Saleen will have had an exemption for a full six years, and been producing vehicles under it for about four and one-half years.

³ The Safety Act is codified as Title 49, United States Code, Chapter 301.

As to advanced air bags, and as indicated above, Saleen has hired an engineering project manager responsible for air bag development, has been working with engineers at Takata, Autoliv, and Bosch in researching all of the program requirements as well as developing a test plan and component designs for development of a system compliant with the advanced air bag requirement. Saleen is also working with Kettering University in Flint Michigan for additional research and testing.

We have concluded that Saleen has made good faith efforts to meet the advanced air bag requirements. We note that Saleen's situation in needing additional time to meet the advanced air bag requirements, which apply to low volume manufacturers beginning September 1, 2006, is not unlike that of several other low volume manufacturers.

If the petition were denied, the sale of S7 automobiles would cease immediately. In evaluating Saleen's current situation, the agency finds that to require immediate compliance with Standard No. 208 would cause the petitioner substantial economic hardship. While Saleen also alters motor vehicles, the S7 is the only model that Saleen manufactures.

Traditionally, the agency has found that the public interest is served in affording continued employment to a small volume manufacturer's work force and to those of its U.S.-sourced component suppliers. The agency has also found that the public interest is served by affording the consumers a wider variety of motor vehicles. In this instance, denial of the petition would put in jeopardy the jobs of 150 full time employees at Saleen dedicated to the design, manufacture, and certification of the S7. Denial of the petition could also affect the payrolls of U.S.-sourced component suppliers.

The vehicle in question will be manufactured in extremely limited quantities. Saleen anticipates selling no more than 25 of the vehicles per year in the United States. The current Manufacturer's Suggested Retail Price is \$555,000. The vehicles are also driven on an extremely limited basis. Saleen stated that the vehicles generally do not accrue more than 2,000 miles per year. In light of these factors, the agency anticipates that the S7 vehicles will have a negligible impact on the overall safety of U.S. highways. The agency also notes that Saleen has indicated that the vehicle subject to this petition complies with all other applicable Federal motor vehicle safety standards.

We are granting Saleen a three-year exemption from the advanced air bag requirements, beginning September 1, 2006. As indicated above, we are also granting that company an extension of the exemption from the "basic" air bag requirements for the first of the three years. Saleen's ability to utilize the final two years of the exemption from the advanced air bag requirements will be dependent on whether it implements an air bag system that enables the S7 to at least meet FMVSS No. 208's "basic" air bag requirements.

Given the discussion presented above, we conclude that Saleen has made sufficient good faith efforts to comply with FMVSS No. 208 to support these exemptions for the prescribed time periods, that requiring immediate compliance would cause substantial economic hardship, and that the exemptions are in the public interest and consistent with the Safety Act. We note that while this document includes some discussion of those good faith efforts and economic hardship, NHTSA has also considered additional information submitted by Saleen which has been determined to be confidential.

We should caution that manufacturers that receive temporary exemptions should not assume that the agency will necessarily grant extensions. On this basic issue, we note that Saleen cited in its petition a particular sales rate that it needs to sustain in order to continue to fund the development of advanced air bags for implementation by September 1, 2009. See p. 2 of Saleen's petition. The petitioner should not assume that if it is unable to maintain a particular sales rate or for other reasons does not continue to fund the development of advanced air bags, that the agency will then grant an extension of the exemption for advanced air bags provided in this document.

As to the specific paragraphs of FMVSS No. 208 that will be covered by the exemptions, we note that the original exemption for Saleen cited S4.1.5.3 of 49 CFR 571.208. On review, we believe that it would be clearer to cite both S4.1.5.1(a)(1) and S4.1.5.3. The former paragraph requires passenger cars, at each front outboard seating position, to meet specified frontal crash protection requirements "by means that require no action by vehicle occupants." S4.1.5.3 then requires that passenger cars meet that requirement by means of inflatable restraint systems. Since the intent of the exemption is to exempt the S7 from automatic crash protection requirements, we believe that S4.1.5.1(a)(1) should be cited. We note that the S7 is still subject, among other things, to S4.1.5.1(a)(3), which requires

it to meet specified performance requirements in a belted crash test. The relevant paragraph for the advanced air bag requirements is S14.2.

We also note that prospective purchasers will be notified that the vehicle is exempted from the air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standards Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Saleen S7 is granted NHTSA Temporary Exemption No. EX 06-7, from S4.1.5.1(a)(1) and S4.1.5.3. This exemption is effective September 1, 2006 to August 31, 2007. Saleen S7 is granted NHTSA Temporary Exemption No. EX 06-8, from S14.2 of § 571.208. This exemption is effective September 1, 2006 to August 31, 2009.

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

Issued on: August 31, 2006.

Nicole R. Nason,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2006-24058; Notice 1]

Pipeline Safety: Petition for Waiver; TransCanada Pipelines Limited

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; petition for waiver.

SUMMARY: TransCanada Pipelines Limited, operator of the Portland Natural Gas Transmission System (PNGTS), requests a waiver of compliance from PHMSA regulations for selected gas transmission pipeline segments in Windham, Maine. These