

level starting in the third year of the respective phase-ins.

At the time NHTSA received Porsche's petition, the agency had largely completed drafting a document responding to petitions for rulemaking from the Alliance of Automobile Manufacturers, Toyota, and DaimlerChrysler requesting several changes in the advanced air bag final rule, including a change to the first phase-in schedule. That document was published in the **Federal Register** on September 24, 2002 (67 FR 59800, Docket No. NHTSA 02-13393; Notice 1).

In that document, we proposed to reduce the percentage of vehicles that must comply with the advanced air bag requirements during the first year of the phase-in, *i.e.*, from September 1, 2003 through August 31, 2004, from 35 percent to 20 percent. We stated that the proposed change reflected the technical challenges being faced by the vehicle manufacturers in meeting the new requirements and the fact that two of the automotive suppliers had dropped plans to offer devices that suppress the passenger air bag when a child is present. We also stated that we had tentatively concluded that a reduction in the first year's phase-in requirement from 35 percent to 20 percent struck a reasonable balance between ensuring that the industry provides advanced air bags as quickly as is reasonably possible, while avoiding a situation in which the industry must put new technologies into vehicles before they have been fully tested.

In light of our proposal to adjust the phase-in schedule, we decided to address the recently submitted Porsche petition and stated that we were considering possible adjustments in the alternative phase-in requirements available to limited line manufacturers. In that document, we stated that we believed the specific concerns cited by Porsche related more to its size than to the number of carlines it sells.

We otherwise denied the petitions or, as to certain requests, dismissed them because the agency had subsequently considered or was considering the same requests in the context of another rulemaking proceeding.³ On January 31, 2003, NHTSA published a final rule adopting the new phase-in schedule as proposed (68 FR 4961, Docket No. NHTSA 03-14270). The sole remaining

issue related to the September 2002 notice is Porsche's petition regarding limited line manufacturers.

II. Porsche's Comments

Porsche was the only party to comment on the issue of possible adjustments in the alternative phase-in requirements available to limited line manufacturers raised by NHTSA in the September 2002 NPRM. That company suggested a revised approach for addressing the issues it had raised in its petition. Porsche opined that it could be difficult to devise a FMVSS No. 208-specific definition of "carline" that would be easily enforceable and not overly-broad, a concern raised by NHTSA in the September, 2002 NPRM. Porsche also noted that it believed its problems with suppliers of advanced air bag technologies was more the result of its relatively small size than the fact that it produced a small number of carlines. Accordingly, Porsche proposed a new phase-in option based solely on a manufacturer's status as a relatively small, largely independent company and its production volume.

Porsche commented that its position among vehicle manufacturers is unique. According to Porsche, it is the only small independent car company selling more than a few hundred vehicles in the United States. Porsche's 2001 global production was approximately 56,000 units. Its next largest independent competitor is BMW, with annual sales of almost 1 million units. Porsche claimed that all other small manufacturers could either avoid the phase-in altogether because they produced less than 5,000 vehicles annually per year or because a larger, parent corporation owned sufficient interest in them as to allow them to phase-in their vehicles under the parent corporation. Thus, Porsche maintained, it was the only small company that would be required to meet the phase-in requirements.

Porsche urged NHTSA to adopt a new category of manufacturers who would be relieved of any responsibility to meet the new, advanced air bag requirements before September 1, 2006. The proposed category would apply to "independent low volume manufacturers" and would be based on worldwide production volume and manufacturer status. It recommended NHTSA limit the proposed category to manufacturers who produce no more than 100,000 vehicles per year and who are predominantly independent (*i.e.*, has less than 10% of its equity controlled by another manufacturer, a company owned by another manufacturer, or a manufacturer holding company).

III. Agency Decision

We have decided against the approach proffered by Porsche in its comments to the September 2002 NPRM. We believe such an approach effectively increases the size of a small volume manufacturer provided in FMVSS No. 208 by up to a factor of 20. Notwithstanding Porsche's relatively small size compared to other manufacturers, it is still substantially larger than those manufacturers for whom NHTSA determined compliance before the statutorily-mandated date would pose an unreasonable hardship. While we acknowledge that Porsche may have some difficulty engaging suppliers, we also note that the examples of supplier disinterest that were provided with the petition for rulemaking indicated that the disinterest was based, in part, on an unwillingness by Porsche to provide financial and design support.

Nevertheless, we have decided to provide relief that we believe is sufficient to address the legitimate concerns of a manufacturer that produces only a few carlines. Our original intent in providing a limited line manufacturer category was to accommodate the needs of those manufacturers who, because of the limited types of vehicles they produce, would have little or no design flexibility if required to meet the phase-in schedule applicable to other manufacturers. Certification of a single carline could result in a *de facto* phase-in requirement that far exceeded the one set for larger, more diverse manufacturers. This disparity is particularly great given the recent reduction in the phase-in percentage for the first year of the phase-in. If one assumes a roughly equal sales distribution among the two carlines originally contemplated by FMVSS No. 208, a limited line manufacturer would have to certify approximately 50% of its vehicles during the first year of the phase-in, while other manufacturers would only have to certify 20%. Given the reduction in phase-in percentages for larger, more diverse manufacturers, we believe it is appropriate to expand both the definition of and the limitations on limited line manufacturers.

First, we have decided to amend the definition of a limited line manufacturer for purposes of the first phase-in only, to a manufacturer that produces three or fewer carlines, as that term is defined in 49 CFR 583.4, for sale or distribution in the United States. NHTSA's initial decision to allow only two carlines to qualify as a limited line manufacturer was based on a desire to address the

³ While some commenters objected to NHTSA's denial of other petitions, or certain requests within the petitions, no new petitions have been submitted and NHTSA's regulations do not require the agency to reconsider its denials of petitions. Accordingly, those issues were not further addressed in the January 2003 final rule and will not be addressed here.