

denial of the exemption request would have an adverse impact on consumer choice, suggesting that there is domestic demand for Shelby Series II vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, SS II stated that Shelby Series II vehicles have utilized advanced composite technology and lightweight materials, which provide both strength and durability. According to SS II, this reduced weight translates into improved emissions and fuel efficiency.

V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (*i.e.*, September 1, 2006). 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: August 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25545, Notice 1]

YES! Sportscars; 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, YES! Sportscars 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.¹

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

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 September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, 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 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 am and 5 pm, 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. 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 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."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 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

² See 65 FR 30680 (May 12, 2000).

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, YES! Sportscars 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 petition³ 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 YES! Sportscars

Background. YES! Sportscars is a division of Funke & Will Aktiengesellschaft (AG), a German corporation formed in 2000. Funke & Will AG is a specialized engineering firm which offers engineering services to the automobile industry on small volume projects. Although the parent company's two founders together own 85 percent of the corporation's shares, the German state of Saxony does have a 15-percent ownership stake.⁴

YES! Sportscars, a separate vehicle manufacturing part of the company, began production in 2001 of high-performance sports cars based on an aluminum spaceframe. This application concerns the YES! Roadster (currently the company's only model) which is expected to retail for \$59,000. To date, the primary markets for the YES! Roadster have been Europe and the Middle East, with the following numbers of vehicles being produced over the past five years: 12 vehicles in 2001; 37 vehicles in 2002; 42 vehicles in 2003; 48 vehicles in 2004, and 54 vehicles in 2005. None of those vehicles has been sold in the U.S. market.

According to the petition, the company had originally planned to produce vehicles for the European market, but it has been determined to be a matter of financial necessity for YES! Sportscars to enter the U.S. market, particularly given the limited but global market for these high-end sports cars. The company anticipates that approximately 65 percent of its total sales will be to the U.S. market.

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. after September 1, 2006.

Eligibility. As discussed in the petition, YES! Sportscars is a division of Funke & Will AG, a German corporation formed in 2000. The entire organization currently employs 49 people. No other vehicle manufacturer has an ownership interest in either YES! Sportscars or Funke & Will AG, and the reverse is likewise true. Stated another way, YES! Sportscars is an independent automobile manufacturer which does

not have any common control or is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer whose total production has ranged from 12 to 54 vehicles per year over the period from 2001 to 2005. According to its current forecasts, YES! Sportscars anticipates that approximately 250 vehicles would be imported into the U.S. during the three-year period for its requested exemption, if such request were granted.

Requested exemption. YES! Sportscars stated that it intends to certify the YES! Roadster as complying with the rigid barrier belted test requirement using the 50th-percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner stated that it previously determined the YES! Roadster's compliance with rigid barrier unbelted test requirements using the 50th-percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. YES! Sportscars stated that it, therefore, cannot at present say with certainty that the YES! Roadster will comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the YES! Roadster's compliance with the other advanced air bag requirements, YES! Sportscars stated that it does not know whether the YES! Roadster will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, YES! Sportscars is requesting an exemption for the YES! Roadster from the rigid barrier unbelted test requirement with the 50th-percentile adult male test dummy (S14.5.2), 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).

YES! Sportscars stated its intention to certify compliance of a second generation of the YES! Roadster, to be produced by September 1, 2009, which would be certified as complying with all applicable U.S. standards, including advanced air bags. Accordingly, the company seeks an exemption from the above-specified requirements of FMVSS No. 208 from September 1, 2006 to August 31, 2009.

Economic hardship. Publicly available information and also the

³ 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.

⁴ According to the petitioner, the German state government took an ownership interest in the firm in exchange for subsidies for capital investment in facilities and equipment. According to YES! Sportscars, these subsidies cannot be used for operational expenditures and research and development funding.

financial documents submitted to NHTSA by the petitioner indicate that the YES! Roadster project will result in financial losses unless YES! Sportscars obtains a temporary exemption.

Over the period 2001–2005, the YES! Sportscars division of Funke & Will AG has had net operational losses totaling 484,000 euros (\$618,000 at an exchange rate of 1 euro = \$1.277).⁵ As of the time of the application, YES! Sportscars has invested over \$3.0 million on the design, development, and homologation of the YES! Roadster project in order to have the vehicle meet U.S. standards—not including the advanced air bag requirements which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

YES! Sportscars stated that costs associated with advanced air bag engineering and development (including research and development, testing, tooling, and test vehicles) have been estimated to be \$1.7 million (including internal costs). In its petition, YES! Sportscars 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, YES! Sportscars 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, YES! Sportscars projects a net loss of \$1.1 million over the period from 2006–2008 (assuming a delayed start of U.S. sales until 2008). However, if the petition is granted, the company anticipates a profit of nearly \$1.4 million during that same period. The petitioner argued that a denial of this petition could preclude financing of the project for USA-compliant vehicles, a development which would have a highly adverse impact on the company.

Good faith efforts to comply. As stated above, YES! Sportscars initially planned to produce vehicles for the European, Mid-East, and Far-East markets, but once it was determined in 2005 that entry into the U.S. market was a necessary part of its business plan, the company invested over \$3.0 million on research and development and tooling for its U.S. YES! Roadster program. In

that time, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations, except for than 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 over \$630,000 to reengineer the YES! Roadster to include a standard air bag system, which it stated will then be “expanded” into an advanced air bag system.

According to its petition, even though advanced air bags are beyond its current capabilities, YES! Sportscars 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 \$1.1 million (excluding internal costs) and a minimum lead time of 24 months for the advanced air bag project. YES! Sportscars stated that the following engineering efforts are needed to upgrade the YES! Roadster’s standard air bag system to an advanced air bag system: (1) Interior redesign work to the dashboard, steering column, and electronic systems; (2) sourcing and organization of supplier and engineering personnel and resources for development work (including sensor calibration); (3) construction of prototypes, and (4) testing.

In addition, YES! Sportscars stated 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. YES! Sportscars further stated that small volume manufacturers simply do not have the internal resources to do full U.S. homologation projects without reliance on outside suppliers of advanced engineering technologies.

In short, YES! Sportscars 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. With funding from sale of the current generation of YES! Roadsters, the company expects that additional development efforts could start in 2007, thereby allowing production of a fully compliant vehicle in September 2009.

YES! Sportscars 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, YES! Sportscars 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 YES! Roadster will comply with all other applicable FMVSSs.

The company asserted that granting the exemption will benefit U.S. employment, companies, and citizens, because YES! Roadsters will be sold and serviced through a network of U.S. dealers. YES! Sportscars also argued that denial of the exemption request would have an adverse impact on consumer choice, suggesting that there is domestic demand for a performance vehicle in the YES! Roadster’s price range. 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 and “minimalist design.” 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, YES! Sportscars stated that the YES! Roadster has an extremely strong and protective chassis, which is composed of aluminum tubes and composite structure parts. According to YES! Sportscars, 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 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (i.e., September 1, 2006). 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: August 18, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

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⁵ According to the YES! petition, the engineering portion of Funke & Will AG has made a modest profit in the past few years, but in total, such profits would only amount to 45 percent of the funding needed to finance the requisite advanced air bag work.