



This document is scheduled to be published in the Federal Register on 03/08/2013 and available online at <http://federalregister.gov/a/2013-05477>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0086]

Group Lotus plc

Grant of Petition for a Temporary Exemption from an Advanced Air Bag Requirement of FMVSS No. 208

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

ACTION: Notice of grant of a petition for a temporary exemption from a provision of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, Occupant Crash Protection.

SUMMARY: This notice grants the petition of Group Lotus plc (Lotus) for a temporary exemption of the front passenger position of its Evora model from one advanced air bag requirement of FMVSS No. 208, i.e., the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies. The agency finds that achieving compliance with that requirement would cause substantial economic hardship to Lotus and that the company has tried to comply with the requirement in good faith.

DATES: The exemption remains in effect until March 8, 2014.

FOR FURTHER INFORMATION CONTACT: David Jasinski, 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:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA published a final rule upgrading 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 twin 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. Prior to this rule, crash tests under FMVSS No. 208 used only one size dummy, a 50th percentile adult male dummy. However, the advanced air bag rule specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard’s crash tests.

The requirements for the vehicle performance in an unbelted 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier crash test and the belted rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) for both the 50th percentile male dummy and the 5th percentile female dummy were phased in, beginning with the 2004 model year. Small volume manufacturers were not subject to these advanced air bag requirements until the end of the phase-in period, which was September 1, 2006.

A second phase-in period required vehicles to be certified as meeting the belted rigid barrier test requirements at speeds up to 56 km/h (35 mph) using the 50th percentile adult male dummy. This requirement was phased in, beginning with the 2008 model year. Small volume manufacturers were not subject to this requirement until the end of the phase-in period, which was September 1, 2010.

¹ See 65 FR 30680 (May 12, 2000).

The 2000 final rule did not include a higher speed belted rigid barrier test for a 5th percentile adult female dummy. Instead, NHTSA initiated testing to examine the practicability of such a requirement.²

On August 31, 2006, NHTSA published a final rule that increased the maximum test speed for the belted rigid barrier test using the 5th percentile adult female test dummy from 48 km/h (30 mph) to 56 km/h (35 mph).³ This new requirement was phased in, beginning with the 2010 model year. Small manufacturers were not subject to this requirement until the completion of the phase in period, which was September 1, 2012.

In recent years, NHTSA has addressed a number of petitions for exemption from some of the initial advanced air bag requirements of FMVSS No. 208. The majority of these requests came from small manufacturers, each of which petitioned on the basis that achieving compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was given the agency in 1972 to enable it to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA granted a number of these petitions, usually in situations in which the manufacturer was supplying standard air bags in lieu of advanced air bags.⁴ In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

² See 65 FR 30690.

³ See 71 FR 51768.

⁴ See, e.g., grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

Notwithstanding those previous grants of exemption, NHTSA has considered two key issues--

- (1) whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and
- (2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected of the petitioners.

While the exemption authority was provided by Congress to address the problems of small manufacturers and the agency wishes to be appropriately attentive and responsive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the safety benefits of advanced air bags, NHTSA has determined that it is not in the public interest to continue to grant exemptions from these requirements under the same terms as in the past.⁵ The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, 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. Accordingly, NHTSA has concluded that the expense of advanced air bag

⁵ See denial of petition of Pagani Automobili SpA, 76 FR 47641-42 (Aug. 5, 2011).

technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.⁶

NHTSA further notes that the granting of hardship exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith."⁷ In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.⁸

II. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act (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 implementing this section to NHTSA.

More specifically, the Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that "compliance with the

⁶ See *id.*

⁷ 49 U.S.C. 30113(b)(3)(B)(i)

⁸ 49 CFR 555.6(a)(2)

standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.”

NHTSA established Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a manufacturer petitioning for exemption is required to include specified information in its petition.⁹ Foremost among the requirements are that the petitioner must set forth the basis for the application, the information required by § 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.

One of the permissible bases for an exemption specified in § 555.6 is hardship. 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 production volume 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 state that a manufacturer has 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

⁹ 49 CFR 555.5(b).

second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,”¹⁰ the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency’s decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer’s ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Group Lotus Plc (Lotus) has submitted a petition asking the agency for a temporary exemption from one advanced air bag requirement of FMVSS No. 208 for its Evora model. Specifically, the petition requests an exemption from the advanced air bag requirement in S14.7, which requires vehicles manufactured on or after September 1, 2012, to meet the higher maximum speed (56 km/h (35 mph)) belted test requirement using the 5th percentile adult female dummy.¹¹ Lotus requested this exemption only for

¹⁰ 49 U.S.C. 30113(b)(1).

¹¹ In its petition, Lotus asks for exemption from S15.1(b) and S16.1(a)(2) as well. However, those provisions apply to only those vehicles certified as complying with S14.6 or S14.7. If an exemption is granted, the vehicle would not be required to be certified to S14.7. S14.6 is the phase in for the higher speed 5th percentile adult female belted barrier test requirement that is not applicable to Lotus. In that instance, neither provision would apply to the exempted vehicles. Furthermore, S16.1(a)(2) is the test

the front passenger seat. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. In its petition, Lotus requested an exemption for a period of 31 months from September 1, 2012 to March 31, 2015.

Lotus is a United Kingdom corporation. In the year prior to the filing of its petition, Lotus produced a total of 3,115 vehicles.¹² Lotus stated that, since its inception, it has never manufactured more than 10,000 vehicles in any year. Lotus stated further that, although it is owned by the Malaysian automobile manufacturer Proton, Proton is not a “sponsor” of Lotus and its production should not be (and historically has not been) aggregated with Lotus’s production for the purpose of determining eligibility for a temporary exemption. Lotus anticipates that the number of exempted vehicles imported to the U.S. if this petition is granted would be approximately 800.

Lotus previously obtained an exemption from the advanced air bag requirements for its Elise model.¹³ In its petition for exemption from the advanced air bag requirements for the Elise, Lotus committed to equipping its next model, the Evora, with compliant advanced air bags. Lotus stated when the Evora was introduced into the U.S. market in 2010, the Evora was fully compliant with FMVSS No. 208. However, Lotus stated that its sales have been lower than projected because of Lotus’s financial hardship, exacerbated by the global recession; emergence of competition in its market segment; and the withdrawal of the Elise from the U.S. market. Furthermore, Lotus stated the Evora’s advanced air bag system does not comply with the higher speed 5th percentile female

procedure for conducting the rigid barrier test using 5th percentile adult female dummies. This test procedure contains no substantive requirements for which Lotus would need exemption.

¹² This total includes 690 vehicles that were assembled for Tesla Motors, Inc.

¹³ See 71 FR 52851, 52859-62 (Docket No. NHTSA-2006-25324).

belted occupant (passenger side, fully forward seat position) barrier crash test, which became effective for the Evora on September 1, 2012, without sourcing new components and conducting a complete revalidation of the system. Lotus previously believed that Evora sales would have been augmented by a new product using substantially the same platform, upon which compliance with the higher speed 5th percentile female belted requirements would have been developed. However, Lotus stated that it stopped that development program due to poor Evora sales and repositioning of its business (moving from the entry level premium segment to the high performance, luxury sports car segment).

Lotus stated that the Evora cannot meet the higher speed 5th percentile female belted test requirements because the Evora's air bag electronic control unit (ECU) does not have the capability to monitor whether the seat belt is buckled and its seat belt supplier does not have a suitable buckle switch. A buckle switch would allow the ECU to fire only the first stage of the air bag inflator for buckled occupants while firing two stages for unbuckled occupants, allowing the stiffness of the air bag to be different for belted and unbelted occupants. In order to incorporate a buckle switch in the Evora, Lotus stated that a new air bag ECU would need to be sourced, calibrated, and validated; a new seat belt system would need to be sourced; and a complete series of development tests would need to be conducted.

Lotus expects that this development would cost over \$4 million. Lotus's financial statements show that between April 2007 and March 2010, the company experienced losses of approximately \$40 million. Lotus stated that, without the exemption, it would withdraw from the U.S. market and lose its market share, resulting in intangible losses

such as loss of brand image, complication of reentry into the U.S. market in the future, and job losses.

Lotus stated that it has considered alternative means of compliance, but these alternatives have been found to be incapable of providing a solution. Lotus stated that it could not use a seat belt buckle sensor from its current seat belt supplier because the switch is inadequate and there is not a suitable ECU. Lotus stated that it considered moving the passenger seat rearward, but concluded it would need to reevaluate compliance with the 50th percentile male tests in both the belted and unbelted conditions which would result in similar costs to those described above. Lotus also stated that it considered fixing the passenger seat in the mid-position, but concluded that occupant ingress/egress would be adversely affected and it would prevent a 95th percentile occupant from fitting in the passenger seat.

Lotus stated that, if an exemption were granted, the company would provide advice and warnings in its owner's manual identifying the risks associated with incorrect positioning of the seat belt and sitting too close to the air bag.

IV. Notice of Receipt and Summary of Comments

On July 3, 2012, we published in the **Federal Register** (77 FR 39564) a notice of receipt of Lotus's petition for a temporary exemption, and provided an opportunity for public comment. We received three comments, two comments from Lotus and one from the Advocates for Highway & Auto Safety (Advocates).

In Lotus's first comment, it addressed three issues. First, Lotus stated that, although its majority shareholder continues to be Proton, Proton has been acquired by DRB-Hicom. Lotus stated that the transfer of ownership of Proton should have no

bearing on its eligibility for an exemption. Lotus also stated that the evaluation of its business plan by new management indicated that the actual fiscal year 2012 results for Lotus would be far worse than forecasted in the petition. Finally, Lotus stated that, upon further evaluation of Evora usage, its annual mile usage was actually 5,127 miles, which Lotus suggested was evidence that the Evora is not used as a primary vehicle.

Advocates addressed several issues in its comments. First, Advocates stated that, in spite of Lotus's assertion to the contrary, NHTSA's policy that it is no longer in the public interest to continue to grant exemptions from the advanced air bag requirements in the same circumstances and under the same terms as in the past would apply to Lotus's petition. Although Lotus only seeks exemption from one of the advanced air bag requirements, Advocates noted that other companies have sought partial exemptions.

Advocates also asserted that the Evora could be used to carry children or other smaller statured occupants in the front passenger seat. Advocates stated that it does not believe that the exemption should be based upon Lotus's assumptions of the target population. The organization stated that, although many consumers would not purchase an Evora as the primary means of transporting their children, there was no reason why Lotus's vehicles would not be used to transport children and, in vehicles with two seats, any child riding in the vehicle would be located in the front seat. Additionally, Advocates stated that the requirements from which exemption is sought are meant to address the safety of small-statured adult females, and that Lotus did not indicate why these smaller statured people would not be occupants of the vehicles.

Advocates also questioned Lotus's good faith efforts to comply with the standard. Advocates asserted that Lotus dismissed one possible alternative means of compliance,

fixing the seat in the middle position, on the grounds of passenger comfort. Advocates stated that Lotus did not provide any evidence that such a solution would not lead to compliance. Advocates also questioned Lotus's good faith efforts in light of the six-year lead time for compliance with the higher speed belted requirement for the 5th percentile female.

Advocates raised two other reasons for denying Lotus's petition. Advocates questioned the degree of Lotus's economic hardship based on the financial projections set forth in its original petition. Finally, Advocates stated that exemptions should only be granted when absolutely necessary and that public safety concerns must outweigh the costs of compliance.

Advocates stated that, based on the foregoing, it could not support granting Lotus's petition for renewal of its temporary exemption.

Lotus submitted a second comment that provided new information regarding the company and addressed Advocates' comments.

First, Lotus addressed its change of ownership to DRB Hicom and how that affects its product plan. Lotus stated that the introduction of new vehicles would be delayed and that Lotus would invest in the Evora to keep the model in production until 2017 to 2020. Lotus stated that, under prior management, bank financing could only be used for new products and could not be spent on the Evora. Thus, Lotus had little funding for improving the Evora, including full FMVSS No. 208-compliance. The new management intends full compliance with FMVSS No. 208 by the end of March 2015.

Lotus also provided updated financial results and projections. Unlike its original projections, Lotus forecasted a loss over the next three years.

Regarding Advocates' comment that Lotus did not consider all alternatives to asking for a waiver, Lotus noted that its inability to spend funds on Evora development meant that it could not pursue any compliance solution that required redesigning and re-certifying its air bag system. Furthermore, Lotus stated that any alternative compliance solution that required redesign and re-certification would result in costs that would be comparable to full FMVSS No. 208-compliance. Lotus stated that other alternatives such as installing an on/off switch, fixing the passenger seat, or withdrawing the 2-seat model from the U.S. market could not guarantee any real-world improvement in safety.

Regarding Advocates' assertion that the public interest does not support granting the exemption, Lotus noted that the limited exemption it seeks is not a complete exemption from the advanced air bag requirements. Lotus also stated its support for NHTSA's general policy that complete exemptions should not be granted as they previously were, but Lotus stated that this request is much narrower.

V. Agency Analysis, Response to Comment, and Decision

In this section, we provide our analysis and decision regarding Lotus's temporary exemption request concerning FMVSS No. 208, including our response to the comments received from Advocates and Lotus.

A. General Issues Related to Petitions for Exemptions from Advanced Air Bag Requirements

NHTSA requested comments in the notice of receipt for Lotus's petition about a number of issues related to the justification for continuing to grant petitions for a hardship exemption from the advanced air bag requirements. We summarized our new

position in the notice of receipt and again earlier in this document. We specifically sought comment on how this position could be applied to Lotus's request.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA has determined that it is not in the public interest to continue to grant exemptions from these requirements in the same circumstances and under the same terms as in the past. The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, 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.¹⁴ Accordingly, NHTSA has concluded that the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

We have stated that manufacturers are not precluded from submitting petitions for exemption in this area, and NHTSA may grant some such exemptions. However, manufacturers should understand that the circumstances in which we would grant such exemptions are expected to be significantly more limited than in the past.

We believe that Lotus's petition for exemption is significantly more limited in nature than those in the past. Rather than seeking exemption from all or most of the

¹⁴ The recent petitions for exemption support NHTSA's conclusion that advanced air bag technology has become more accessible to small volume manufacturers in recent years. In addition to the fact that several manufacturers who received exemptions in the past have been able to produce fully-compliant vehicles, many of the manufacturers who have recently sought exemption from the advanced air bag requirements have been developing advanced air bag systems in-house or are working with suppliers to develop such systems. *See, e.g.*, Notice of Receipt of Application of Spyker Automobielen, B.V., 76 FR 19179 (Apr. 6, 2011) (manufacturer is working with a supplier to develop advanced air bag system); Notice of Receipt of Petition of Lotus Cars Ltd., 76 FR 33406 (June 8, 2011) (manufacturer has another model that fully complies with the advanced air bag requirements).

advanced air bag requirements for the Evora, Lotus seeks exemption from only one requirement, higher maximum speed belted rigid barrier test for a 5th percentile adult female dummy, and only seeks this exemption for the passenger seat position. Because of the very limited nature of the exemption sought by Lotus, we consider it to be within the circumstances under which we would consider granting an exemption.

Although Advocates cite examples of what it characterizes as limited exemptions, the examples involve manufacturers seeking exemption from most of the advanced air bag requirements. Furthermore, the documents issued by NHTSA and cited by Advocates related to these exemption requests are notices of receipt, which do not represent a decision of the agency. We have sought comment on the applicability of this policy in all recent notices of receipt of petitions for exemption from any advanced air bag requirement and we will continue to do so if we receive any additional advanced air bag exemption petitions.

B. Decision on Lotus's Petition

In response to Lotus's petition, and after considering all of the information provided as a response to the notice of receipt of the petition, NHTSA has decided to grant Lotus's petition for temporary exemption of the front passenger seat in the Evora from the higher speed belted rigid barrier test for a 5th percentile adult female dummy in FMVSS No. 208 for a period of one year after publication of notice of this decision in the **Federal Register**. We are not providing the full 28-month revised exemption period sought by Lotus because we believe that Lotus should give additional consideration to alternative means of compliance that may not require full revalidation of the advanced air

bag system or, alternatively, to the acceleration of its plans for full FMVSS No. 208 compliance.

Our reasoning for granting this exemption is as follows. First, we find that Lotus is eligible for an economic hardship exemption. As discussed above, 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. 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.

Accordingly, we considered whether an entity other than Lotus can be considered to manufacture the Evora. We considered the effect of Proton's ownership of Lotus on its eligibility for an economic hardship exemption in prior notices and concluded that Lotus is eligible under the requirements of 49 USC § 30113(d).¹⁵ For the purpose of this exemption request only, we conclude that the recent transfer in ownership of Proton to DRB Hicom has no effect on our prior conclusions regarding Lotus's eligibility. Accordingly, we determine that Lotus is eligible for an economic hardship exemption.

Based on the information provided in Lotus's petition and its comments, NHTSA concludes that Lotus has demonstrated a good faith effort to bring its vehicle into full compliance with the requirements of FMVSS No. 208. We note that, after filing its petition, Lotus underwent a change of ownership and management. As a result of this change, Lotus has reconsidered aspects of its petition and has revised its petition to request a shorter exemption period. Moreover, Lotus has clarified that it intends to make

¹⁵ See 64 FR 61379 (Nov. 10, 1999); 68 FR 10066 (Mar. 3, 2003); 69 FR 5658 (Feb. 5, 2004); 71 FR 52851, 52859-62 (Feb. 5, 2004).

the Evora fully compliant with FMVSS No. 208 at the end of the requested exemption period.

In reaching this conclusion regarding good faith efforts, we also placed substantial weight on the fact that Lotus examined alternative means to bring the vehicle into compliance such as fixing the seat position or moving it rearward. Nevertheless, we believe Lotus should reconsider using these or other alternative means to bring the Evora into full compliance.

As noted earlier, Advocates stated that, in considering alternative means of compliance, Lotus would not need to perform full vehicle tests. However, we note that, in considering alternative means of compliance with the higher maximum speed belted test requirement using 5th percentile adult female dummies, Lotus must also consider the vehicle's compliance with the other requirements of FMVSS No. 208, particularly the unbelted test requirements.

We accept Lotus's assertion that, to ensure compliance with the other advanced air bag requirements, Lotus would need to revalidate some portion of its air bag system. For example, Lotus could achieve compliance with the higher speed belted test requirement by restricting the forward movement of the seat beyond some point. We recognize that restricting the forward movement of the seat would move both the full forward and middle seat track positions rearward, which could affect performance on the unbelted tests. Although Lotus stated that the costs of revalidating its system with the forward movement of the seat restricted would result in similar costs to replacing the ECU, Lotus has not provided any specific explanation of what tests it believes it would need to perform and how much money such a program would cost.

Lotus could fix the passenger seat in the middle position, which would not affect the belted or unbelted test performance with the 50th percentile male. However, it could affect the performance of the 5th percentile female unbelted tests. Although Lotus states that this approach could adversely affect the comfort of larger occupants and could affect ingress or egress, Lotus has not provided the agency with support for these assertions.

Although Lotus suggests that real world safety may not be improved with these alternative means of compliance, Lotus has not provided any data or other evidence to support its assertion that these alternative means for compliance would result in lower real world safety. To the contrary, for a belted 5th percentile female sitting in the passenger seat fixed at the current middle position, this alternative means of compliance would likely result in a higher level of safety as compared to the current full forward position.

Notwithstanding these observations, we conclude that Lotus has acted in good faith in exploring alternative means of compliance and reasonably concluded that such alternative means of compliance are not feasible or desirable at this time. Lotus did not have the benefit of NHTSA's views on these alternative means of compliance prior to filing its petition. The agency's decision to grant this petition for a substantially shorter time period than sought by Lotus will allow Lotus to revisit its assessment of these or other alternative means of compliance or accelerate its schedule for replacing the ECU of its current advanced air bag system.

NHTSA also concludes that Lotus has demonstrated the requisite potential financial hardship. Although Advocates noted that, in its initial projections, Lotus

expected to be profitable throughout the exemption period, its revised projections indicate it will incur financial losses, with or without an exemption.

Several factors support a finding that granting Lotus's exemption is in the public interest. NHTSA has traditionally found that the public interest is served by affording consumers the choice of a wider variety of motor vehicles and providing additional employment opportunities. We believe that both of these public interest considerations would be served by granting Lotus's petition and note that the denial of this request would remove a vehicle that is currently being sold in the U.S. market. Furthermore, as the Evora is the only vehicle currently being sold by Lotus, the withdrawal of the Evora from the market would result in Lotus leaving the U.S. market.

There are other relevant considerations. The number of vehicles at issue is small. In the last three years, Lotus has produced between 333 and 409 vehicles annually for the U.S. market. We agree with Lotus that the relatively low number of miles driven by the vehicle because of its nature as a second vehicle will mean that the vehicle is less likely to be involved in a crash. Finally, Lotus is including in its owner's manual information regarding the risk of sitting too close to the air bag. As a condition of this grant, we require Lotus to encourage its dealers to highlight this information for its consumers at the point of sale.

After considering all of the relevant information, we have decided to grant Lotus a temporary exemption of the front passenger position in its Evora model from the higher maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies in S14.7 of FMVSS No. 208 for a period of one year after publication of this notice in the **Federal Register**. Furthermore, the total number of vehicles that may

be produced under this exemption is limited to 450, which is approximately 10% higher than the highest number of vehicles produced for the U.S. market by Lotus in the last three years and approximately half of the number of vehicles Lotus intended to manufacture with a 28-month exemption.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from S14.7 of FMVSS No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must securely affix 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 in which 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 FMVSS No. 208’s requirements. Although we have said in the past that the addition of a reference to individual provisions would be of limited use to consumers in the case of advanced air bag exemptions, in the case of Lotus, which seeks exemption from only a single provision, we will allow Lotus to list the exempted paragraph on the label. For this

reason, we believe the two labels should read in relevant part, “except for S14.7 of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *.”

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Lotus is granted NHTSA Temporary Exemption No. EX 13-01, from S14.7 of 49 CFR 571.208 for the front passenger seat of its Evora model. The exemption is for no more than 450 vehicles and it shall remain effective until one year following publication of notice of this decision in the **Federal Register**, as indicated in the DATES section of this document.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.95)

Issued on: February 27, 2013

David L. Strickland
Administrator

Billing Code 4910-59-P

[FR Doc. 2013-05477 Filed 03/07/2013 at 8:45 am; Publication Date: 03/08/2013]