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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-02-13956, Notice 2]

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

This notice grants the application of Lotus Cars Ltd. ("Lotus") of Norwich, England, for a renewal of NHTSA Temporary Exemption No. 99-12, 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 published notice of receipt of the application on December 4, 2002, requesting public comment on it (67 FR 72267).

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99-12 from S7, *Performance Criterion*, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate another model, 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 percent of its production thereafter.

But 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 in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

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

Lotus remarked that the entity that ultimately controls Lotus Cars is the manufacturer of Proton cars, "the Malaysian company Perusahaan Otomobile Nasional Berhad (Proton)." We noted in the December 4, 2002, notice that Lotus' balance sheets and income statements did not indicate that this Asian entity, itself a motor vehicle manufacturer, made capital contributions to Lotus or otherwise participated in the management of this British company. Lacking these indicia of control, we stated that we had decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption.

On December 16, 2002, during the comment period, Lotus addressed the question of its relationship to Proton. At the time Lotus filed its application in May 2002, Proton owned 80 percent of the shares of Lotus but had since acquired total ownership of the company. Proton had in fact made a capital contribution to the company "since its acquisition," which allowed Lotus "to pay off certain debts, return to solvency, and thus to continue trading." It noted that "the capital infusion also permitted continued operations from a cash-flow basis." Lotus argued that we should more properly consider the facts that (1) there is no similarity of design between the cars produced by Proton and Lotus, (2) Lotus designed and engineered the Esprit without assistance from Proton, and (3) Lotus's vehicles are imported and sold both in the U.S. and Europe by a dealer/distributor network "totally independent" of Proton. In support, Lotus reminded us that we had established these three criteria in

deciding that Maserati (when it was owned by Chrysler Corporation and G.B.M. S.p.A) and Ferrari (when Fiat held a 90-percent ownership interest) were eligible to apply for hardship exemptions (See respectively, 53 FR 28324, July 27, 1988 and 54 FR 46321, November 2, 1989). These three factors also exist in the Lotus case, and an additional one of relevance: the vehicle for which exemption is sought was designed well over 20 years ago when Lotus was an independent company. Therefore, we have decided that Lotus remains a small volume manufacturer within the meaning of the exemption legislation. In 1999, Lotus produced 2,569 automobiles; in 2000, 2,993 automobiles (including 127 Opel/Vauxhall cars); and in 2001, 5,181 automobiles (including 3,046 for Opel/Vauxhall). Over the same three-year period it exported 112, 162, and 48 vehicles respectively to the United States.

Notwithstanding the increase in production between 1999 and 2001, Lotus's financial submissions show the company's operating loss of 7,513,000 Pounds for its fiscal year 2001–2002, a loss of 20,244,000 Pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 Pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 Pounds, or \$24,622,400 computed at a rate of \$1.6 = 1 Pound.

Lotus had intended to cease production of the exempted Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but "was unable to launch itself." By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, "an additional 241 employees were made redundant." However, it had located "an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles." The company stated that its "only hope for keeping the US market alive [is] to build the additional 140 Esprits, ending production on December 21, 2003," the period for which it has requested an exemption. No further exemption will be requested for the Esprit. It hopes to "find a way to finance" the M260 project for introduction in the U.S. in 2004, a vehicle being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

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

In its application, Lotus simply said that "the extension will continue to be consistent with the public interest and the objectives of the Safety Act." On December 16, 2002, it repeated and confirmed the assertions made in the past that, after many years of sales of the Esprit with its current body shape, the company knew 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.

If Lotus USA is required to close because of a denial, its employees will be out of work and its dealers "significantly adversely affected." In its new application, the company adds that its "image and credibility would be ruined." An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

Comments Received on the Lotus Petition

We received five comments on the Lotus petition, all of which supported an extension of the exemption. Three of the comments emphasized the importance of adequate repair facilities and availability of spare parts for the continued safe operation of Lotus cars in the United States.

The Agency's Findings

Both the 1999 and 2002 petitions by Lotus clearly demonstrate the financial turmoil that the company has experienced in the past few years. With recent losses cumulating over \$24,000,000, Lotus has experienced some temporary relief by the infusion of capital from Proton. This relief will allow it to manufacturer from existing parts the final 140 Esprits and to sell them in the Untied States (cars which, built to American specifications, might not be saleable elsewhere). In engineering the M260 to comply with Standard No. 201, Lotus has made a good faith effort to comply with that standard. The term of the exemption would be short and only a limited number of vehicles produced under it. An exemption would assure an adequate supply of spare parts and afford a continuing, uninterrupted commercial relationship with Lotus dealers and their employees in the United States.

According, for the reasons discussed above, it is hereby found that to require

compliance with Standard No. 201 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption from Standard No. 201 would be in the public interest and consistent with the objectives of traffic safety. Therefore, NHTSA Temporary Exemption No. 99-12, exempting the Esprit model from 49 CFR 571.201 Standard No. 201, *Occupant Protection in Interior Impact*, is hereby extended to February 1, 2004.

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

Issued on: February 25, 2003.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-20994]

New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed pooling application.

SUMMARY: By application filed on January 27, 2003,¹ New Jersey Transit Bus Operations, Inc. (NJT Bus), and Academy Lines, L.L.C. (Academy), jointly request approval of a service pooling agreement under 49 U.S.C. 14302 and 49 CFR 1184.1, *et seq.* to pool portions of their commuter operations that extend over U.S. Highway 9 between Lakewood, NJ, and New York, NY (the Route 9 Corridor).

DATES: Comments on the proposed service pooling agreement may be filed with the Board in the form of verified statements on or before April 2, 2003. If comments are filed, applicants' rebuttal statement is due on or before April 22, 2003. The Board will issue a decision on the merits after consideration of any comments and rebuttal that are submitted.

¹ Applicants concurrently filed a petition under 49 U.S.C. 13541(a) requesting exemption from 49 U.S.C. 14302 so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than 50 days, or such other time as the Board may direct, pending Board action on the pooling application. Applicants' request was granted by decision served February 12, 2003 in *New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C., Exemption Pursuant to 49 U.S.C. 13541 From the Provisions of 49 U.S.C. 14302*, STB Docket No. MC-F-20994 (STB served Feb. 12, 2003).

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20994 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, send one copy of any comments to each of applicants' representatives: (1) E. Philip Isaac, Deputy Attorney General, One Penn Plaza East, Newark, NJ 07105-2246; and (2) Joseph J. Ferrara, 111 Paterson Avenue, Hoboken, NJ 07030.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 565-1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Under the proposed pooling agreement, the carriers will coordinate their schedules and fares over the involved routes for their regularly scheduled passenger bus operations. The carriers do not intend to pool revenues or share expenses (except for the costs associated with preparing and printing public timetables showing their combined coordinated services and Port Authority Bus Terminal (PABT) gate and platform fees), but will cross-honor their independently sold commutation tickets and reimburse each other accordingly.

In 1991, NJ Transit was authorized to perform these same pooling operations with another regulated passenger carrier, Suburban Trails, Inc. (Suburban). See *NJ Transit Bus Operations, Inc.—Pooling—Suburban Trails, Inc.*, No. MC-F-19737 (ICC served Mar. 19, 1991). Effective January 3, 2003, however, Suburban ceased serving the Route 9 Corridor, withdrew from the pooling agreement, and exited the market. By the filing of this application, approval is being sought to allow Academy to assume Suburban's place in the pooling operation.²

NJT Bus is a wholly owned subsidiary of the New Jersey Transit Corporation,

² In an application filed on February 4, 2003 in STB Docket No. MC-F-20997, *Coach USA, Inc., et al.—Purchase and Sale of Assets—Academy Bus, L.L.C., et al.*, Coach USA, Inc. and two of its subsidiaries, Suburban Transit Corp., and Red & Tan Tours, Inc. (the Coach applicants), and Academy Bus, L.L.C. and two of its subsidiaries, Academy Express, L.L.C., and Academy (the Academy applicants) state that they have entered into a transaction to "swap" certain interstate and intrastate motor passenger carrier operating authorities in order to enhance the efficiency of their respective operations. The Academy applicants will transfer to the Coach applicants the "Academy Routes," while the Coach applicants will transfer to the Academy applicants the "Route 9 Corridor route," the "Suburban Atlantic City Routes," and the "Red & Tan Routes." This proceeding is presently pending before the Board. Reference is made to it here because Academy and Suburban (another Coach subsidiary) are involved in the instant proceeding.