

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

[Docket No. NHTSA–2008–0152]

Think Technology AS; Grant of Application for a Temporary Exemption From the Advanced Air Bag Requirements of Federal Motor Vehicle Safety Standard No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard No. 208.

SUMMARY: This document grants the Think Technology AS (Think) application for a temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. The exemption applies to the Think City EV vehicle line. In accordance with 49 CFR Part 555, the basis for the grant is that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of that vehicle. The exemption is effective from February 1, 2010 through January 31, 2012.

NHTSA published a notice of receipt of the application on September 16, 2008 and afforded an opportunity for public comment.

DATES: The exemption is effective February 1, 2010 through January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Ari Scott, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–326, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Advanced Air Bag Requirements

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as “advanced air

bags.”¹ 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.

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 advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a small electric-powered car.

II. Overview of Think's Petition for Low-Emission Vehicle Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Think 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 the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of the vehicle. Think requested the exemption for a period of two years. The petitioner stated that the vehicle will be equipped with standard air bags.

III. Background of Manufacturer

The Think City EV is a two-seat hatchback vehicle that originally began as a project started in 1998 by PIVCO AS in Norway. According to the petitioner, in 2000, the PIVCO project was acquired by Ford Motor Company, a major U.S. automobile manufacturer, as part of an effort to comply with the State of California's Zero Emissions Vehicle mandate. Ford created a project called Think, which produced 350

Think City EV cars based on the PIVCO project in 2000, which were leased as part of a demonstration and testing project. However, in light of the California Air Resources Board's decision in 2003 to essentially end the requirement for “pure” electric cars, Ford sold the Think project to KamKorp, a company based in Switzerland. In 2006, a new ownership occurred creating Think Global AS.

Think Technology AS is a wholly-owned subsidiary of Think Global AS, a holding company that possesses the intellectual property rights to the Think City EV. The current owners of Think Global AS include the founders of the PIVCO project, the precursor to the Think City EV, as well as various other entities in Norway and other countries. Neither Think Global AS nor Think Technology AS (hereinafter, “Think”) has sold any vehicles in the U.S. to date.

IV. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle.

A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

To be considered, a petition submitted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle must include specified information set forth at

¹ See 65 FR 30680 (May 12, 2000).

§ 555.6(c). The main requirements of this section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of the vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

NHTSA notes that while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"² the statute also provides that an exemption may be renewed on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will grant renewal petitions, thereby potentially imparting semi-permanent exemption from a safety standard. Exempted manufacturers contemplating seeking renewal should bear in mind that the agency is directed to consider not only whether an exemption would make the development or field evaluation of a low-emission motor vehicle easier but other factors such as whether an exemption is in the public interest and consistent with the Safety Act generally.

V. Think's Petition

As indicated above, Think has petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. Think requested an exemption for a period of two years upon the grant of the petition, although in a subsequent communication it requested that the starting date for that period be delayed until February 1, 2010.

The requested exemption includes the advanced air bag requirements in S14.5.2 of FMVSS No. 208, 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).

The basis for the petition was that the exemption would facilitate the

development of a low-emission vehicle and would not unreasonably lower the safety or impact protection level of the vehicle. Think asserted that the Think City EV emits zero pollutants, would not unreasonably degrade safety, has substantial public interest value, and that the exemption is necessary to facilitate the development. The following is a brief summary of the salient points of Think's petition, and more complete information can be found by examining the notice of receipt or the petition itself, available in the NHTSA docket (NHTSA-2008-0152).

Think asserts that the Think City EV is a low-emission vehicle. It states that 49 U.S.C. 30113(a) defines a low-emission vehicle as one that conforms to the applicable standards for new vehicles contained in section 202 of the Clean Air Act (42 U.S.C. 7521), and whose emissions are significantly below one of those standards. Section 202 of the Clean Air Act currently controls hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter. Think asserts that the Think City EV emits none of the listed pollutants. It also asserts that the vehicle has no additional systems installed that could produce the named pollutants, e.g., a fuel-fired heating system.

Think also stated that the requested exemption would not unreasonably degrade the safety of the Think City EV. While it is requesting an exemption from the advanced air bag requirements, the Think City EV is not without air bags. Think states that the Think City EV will comply with the pre-advanced air bag requirements of FMVSS No. 208. As stated in the petition, the only differences between a compliant vehicle and the Think City EV are the test requirements discussed above in the requested exemption.

Additionally, Think cited several safety features of the Think City EV that will help to prevent injuries. The petitioner stated that the vehicle was designed, engineered and tested by Ford to meet all applicable NHTSA requirements for the 2003 model year. It stated further that the Think City EV will: (1) Meet the new belted test requirements of S14.5.1(a), which imposes more stringent limits for head injury criteria, chest deflection, and neck injury than the old version to which the vehicle was originally designed; (2) meet the criteria for injury prevention under S13, with regard to the unbelted sled test; (3) have FMVSS No. 209 and 210 compliant belts and anchorages, together with pretensioners and load limiters; (4) have a passenger air bag on-off switch permitted by FMVSS No. 208; and (5) meet all other

requirements of the FMVSSs. Given these features, the petitioner argues that the Think City EV will not unreasonably degrade safety or impact protection, and that the risk to safety is *de minimis*.

Think states that the temporary exemption it seeks would facilitate the evaluation and development of the Think City EV. The petitioner claims that it currently does not have the ability to design or acquire an air bag system that meets the advanced air bag requirements of Standard No. 208. While the Think City EV's air bag system is a dual stage system, it is currently designed with a fixed phase delay as Think does not yet have hardware, such as seat position sensing, that can be utilized to meet all of the advanced air bag requirements. Think also asserts that off-the-shelf systems that meet the requirements are not currently available, and that the sourcing of a custom-designed system is not straightforward or financially viable at this time. According to that company, the requested exemption would facilitate the development of the Think City EV by allowing Think to enter the U.S. market, a key target market for the vehicle at issue. Think states that this would enable the company to evaluate the vehicle, and based on this evaluation, continue development, including successive models. Specifically, Think claims that the requested two year exemption would permit:

- Evaluation and further development of alternative battery concepts;
- Evaluation and further development of vehicle systems based on real-world usage under U.S.-specific driving and storage conditions;
- Product evaluation through U.S. warranty analysis and customer feedback;
- Further evaluation of the company's plan to establish a U.S. manufacturing operation; and
- Development of a compliant advanced air bag system.

Think stated that at the end of the exemption period, it intends to conform with all advanced air bag requirements.

Finally, Think set forth reasons why the granting of the petition would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301. Think believes that the Think City EV is a major step forward in transportation that will benefit the environment, and that granting the exemption will protect U.S. consumer choice. According to the petitioner, battery electric vehicles like the Think City EV can reduce dependence on oil and are more energy efficient compared to Internal Combustion Engine powered cars.

² 49 U.S.C. 30113(b)(1).

Think also asserted that battery recharging costs are more predictable than gasoline prices, and not as subject to volatile international incidents.

VI. Notice of Receipt

On September 16, 2008, we published in the **Federal Register** (73 FR 54660) a notice announcing receipt of an application from Think Technology AS for a temporary exemption from the advanced air bag requirements of FMVSS No. 208 for the Think City EV. We invited public comment on Think's application. The only comment we received was from Think, indicating that due to a delay in its production schedule, it was requesting that the exemption begin on November 1, 2009. In a subsequent e-mail, Think requested that the commencement of the exemption be further delayed until February 1, 2010.

VII. Final Decision

The following discussion provides our decision regarding Think's temporary exemption request pertaining to the advanced air bag requirements of FMVSS No. 208.

We are granting Think's petition for the Think City EV to be exempted from the following portions of the advanced air bag requirements of FMVSS No. 208: S14.5.2, S15, S17, S19, S21, S23, and S25. The exemption is for a two year period. The agency's rationale for this decision is as follows.

First, we believe it is manifestly in the public interest to accelerate the development of electrically driven vehicles. Electric vehicles can help reduce the reliance of the nation on oil, and reduce greenhouse gas and other emissions. Moreover, development of electric vehicles contributes to the expansion of consumer choices.

NHTSA further agrees that the requested exemption would make the development or field evaluation of a low-emission vehicle easier. Think has stated that there are a number of concepts that need evaluation and further development at this time. There are, at this time, very few other fully battery-operated vehicles available in the U.S. Think stated that substantial further evaluation of the market and available technologies is needed to further the development of these types of vehicles.

Think explained that the exemption would, among other things, permit evaluation and further development of alternative battery concepts, evaluation and further development of vehicle systems based on real-world usage under U.S.-specific driving and storage conditions, and product evaluation

through U.S. warranty analysis and customer feedback. We agree that the exemption would permit that company to engage in these activities, and thereby make the development or field evaluation of a low-emissions vehicle easier.

NHTSA also concludes that granting this exemption would not unreasonably lower the safety or impact protection level of the vehicle. Of particular note, the Think City EV will have air bags and will be certified to meet the pre-advanced air bag requirements of FMVSS No. 208. Moreover, with exception of the advanced air bag requirements, it will be required to be certified to meet all other requirements contained in the applicable FMVSSs.

Furthermore, while the Think City EV lacks an advanced air bag that meets the requirements of FMVSS No. 208, it does employ a two-stage air bag that uses a fixed delay. The Think City EV is also equipped with an air bag on-off switch, which can be used to turn off the front passenger air bag when children are seated in the right front passenger seat.

Additionally, Think stated in its petition that while it is requesting an exemption from the requirements of S14.5.2, with regard to the unbelted tests, the Think City EV will meet the 50th percentile adult male dummy sled test requirements in S13, as well as the injury criteria in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 (the criteria specified in S14.5.2).

We also observe that only a limited number of vehicles would be produced under the requested exemption. Manufacturers granted exemptions on the basis of furthering the development of low-emission vehicles are limited to selling 2,500 exempted vehicles in any 12-month period. Given that this is a two-year exemption, no more than 5,000 vehicles could be built that lack the advanced air bag protection of FMVSS No. 208. In its petition, Think stated that it projected selling 500 vehicles during the first year of the requested exemption and 2,500 vehicles during the second year.

Based on the above discussion concerning safety, we believe that any impact on safety from granting the requested exemption would be negligible.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced 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 FMVSSs in effect on the date of manufacture "except for Standard 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. The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a FMVSS.

In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

In consideration of the foregoing, we conclude that granting the requested exemption from the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would facilitate the field evaluation and development of a low-emission vehicle, and would not unreasonably lower the safety or impact protection level of that vehicle. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(iii), Think Technology AS is granted NHTSA Temporary Exemption No. EX 09-02, from S14.5.2, S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. The exemption is for the Think City electric vehicle and shall run from February 1, 2010 until January 31, 2012 as indicated in the **DATES** section of this notice. The exemption may not be used for more than 2,500 vehicles to be sold in the United States in any 12-month period.

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

Issued on: July 30, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9-19380 Filed 8-11-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA-2009-0069]

Applicant: Norfolk Southern Corporation, Mr. B. T. Fennell, Division Superintendent, Harrisburg Division, 4600 Deer Path Road, Harrisburg, Pennsylvania 17111.

The Norfolk Southern Corporation (NS) requests a waiver from the requirements of 49 CFR 236.566; Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.

The request is to permit NS to use non-equipped, remote-controlled locomotives to operate as controlling units on the NS Morrisville Line, in 261-CSS territory, between CP-MA, Milepost (MP) MV 4.7 and CP-Lang, MP MV 6.3.

The reason given for the proposed waiver is to provide head room out of the Morrisville Yard for remotely operated non-equipped locomotives onto the Main Track and Signaled Siding for switching operations. It is limited to switching movements West of CP-MA into equipped territory and reversing back into Morrisville Yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing

that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA-2009-0069 and may be submitted by one of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202-493-2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590; or
- *Hand Delivery:* Room W12-140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

FRA wishes to inform all potential commenters that 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://www.regulations.gov>.

Issued in Washington, DC on August 6, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9-19279 Filed 8-11-09; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

[Docket Number FRA-2009-0079]

Applicant: Norfolk Southern Corporation, Mr. B. L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street, NE., Atlanta, Georgia 30309.

The Norfolk Southern Corporation (NS) seeks approval of the proposed discontinuance and removal of the control signals and the conversion of a power-operated crossover to hand-operation at CP-111, Milepost EP-73.4, on the NS Harrisburg Division, Port Road Branch, Running Tracks B & C, Harrisburg, Pennsylvania. Four signals are to be removed and the power-operated crossover is to be converted to hand-operation.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA-2009-0079 and may be submitted by one of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202-493-2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200