

requirements of the Federal Transit Act, Section 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. The terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing these in 29 CFR Part 215. Please see Amendment to Section 5333(b), Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA-21); Final Rule (64 FR 40990, July 28, 1999).

Issued on August 19, 1999.

Gordon J. Linton,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99-6093; Notice 1]

Italjet S.p.A.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Italjet S.p.A., an Italian corporation, through Italjet USA ("Italjet") of New York City, NY, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request is that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. Sec. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Italjet has applied on behalf of its Torpedo 125, Formula 125, Millenium 125, and Millenium 150 motor scooters ("scooters"). The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards. According to Italjet, its scooters have a peak motor output of 26 hp and a top speed of 60 miles per hour.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, though the left handlebar is permissible for motor driven cycles (Item 11, Table 1).

Italjet would like to use the left handlebar as the control for the rear brakes of the scooters, whose peak motor output of 26 hp produces more than the 5 hp maximum that separates motor driven cycles from motorcycles. The gear ratio of the vehicle is fixed, and "there is no need for the rider to shift gears, as on a standard motorcycle." Because of this, the scooters are "equipped with neither a clutch nor a clutch lever, and the left hand of the rider is free to operate a brake lever." Italjet states that it prefers this design, given its focus on European and Asian markets "where rear brake controls for scooters of all horsepower ratings are typically mounted on the left handlebar."

Italjet argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. It believes that "the prevalence of the left hand operated design in Europe and Asia is one strong indicator that a vehicle designed in this way can be operated safely." It believes that "vehicle safety might be somewhat enhanced with the left hand brake lever, as the hand (bare or gloved) is generally more capable of sensitive modulation of the braking force than the foot."

Italjet intends to field test a small number of the scooters in the American market in Fall 1999 to assess the design, and without an exemption it would be unable to do so. It wishes to consider whether the United States' scooter market offers sufficient sales potential to justify the creation of a design specifically for the United States that incorporates the right foot brake pedal. Alternatively, it may petition for rulemaking to amend Standard No. 123 to allow the hand-operated brake control on motorcycles with more than 5 hp.

Italjet anticipates sales of not more than 2500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety "because it would maintain an acceptable level of safety while accelerating the advancement of an important new class of vehicles for use by consumers and businesses."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 23, 1999.

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

Issued on August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6092; Notice 1]

Lotus Cars Ltd.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

Lotus Cars Ltd. ("Lotus") of Norwich, England, through Lotus Cars USA, Inc., has applied for a temporary exemption from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact*, as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

The material below is taken from Lotus's application

Why Lotus Needs a Temporary Exemption

In August 1995, when S7, the new head injury criteria portion of Standard No. 201, was promulgated, Lotus was owned by the Italian owners of Bugatti, a company then in bankruptcy. That year, Lotus was able to produce only 835 cars, selling 152, or 18.2%, in the United States.

This country was the primary market for the Lotus Esprit, which, by then, was an aging design. With the limited resources that it had and the uncertainties of the future, in 1996 Lotus made the decision to invest primarily in an all-new model, the Elise, and to modernize the Esprit, rather than to replace it with an all-new design. Developed on a small budget, the Elise was not designed or intended for the American market. The Esprit was fitted with a new V8 engine meeting current U.S. emissions standards.

At the end of 1996, Lotus was sold to its current owners, a group of Malaysian investors, who reviewed the company's fortunes. The Elise was becoming successful in its markets, while losses in the United States in the previous two years approached \$2,000,000, primarily due to the declining appeal of the Esprit. The company's overall sales in 1996 had declined to 751, including sales of 67 Esprits in the U.S. (8.9% of total sales). Nevertheless, the new owners decided to continue in the U.S. market. Sales were marginally better in the U.S. in 1997, 72 Esprits, and vastly improved elsewhere with the great success of the Elise. Lotus sold 2414 cars in 1997 (with the U.S. sales representing only 3% of total sales, approximately the same as in 1998). However, it lost almost 2,000,000 Pounds in its 1996/7 fiscal year.

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998–September 1, 1999, and to conform 100% of its production thereafter.

But, in addition to the new owners of Lotus, the new year saw the appointment of new CEOs of Lotus and Lotus Cars USA, with the result that a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described below, the company found itself unable to conform the current Esprit to Standard No. 201. In the meantime, the company had turned the corner with the success of the Elise, and had a net profit for its fiscal year 1997/

8 of slightly more than 1,000,000 Pounds.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

When Lotus decided to continue production of the Esprit, it re-engineered the car's front header rail and installed energy-absorbing material. After these modifications, the Esprit's HIC value was reduced from an already-complying 840 to 300.

However, the side rail was not so simple. The small Esprit cockpit precluded any padding from being added at that location, without compromising ingress/egress and visibility. In order to comply with Standard No. 201, the Esprit "greenhouse" would have to be substantially modified. Modification costs could not be recovered for the relatively few cars that would be involved in the 1999–2002 period without raising the retail price to an unacceptable level. Further, Lotus was encountering major problems sourcing design-specific energy absorbing materials without being compelled to buy a 10-year supply; it was therefore forced to consider materials being produced for high-volume users, with attendant problems.

As redevelopment plans progressed in 1998, Lotus determined that a redesign of the "greenhouse" for the 1999–2002 period would cost in excess of \$950,000, and require retesting to confirm continued compliance of its airbag system with Standard No. 208. But the company did not have the personnel to deploy to both the redesigned and new Esprit projects, and it has chosen to devote its human resources to the all-new Esprit.

The Elise continues to contribute to the company's newly found financial solidarity, and its cumulative net income for the past three fiscal years is 2,466,000 Pounds, or, \$4,068,900 (at an exchange rate of 1.65 to 1). Although a denial of the petition would substantially reduce Lotus's net income but not result in a net loss, the decrease would come primarily at the expense of Lotus Cars USA which Lotus believes could not remain in existence without cars to sell during the period required to develop the new Esprit. Lotus estimates that it would sell 200 Esprits in the U.S. during the period of a 3-year exemption.

Why an Exemption Would be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

After 10 years of sales of the Esprit with its current body shape, Lotus knows of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads. The Esprit will be in full compliance by the same date that the phase-in ends for all manufacturers and when there will be 100% compliance across the board, September 1, 2002.

If Lotus USA is required to close because of a denial, its 10 employees will be out of work. In addition, a denial is bound to affect Lotus dealers in unknown ways. An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room PI-401, 400 Seventh Street, SW, Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at web site dms.dot.gov. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 23, 1999.

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

Issued on: August 13, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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