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C O S V A M

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BY FAX AND EXPRESS MAIL

NHTSA-00-7013-27

June 21, 2000

Administrator
NHTSA
400 7th St. SW
Washington DC 20590

Petition for Reconsideration of May 12, 2000 Final Rule;
FMVSS 208 / advanced air bags; Docket No. 00-7013, Notice 1; 65 FR 30680.

Dear Sir or Madam:

The Coalition of Small Volume Automobile Manufacturers, Inc. ("COSVAM") hereby petitions for reconsideration of the May 12, 2000 final rule regarding advanced air bags under FMVSS 208.

COSVAM is a non-profit trade association formed in January 1996 in order to seek greater flexibility in United States automotive regulations for automobiles produced by small volume manufacturers ("SVMs"). All COSVAM members are ultra small volume automobile manufacturers or their suppliers.

COSVAM requests reconsideration as follows:

I.

COSVAM Requests That The Final Rule Define "Small Manufacturer" For Purposes Of Exclusion From The Phase-In Requirements As Including Manufacturers That Produce Not More Than 10,000 Vehicles Per Year World-Wide

In its comment to the SNPRM, COSVAM requested that the final rule define "small manufacturer", for purposes of exclusion from the phase-in requirements, as including manufacturers that produce not more than 10,000 vehicles per year worldwide. In denying COSVAM's request and maintaining the 5000 limit proposed in the SNPRM, the agency simply stated that "COSVAM did not provide any analysis demonstrating a need to increase the number beyond 5000." 65 FR at 30720.

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COSVAM respectfully disagrees with this conclusion. As NHTSA itself noted in the final rule, "COSVAM argued that the definition of small volume manufacturer should be based on the agency's overall statutory scheme ...." 65 FR at 30720. The agency then correctly observed in a footnote that 49 USC 30113 provides exemption relief to manufacturers producing fewer than 10,000 vehicles per year. COSVAM, therefore, did indeed provide an "analysis" demonstrating a need to change the SVM limit to 10,000. COSVAM's reasoning was that Congress intended, as expressly set forth in section 30113, that small volume exemptions be available to companies producing fewer than 10,000 cars per year. Surely the better course is adopt the 10,000 limit in this rule, thereby maintaining regulatory consistency. Why have a 10,000 SVM definition in the statute and a 5000 limit in the May 12 final rule? Moreover, the obvious answer – that the May 12 rule should adopt the 10,000 limit – is further supported by the fact that NHTSA staff has indicated that in deciding whether or not a given company is an SVM, the agency will apply the test used in past NHTSA section 30113 decisions.

- In view of the foregoing, COSVAM requests that the definition of SVM be set at 10,000 per year worldwide.

II.
In The Alternative, COSVAM Would Urge Two Other Courses Of Action If NHTSA Refuses To Set A Limit Of 10,000 Per Year Worldwide

In the alternative, COSVAM would urge two other courses of action if NHTSA refuses to set a limit of 10,000 per year worldwide:

- Set the definition of SVM at 5000 *US sales per year*. Most significantly, in the advanced air bag phase-in available to "limited line manufacturers" NHTSA offers flexibility to "manufacturers that sell two or fewer carlines *in the United States*." 65 FR at 30720 (emphasis added). Why not use the same approach as regards SVMs? Indeed, regulatory consistency would demand this result. Furthermore, this approach is also compelled by logic -- the cost of advanced air bags must be amortized over US sales, given that advanced air bags need not be installed in non-US vehicles.
- As a last choice, COSVAM suggests that the definition of SVM be based on an **average** of 5000 cars per year worldwide over the phase-in period. In this way, a company could make use of the SVM lead-time provisions if its average production during the phase-in was below 5000 per year worldwide. Thus, if a manufacturer produced 3999 cars in the first phase-in year, 4999 in the second, and 5999 in the last phase-in year, it would still be eligible for the SVM lead-time provisions in all 3 years. NHTSA's existing regulations recognize such an approach. Various NHTSA phase-in requirements specify that the percentage of production that must be compliant during a given phase-in year is equal to a percentage of an average annual production over preceding years. See e.g. 49 CFR 571.214, S8; S14 of current rule. The idea of using a phase-in average will also avoid the possibility that an SVM crosses the 5000 limit in one year by one car, and thereby is foreclosed from the phase-in exclusion for that year.

III.
SVMs Producing 10,000 Cars Per Year Have No Greater Ability To Comply Than Those Producing 5000 Per Year.

In closing, COSVAM wishes to make a general observation. There is no logical reason why a manufacturer producing 10,000 vehicles per year worldwide will have any easier time meeting the advanced air bag rule than a manufacturer producing 5000. In the global automotive industry, a manufacturer producing 10,000 per year is just as "microscopic" as one producing 5000. Both face the very same "technical challenges" (65 FR at 30721). Indeed, at least three COSVAM members have indicated that their annual production could very well go above 5000 worldwide before the phase-in concludes, but that notwithstanding their exceeding the 5000 limit, they will still face the very same problems meeting the advanced air bag rule as they would if they were below 5000. Unfortunately, crossing the 5000 "line" does not trigger any greater ability to comply with the rule.

Sincerely,

Lance Tunick
Chairman