



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

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**Saleen Automotive Inc.; Receipt of Petition for a Temporary Exemption From all Requirements of FMVSS No. 126 and the Air Bag Requirements of FMVSS No. 208;
Notice of receipt of a petition for a temporary exemption, request for comment
84 Federal Register 27392, June 12, 2019**

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the National Highway Traffic Safety Administration (NHTSA, Agency) notice of receipt of a petition for a temporary exemption and request for comment on a petition from Saleen Automotive Inc. (Saleen) for exemptions from Federal Motor Vehicle Safety Standard (FMVSS) No. 126, Electronic Stability Control (ESC) and the airbag requirements of FMVSS No. 208.¹ Advocates opposes the granting of the exemption from the airbag requirements of FMVSS 208.

Airbag Exemption Requirements

In their Petition,² Saleen states that they are applying for the exemption under the justification that “compliance with the standard would cause substantial economic hardship”.³ While the governing statutes and regulations specify the information required in a petition for exemption from FMVSSs, Saleen acknowledges in the Petition that exemptions from the airbag requirements are further restricted by language in FMVSS 208 itself.⁴ However, the Petition fails to meet the requirements of those regulations. Specifically, the regulation dictates the standard of review for petitions for exemption from inflatable restraint systems:

S12.3 Standard of review. In order to receive a temporary exemption from the inflatable restraint requirement, a vehicle manufacturer must demonstrate in its application that there has been a disruption in the supply of one or more inflatable restraint system components, or a disruption in the use and installation by the manufacturer of any such component due to unavoidable events not under the control of the manufacturer, which will prevent a manufacturer from meeting its anticipated production volume of vehicles with inflatable restraint systems.

¹ Saleen Automotive Inc.; Receipt of Petition for a Temporary Exemption From all Requirements of FMVSS No. 126 and the Air Bag requirements of FMVSS No. 208; Notice of receipt of a petition for a temporary exemption, request for comment; National Highway Traffic Safety Administration (NHTSA), 84 FR 27392 (Jun. 12, 2019). (Notice).

² Saleen Automotive Inc. – Email/Petition Application(2), Mar. 14, 2019, NHTSA-2019-0053-0002. (Petition).

³ 49 USC 30113(b)(3)(B)(i); 49 CFR 555.5(a).

⁴ 49 CFR 571.208 S12, Temporary Exemption from Requirement for Inflatable Restraint System.

Saleen has presented no evidence that there is any disruption in the supply or use and installation due to unavoidable events. While Saleen notes that development of a compliant airbag would take 15 months, this is not a disruption or unavoidable event, but part of the current industry process of developing a safe motor vehicle.

Similarly, Saleen acknowledges that the NHTSA has concluded in 2011 that “the expense of advanced air bag technology may not now be sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.”⁵ However, Advocates disagrees with Saleen’s claim that the statement in the notice cited was not directed at low-volume manufacturers such as themselves.⁶ Specifically, the preceding sentence in the cited notice states “[f]urthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology.”⁷ Further, the noticed cited by Saleen is for exemptions from the advanced airbag requirements and not exemptions from the entire airbag requirement. In fact, the Agency has addressed these issues as they pertain to a small volume manufacturer in 2007. At that time, the NHTSA concluded in denying an application for exemption from the airbag requirements “that it would not be in the public interest or consistent with the Safety Act to grant an economic hardship exemption to permit [those] vehicle[s] to be sold without air bags.”⁸ Thus, the NHTSA has already concluded that the time and cost of developing airbags, let alone meeting advanced airbags requirements, are no longer a valid basis for justifying exemptions under economic hardship.

Conclusion

Airbags, along with seatbelts, are the primary safety technologies placed in motor vehicles to address the serious risk of injury in frontal collisions. The NHTSA estimates that frontal airbags have saved over 47,000 lives between 1987 and 2016.⁹ It would be unconscionable for the NHTSA to grant an exemption from the airbag requirements in FMVSS 208 given the foundational nature and maturity of the technology. Failure of manufacturers, new or old, large or small, to take into account the engineering and time to produce vehicles with this life saving technology is unacceptable. The NHTSA has previously rightfully concluded that exemptions from the airbag requirements are not in the public interest, not consistent with the Safety Act, and should not be allowed on the justification of an economic hardship. For these reasons Advocates opposes the granting of this exemption.



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⁵ Petition, p. 6; citing 76 FR 20082, Apr. 11, 2011.

⁶ Petition, p. 6.

⁷ 76 FR 20082, Apr. 11, 2011

⁸ 72 FR 30426, May 31, 2007.

⁹ Traffic Safety Facts 2016, NHTSA, DOT HS 812 554, May 2018.