performance for facilities constructed with funds from FTA's New Starts program would be determined by FTA on a case-by-case basis. FTA would require real-time monitoring of traffic flows to ensure on-going compliance with operational performance standards.

(iii) *Program income from the HOT lane facility, including all toll revenue, is used solely for ''permissible uses.''* ''Permissible uses'' could mean any of the following uses with respect to any HOT lane facility, whether operated by a public or private entity: (a) Debt service, (b) a reasonable return on investment of any private financing, (c) the costs necessary for the proper operation and maintenance of such facility (including reconstruction and rehabilitation), and (d) if the operating entity annually certifies that the facility is being adequately operated and maintained (including that the permissible uses described in (a), (b) and (c) above, if applicable, are being duly paid), any other purpose relating to a project carried out under Title 49 U.S.C. 5301 et seq. (''transit law''). In cases where the HOT lane facility has received (or receives) funding from FTA and another Federal agency, such that use of the facility's program income is governed by more than one Federal program, FTA's restrictions concerning permissible use would not apply to more than *transit's allocable share* [14] of the facility's program income. FTA would not require recipients to assign priority in payment to any permissible use.

(c) *Transit Fares and Tolls on HOT Lane Facilities.* FTA would not condition reporting of HOT lanes as fixed guideway miles following conversion from HOV lanes or condition any approval or waiver under a Full Funding Grant Agreement on a grantee's adopting transit fare policies or a tolling authority's adopting of tolling policies concerning, respectively, the price of transit services on the HOT lane facility and the tolls payable by SOVs. Instead, FTA would allow grantees and tolling authorities to develop their own fare structures for transit services and tolls, respectively, on HOT lane facilities. Transit fares would remain subject to 49 U.S.C. 5332 (Nondiscrimination) and 49 U.S.C. 5307 (Urbanized area formula grants).

(d) *No Return of Funds under Full Funding Grant Agreements.* In the event that an HOV facility is converted to a HOT facility and the HOV facility has received funds through FTA's New Starts program, FTA would not require the grantee to return such funds so long as the facility complied with the conditions set forth in this guidance.

James S. Simpson,

Administrator.

[FR Doc. E6–14796 Filed 9–6–06; 8:45 am]

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[14] *Transit's allocable share* of the facility's program income shall be an amount equal to the facility's total program income, for any period, multiplied by a ratio, (a) the numerator of which shall be the cumulative amount of funds contributed to the facility through a program established by transit law, and (b) the denominator of which shall be the cumulative amount of all Federal funds contributed to the facility, in each case at the time transit's allocable share is calculated.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25324, Notice 2]

Automobili Lamborghini SpA; Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH; Group Lotus Plc; Morgan Motor Company Limited; Maserati; Grant of Applications for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Grant of applications for temporary exemptions from certain advanced air bag provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the Automobili Lamborghini SpA (''Lamborghini''); Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH (collectively, ''Bugatti''); Group Lotus Plc (''Lotus''); Morgan Motor Company Limited (''Morgan''); and Maserati SpA (''Maserati'') applications for temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* The exemptions apply to the Lamborghini Murcielago, the Bugatti Veyron 16.4, the Lotus Elise, the Morgan Aero 8, and the Maserati Coupe/Spyder. In accordance with 49 CFR part 555, the basis for each grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

The exemptions for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 and will remain in effect until August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 and will remain in effect until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 and will remain in effect until December 31, 2007.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the applications [1] in the **Federal Register** and asked for public comments.[2] We received comments from four of the petitioners (Lamborghini, Lotus, Morgan, and Maserati), one trade organization, and one individual. Please note that, as was done with the notice of receipt, we are publishing this decision notice for the five applications together to ensure efficient use of agency resources and to facilitate the timely processing of the applications. However, NHTSA considered each application individually, and our decision regarding the temporary exemption for each company is discussed separately below.

DATES: The exemptions from the specified provisions of FMVSS No. 208 for the Lamborghini Murcielago, the Lotus Elise, and the Morgan Aero 8 are effective September 1, 2006 until August 31, 2009. The exemption for the Bugatti Veyron 16.4 is effective from September 1, 2006 until September 1, 2008. The exemption for the Maserati Coupe/Spyder is effective from September 1, 2006 until December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Eric Stas in the Office of the Chief Counsel at the National Highway Traffic Safety Administration (NCC–112), 400 Seventh Street, SW., Room 5215, Washington, DC 20590 (Phone: 202–366–2992; Fax 202–366–3820).

SUPPLEMENTARY INFORMATION

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' [3] 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,

[1] To view the applications, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the Docket No. NHTSA–2006–25324.

[2] *See* 71 FR 39386 (July 12, 2006) (Docket No. NHTSA–2006–25324–6).

[3] *See* 65 FR 30680 (May 12, 2000) (Docket No. NHTSA–2000–7013).

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.

Small volume manufacturers (i.e., original vehicle manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States) are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and, thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

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 exemptions granted by this agency. In the present case, we are addressing five separate petitions for a temporary exemption from the advanced air bag requirements, each of which is discussed individually below. The petitioners are all manufacturers of very expensive, low volume, exotic sports cars.

II. Overview of Petitions for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Lamborghini, Bugatti, Lotus, Morgan, and Maserati have separately petitioned the agency for a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for each application is that compliance would cause substantial economic hardship [4] to a manufacturer that has tried in good faith to comply with the standard. The agency closely examines and considers the information provided by manufacturers in support of these factors, and, in addition, pursuant to 49 U.S.C. 30113(b)(3)(A), determines whether exemption is in the public interest and consistent with the Safety Act.[5]

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 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 include any provision indicating that a manufacturer might have 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 second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a ''temporary basis,'' [6] 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 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 on-going good faith efforts to comply with the regulation, the public interest, consistency with Safety Act, generally, as well as, other such matters as provided in the statute.

III. Lamborghini

Background. Lamborghini is an Italian corporation formed in 1963 to produce high-performance sports cars. This application concerns the Lamborghini Murcielago, a vehicle which was developed in the mid-1990s and which is now scheduled to continue in production until 2009. Originally, Lamborghini planned to begin selling the Murcielago in 1999 and to end production before September 2006. However, because of financial hardship and a change in corporate ownership, the petitioner did not begin sales of the Murcielago until the very end of 2001, and it is now forced to extend the product cycle of this vehicle.

Lamborghini has experienced financial problems for several years. Over the period from 2001 to 2004, the company lost more than $180 million. Lamborghini claims this economic hardship precluded the timely development of a new vehicle that could comply with advanced air bag requirements. With respect to the Murcielago, Lamborghini also has been unable to overcome a number of engineering problems associated with installing advanced air bags in the current vehicle configuration. If the exemption is not granted, the Murcielago model cannot be sold in the U.S. during the period 2006–2009, which the petitioner stated could further delay the introduction of a fully compliant vehicle. Thus, Lamborghini asks for a temporary exemption from the advanced air bag requirements for the Murcielago until it is replaced by a brand new vehicle in 2009.

Eligibility. Lamborghini's total motor vehicle production in the most recent year of production was less than 10,000 vehicles. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Lamborghini S.p.A.	Worldwide production	U.S. imports
2002	434 cars	134 cars.
2003	702 cars	423 cars.
2004	2038 cars	645 cars.
2005 (estimate)	1662 cars	665 cars.

However, in 1998, 100 percent of Lamborghini was acquired by Audi, a

[4] When considering financial matters involving companies based in the European Union (EU), it is important to recognize that EU and U.S. accounting principles have certain differences in their treatment of revenue, expenses, and profits. Public statements by EU manufacturers relating to financial results should be understood in this context. This agency analyzes claims of financial hardship carefully and in accordance with U.S. accounting principles.

[5] The Safety Act is codified as Title 49, United States Code, Chapter 301.

[6] 49 U.S.C. 30113(b)(1).

large motor vehicle manufacturer (which is in turn 99.9 percent owned by Volkswagen). In discussing its eligibility for hardship relief, Lamborghini asserts that its relationship with Audi is ''arm's-length.'' Lamborghini operates independently, and services provided by Audi or Audi affiliates are paid for by Lamborghini.

In making our determination regarding eligibility, we note that the public comment [7] of the Coalition of Small Volume Auto Manufacturers (COSVAM) raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that Lamborghini is owned by Audi, a vehicle manufacturer whose sales in the U.S. market exceeds the upper limits for classification as a small volume manufacturer. Accordingly, the commenter argued that Lamborghini should be considered a brand produced by major vehicle manufacturer Audi, thereby making the petitioner ineligible for a temporary exemption under part 555 based upon higher production values.

Lamborghini also submitted a public comment [8] on its own petition, in which it sought to further clarify its relationship with its parent company, arguing that it is similar to that of Ferrari and its parent company (Fiat). According to Lamborghini, the Murcielago does not resemble nor share parts with any vehicle produced by the parent company. The petitioner further stated that the parent company did not assist in the design or engineering of the Murcielago, nor did it have any role in the manufacturing process for that vehicle. In fact, the Murcielago was developed prior to Audi's acquisition of Lamborghini in 1998. Furthermore, Lamborghini argued that it pays for any testing or similar assistance provided by Audi. It also stated that Lamborghini has its own CEO and Board of Directors, and that the company has its own research and development, Sales-Marketing, and After-Sales departments.

The agency examined the relationship between Lamborghini and Audi. Lamborghini S.p.A. is 100% owned by Audi AG (which, in turn is 99.1% owned by Volkswagen AG). We have concluded that Lamborghini is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Lamborghini and cars produced by Audi. There is no sharing of engines, transmissions, platforms, or interior systems, and production tooling is unique to Lamborghini. Second, Lamborghini has indicated that it has paid for all services or assistance provided by Audi in ''arms-length'' transactions. Third, cars are imported and sold through separate distribution channels independent of the Audi dealer network. Accordingly, NHTSA concludes that Audi is not a manufacturer of Lamborghini vehicles by virtue of being a sponsor.

Requested exemptions. Lamborghini states that it intends to certify the Murcielago as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner states that it previously determined the Murcielago's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Lamborghini states that it, therefore, cannot at present say with certainty that the Murcielago will comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the Murcielago's compliance with the other advanced air bag requirements, Lamborghini states that it does not know whether the Murcielago will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Lamborghini is requesting an exemption for the Murcielago from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), 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).

Lamborghini is requesting the above exemption for the Murcielago for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Lamborghini states that over the four-year period from 2001–2004, it lost over $180 million (145 million euros), with yearly losses averaging approximately $47 million (37 million euros). Lamborghini asserts that, notwithstanding engineering impracticability described below, it could not afford to develop an advanced air bag system for the Murcielago and to also engineer its fully compliant replacement by 2009.

Lamborghini initially did not foresee that the Murcielago would still be in production when advanced air bags became mandatory. It was designed in the mid-1990s and was intended to be launched in 1999, with production ending in 2006. Due to financial hardship and changes in ownership, the Murcielago was not offered for sale until late in 2001. Further financial hardship, compounded by shifts in the exchange rate between the U.S. dollar and the euro and the need to amortize costs of developing the Murcielago, necessitate continued production of that vehicle until 2009.

Lamborghini estimates the total cost of an advanced air bag program to be about $24 million (20 million euros). Lamborghini states that the development of an advanced air bag system for the Murcielago's successor can be funded through the Murcielago's continued U.S. sales.

If the exemption is denied and U.S. sales of the Murcielago end on September 1, 2006, Lamborghini projects a loss of $12.7 million (10.6 million euros) for the period between September of 2006 and September of 2009.

Good faith efforts to comply. Once the petitioner realized that the product life of the Murcielago would have to continue beyond September 2006, Lamborghini undertook efforts for development an advanced air bag system. As early as 2001, Lamborghini began contacting air bag manufacturers in an effort to develop a compliant advanced air bag system. It pursued this matter with at least four suppliers. However, none provided a workable solution. The efforts continued until the summer of 2005, at which point Lamborghini concluded that technical constraints prevented development of advanced air bags for the Murcielago. Specifics of the technical difficulties are described in the petition.

Lamborghini argues that an exemption would be in the public interest. The petitioner argues that the number of vehicles affected by an exemption would be very small and will therefore have, at most, a negligible impact on the overall safety of U.S. highways. Further, the petitioner asserts that according to the company's research, the Murcielago is likely to be operated only on a limited basis (an average of 5,000 miles per year). Lamborghini also argues that granting an exemption will assure proper parts and service are available in the U.S. to support existing owners of Lamborghini

[7] Docket No. NHTSA–2006–25324–15.

[8] Docket No. NHTSA–2006–25324–12.

automobiles, thereby benefiting not only Lamborghini customers, but also dealers and service personnel. Finally, it argued that denial of its requested exemption would decrease consumer choice in the high-performance vehicle market.

Summary of Public Comments. The agency received three comments on the Lamborghini petition for a temporary exemption. The first comment was submitted by Lamborghini itself. In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Lamborghini presented the following arguments in support of its petition.

Like Ferarri, Lamborghini stated that its product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Lamborghini stated that it did not anticipate continued production of the Murcielago after September 1, 2006, but the company later determined that it would be necessary to continue production of that model. According to Lamborghini, advanced air bag requirements were not anticipated when designing the Murcielago's vehicle platform, which arose from a predecessor vehicle developed circa 1990. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle. Lamborghini stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so.

As discussed previously, Lamborghini argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is owned by Audi (*see* Eligibility section above for details).

Lamborghini stated that its vehicle also incorporates additional active and passive safety systems, including anti-lock brakes (ABS), traction control, four-wheel drive, rollover bars, pretensioners, and upgraded rear fuel system integrity. The petitioner also stated that the vehicle has been subjected to a frontal pole test at 35 mph and a roof crush resistance test at 2.5 times the mass of the vehicle. Furthermore, the company stated that the Murcielago has been equipped with an air bag on-off switch.

In terms of safety impact, Lamborghini argued that it intends to produce only 380 Murcielago vehicles over three years and that these vehicles are not normally used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and the 2004 Annual Report File [9] (a period covering both the Murcielago and its predecessor vehicle (the Diablo)) showed only one crash involving a Lamborghini, in which the adult female occupant survived. According to Lamborghini, there are no known instances of injury or death to infants, children, or other occupants caused by air bags, the problem giving rise to the advanced air bag rule. The company further argued that given its low sales volume, it would be aware of such fatalities and injuries if they were occurring. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety.

In addition, Lamborghini argued that the continued weakening of the U.S. dollar vis-à-vis the euro, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

The second comment was submitted by Mr. Steven Blodgett, an individual.[10] (We note that Mr. Blodgett's comments applied equally to all five manufacturer-petitioners. Accordingly, this commenter's arguments will be set forth immediately below, but they will not be repeated in subsequent discussions involving the other four manufacturers.) In part, Mr. Blodgett requested a 30-day extension of the 15-day comment period, arguing that the agency has arbitrarily shortened the comment period. The commenter argued that his ability to seek an extension of the comment period has been compromised by the requirement under 49 CFR 553.19 that such requests must be received not later than 15 days before the time stated in the notice. He stated that additional time is required to allow for proper research in order to verify the statements of the manufacturers, as well as their accompanying financial data. Furthermore, he argued that a 60-day comment period is required under 5 CFR 1320.8(d).

Mr. Blodgett also requested that the Office of Management and Budget (OMB) and/or a separate independent contractor be used to evaluate the financial data submitted by the five petitioning manufacturers. The commenter also faulted the manufacturers for petitioning the agency not long before the September 1, 2006 compliance date for the advanced air bag requirements. He further suggested that it is presumptuous for these manufacturers to continue producing vehicles prior to receiving a decision on their applications for temporary exemption, something which should be taken into account when considering the manufacturers' petitions.

Mr. Blodgett objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturers seek an exemption cannot be met. The commenter expressed his opinion that the government should not be subsidizing uncompetitive businesses through the temporary exemption process and that granting exemptions unfairly penalizes other manufacturers who concomitantly lose market share.

Mr. Blodgett also objected to the agency's decision to combine the five applications for temporary exemption into a single **Federal Register** notice, rather than publishing a separate notice for each petitioner. The commenter argued that this is confusing and is not consistent with the requirements of 49 U.S.C. 30113(b)(2).

The third comment was submitted by the COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (*see* Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Lamborghini Petition. We are granting the Lamborghini petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Lamborghini must continue to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement.

[9] The 2004 FARS data file—the Annual Report File—was created in June 2005; however, the 2004 FARS file officially closed in February 2006. This additional time provided the opportunity for submission of important variable data requiring outside sources, which may lead to changes in the final counts. The updated final counts for 2004 will be reflected in the 2005 annual report.

[10] Docket No. NHTSA–2006–25324–13 and –14.

The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Lamborghini to completely redesign its vehicles, in order to overcome the engineering limitations based upon the basic configuration of the Murcielago. While the petitioner was aware of the new requirements for some time, its business plans changed, and it was subsequently determined that the Murcielago's production run would need to be extended beyond 2006, thereby raising the problem of compliance with the advanced air bag requirements.

Lamborghini explained the main engineering challenges precluding incorporation of advanced air bags into the Murcielago at this time, as follows. First, cockpit space limitations imposed by the windshield and passenger compartment height currently prevent the fitting of the six-year-old dummies into the required out-of-position test locations, thereby necessitating a customized procedure. Second, the location of the air conditioning system precludes installation of the passenger air bag module in the top of the instrument panel, and the manufacturer was unable to identify an alternate location for the air bag module. Third, it was not possible to adapt Lamborghini's supplier's bladder technology based upon occupant sensors into the Murcielago's unique seating systems. Fourth, another supplier's sensor system was unable to distinguish between the six-year-old and 5th-percentile female dummies in the Murcielago environment. Fifth, the manufacturer was confronted with cockpit space limitations which precluded placement of occupant sensors in other areas of the seat structure, and it was unable to find suppliers willing to customize their systems to Lamborghini's specifications. Sixth, the top-mounted passenger air bag system designed for the new Lamborghini Gallardo (which will meet the advanced air bag requirements) cannot be retrofitted into the Murcielago.

For a high-speed performance vehicle such as the Murcielago, aerodynamics are a major design consideration, so such vehicles tend to sit very close to the ground and have minimal cockpit space as essential features of their basic design. Any significant increase in cockpit dimensions (as might be required to meet the advanced air bag requirements) would necessitate a total vehicle makeover. Lamborghini has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Lamborghini made good faith efforts to bring the Murcielago into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to design a new vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $180 million (145 million euros) over the period from 2001–2004. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between profitability and ongoing losses. According to Lamborghini, absent the exemption, production of the Murcielago would cease in September 2006, because sales in the rest of the world would be insufficient to justify continued production (as the U.S. accounts for 35–40 percent of the market for the Murcielago). However, Lamborghini's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Murcielago over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market in September 2009. Granting the exemption will allow Lamborghini to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Murcielago that meets all U.S. requirements.

While some of the information submitted by Lamborghini has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Lamborghini's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

4. List of air bag suppliers that were approached in hopes of procuring necessary components.

5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that Lamborghini is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Lamborghini's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Lamborghini dealers, repair specialists, and several small service providers that transport Lamborghini vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Murcielago features several advanced ''active'' safety features. These features are listed in the petitioner's application.[11] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 380 for the duration of the exemption), and because Lamborghini vehicles are not typically used for daily transportation. Their yearly usage is substantially lower compared to vehicles used for everyday transportation.

In addition, Lamborghini has voluntarily included an air bag on-off switch for passenger air bag suppression for the protection of children being transported in the right front seating position. This will enable the passenger

[11] *See* page 23 of Lamborghini's petition and page 2 of Lamborghini's comments.

air bag to be manually turned off when a child is present, which supports our findings that this exemption would have a negligible impact on motor vehicle safety.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question.[12] These data indicate that over that period, there were no NASS CDS cases for the Murcielago and one FARS case for the Murcielago predecessor (injured female passenger). Thus, there were no children or small women involved in crashes of the later Lamborghini Murcielago included in these databases.

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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standard. 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.

Although our response to the supplementary comments provided by the petitioner is reflected above, we would offer the following response to the other public comments received on the Lamborghini petition.

We have decided not to grant Mr. Blodgett's request for extension of time to comment on the five applications contained in our July 12, 2006 **Federal Register** notice announcing receipt of those applications. First, the commenter pointed to requirements under part 553, *Rulemaking Procedures* (specifically paragraph 553.19, *Petitions for extension of time to comment*), which states that persons wishing to request extension of a comment period must do so in writing 15 days prior to expiration of the time stated in the notice. However, the notice of receipt in question was issued under part 555, Temporary Exemption From Motor Vehicle Safety and Bumper Standards, which does not contain any time limitations either for the public comment period or related requests for extension of time. In the present case, the agency decided to shorten the length of the comment period to 15 days, in light of the rapidly approaching deadline for small volume manufacturer compliance with the advanced air bag requirements of FMVSS No. 208. That determination reflected our careful balancing of the need to provide an adequate opportunity for public comment and the need to issue a decision prior to the standard's compliance deadline. Contrary to what Mr. Blodgett's comment suggests, his request for an extension of the comment period was received and considered by the agency, although we decided that it would not be in the public interest to grant that request.[13]

We likewise do not agree with Mr. Blodgett that it is necessary to submit the manufacturers' financial data to OMB or an independent contractor for evaluation. NHTSA routinely evaluates such information in making its determinations, as it has done with prior requests for temporary exemption under part 555. Furthermore, we do not agree with Mr. Blodgett's contention that negative inferences should be drawn from the timing of manufacturers' submission of their part 555 applications or their continuation of manufacturing activities pending the agency's decision. The timing of the submission of a manufacturer's application may be predicated upon good faith efforts to achieve compliance with our safety standards, although in the end, those efforts may prove unsuccessful. Likewise, a company's business decision to continue production of vehicles subject to an application for temporary exemption has no bearing on the agency's decision to grant or deny an application, particularly since it is conceivable that such vehicles could be sold in non-U.S. markets.

We do not believe that vehicle manufacturers seeking an exemption should be required to prove that there are no advanced air bag systems available which would allow their vehicles to comply with FMVSS No. 208, because in essence, that would require the companies to prove a negative. Instead, the companies must demonstrate that they made good faith efforts to comply with the standard and show how they plan to achieve compliance in the future. By statute, manufacturers are entitled to apply for a temporary exemption under part 555, provided that they meet all relevant requirements.

We likewise do not agree with Mr. Blodgett's suggestion that the agency improperly combined the present five part 555 applications in one **Federal**

[12] For fatalities, the agency has a high level of confidence that we would know if one of the petitioners' vehicles had been involved in a fatal crash due to reporting in FARS. However, the agency's ability to track injuries in this context is more limited, primarily because NASS CDS operates differently. NASS CDS is not a census of all vehicle-related injuries, but instead it is a statistical sample which is unlikely to randomly capture air bag-related fatalities. Although the agency's Special Crash Investigations office searches for air bag-related deaths and injuries, there may be lesser injuries that go unreported. This observation applies to all five petitions covered by the notice.

[13] We note further that Mr. Blodgett asserted that, pursuant to 5 U.S.C. 1320.8(d), a 60-day comment period is required on the notice of receipt of an application for temporary exemption. However, 5 CFR part 1320, *Controlling Paperwork Burdens on the Public,* implements the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Those provisions deal with specified types of collections of information from the public (which require OMB approval and clearance), and the 60-day comment period referenced above is related to such collections of information. Furthermore, in defining the term ''information,'' 5 CFR 1320.3(h)(4) states that that term does not generally include:

Factors or opinions submitted in response to general solicitation of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment.

Thus, the provision pointed to by the commenter is not relevant in the present case.

Register notice or that this somehow increased burdens on commenters. The notice of receipt clearly set forth in its title the companies seeking exemptions and discussed each of the applicants separately. In light of the similarity of the issues to be addressed, we believe that such consolidation was appropriate.

As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Lamborghini has demonstrated good faith effort to bring the Murcielago into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. 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)(i), Lamborghini Murcielago is granted NHTSA Temporary Exemption No. EX 06–2, from S14.5.2, S15, S17, S19, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

IV. Bugatti

Background. Bugatti was a manufacturer of high performance motor vehicles from 1909 until the outbreak of World War II. In the past two decades, several attempts were made to revive the marquee. Finally, under the new ownership in 1998, the petitioner began designing a new vehicle called the Veyron 16.4 (Veyron). Only 300 vehicles are to be made (about half of which are expected to be imported to the U.S.), each costing in excess of $1,000,000. Bugatti originally planned to begin selling the vehicle in September of 2003 and to end production before the advanced air bag requirements went into effect. However, significant development issues delayed the start of production until September of 2005. Once this shift in the production schedule became apparent, the petitioner argues that it tried in good faith but could not bring the vehicle into compliance with the advanced air bag requirements, and it would incur substantial economic hardship if it cannot sell approximately 100 vehicles in the U.S. after September 1, 2006.

Eligibility. Bugatti just began producing vehicles and its total production has not reached 100. However, in 1998, Bugatti was acquired by Volkswagen AG (VW), a large motor vehicle manufacturer. According to Bugatti, the Veyron 16.4 does not resemble any vehicle built or sold by any other VW company. The petitioner also states that the Veyron 16.4 was engineered entirely by Bugatti, and that it will similarly be manufactured and marketed solely by Bugatti. Bugatti stated that almost all parts for its vehicle are provided by suppliers that do not provide any parts to any other VW companies. In discussing its eligibility for hardship relief, Bugatti asserts that its relationship with VW is ''arm's-length.'' Bugatti operates independently, and services provided by Bugatti affiliates were paid for by Bugatti.

In making our determination regarding eligibility, we note that the public comment from COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that Bugatti is owned by VW, a vehicle manufacturer whose sales in the U.S. market exceeds the upper limits for classification as a small volume manufacturer. COSVAM further questioned why an otherwise advanced performance vehicle such as the Bugatti Veyron 16.4 would be unable to comply with the requirements of FMVSS No. 208, particularly when other vehicles within its ''corporate family'' are or will be in compliance. Accordingly, the commenter argued that Bugatti should be considered a brand produced by major vehicle manufacturer VW, thereby making the petitioner ineligible for a temporary exemption under part 555 based upon higher production values.

The agency examined the relationship between Bugatti and VW. We have concluded that Bugatti is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Bugatti and cars produced by VW. Second, Bugatti operated independently from VW in designing and developing the Veyron 16.4. Third, almost all of the parts used in the Veyron production are obtained from suppliers that do not supply parts to VW. In addition, when Bugatti has used test tracks or other facilities of VW in the course of developing the Veyron, it has reimbursed Volkswagen AG for the costs of those facilities on an ''arms-length'' basis. Accordingly, NHTSA concludes that VW is not a manufacturer of Bugatti vehicles by virtue of being a sponsor.

Requested exemptions. Bugatti stated its intention to certify compliance of the Veyron model, produced on and after September 1, 2006 for sale in the United States, with rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5.1 and S14.5.2), the rigid barrier test requirements using the 5th percentile adult female test dummy (belted and unbelted, S15), and the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17).

As for the other advanced air bag requirements, Bugatti states that it does not know whether the Veyron will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Bugatti is requesting an exemption from 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).

Bugatti is requesting the above exemption for the Veyron 16.4 for the period from September 1, 2006 to September 1, 2008.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the Veyron project will result in financial losses whether or not Bugatti obtains a temporary exemption. At the time of the application, Bugatti had spent over $360 million on the Veyron project—the company's only model—with little or no return on its investment. If the exemption is granted, Bugatti projects a net loss of $3.7 million. If the exemption is denied, Bugatti projects a net loss of $22.5 million. Further, denial of the petition would likely preclude the petitioner from developing new, fully compliant vehicles. The petitioner argues that a denial of this petition could ultimately put Bugatti out of business.

Good faith efforts to comply. As stated above, Bugatti originally anticipated that all of the Veyrons destined for the U.S. market would be manufactured prior to September 1, 2006. As such, the company did not believe the vehicles would need to be equipped with advanced air bag systems. However, due to delays in completing the design and engineering of the vehicle, Bugatti did not begin production of the Veyron until the fall of 2005, nearly two years after the anticipated initial start date.

To install an advanced air bag system on the Veyron, modifications would be required to the steering wheel, the seats, the air bag system, the safety belts, the knee bolsters, and the instrument panel. Bugatti sought proposals from several potential suppliers for the development of an advanced air bag system for the Veyron, but received only one proposal. According to the petitioner, the proposal showed that the development and implementation costs for such a system were far beyond its current financial capabilities, particularly when considered in terms of amortizing those costs over a population of just 100 vehicles. The proposal indicated that total development, testing, and implementation of an advanced air bag system for the Veyron would cost over $12 million. More important, development would take at least 24 months, which would have required Bugatti to completely shut down its operations. The petitioner argued this scenario is not feasible for a manufacturer intending to produce a total of 300 vehicles. For further details, see the petition.

Bugatti argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Bugatti asserted that there is consumer demand in the U.S. for the Veyron, and granting this application will allow the demand to be met. Bugatti also states that granting the exemption will ''have negligible impact on motor vehicle safety because of the limited number of vehicles sold and because each vehicle is likely to travel on the public roads only infrequently.'' Further, Bugatti states that it is extremely unlikely that young children would often be passengers in this vehicle, and, therefore, permitting a vehicle to be sold without an air bag designed to protect small children is unlikely to have any adverse impact on safety. Finally, Bugatti indicates that the Veyron, which is equipped with standard air bags, also incorporates many safety features that are not required by the FMVSSs, including anti-lock brakes, electronic stability control, all-wheel drive, run-flat tires, a tire pressure monitoring system (installed ahead of the required date for small volume manufacturers under FMVSS No. 138, *Tire Pressure Monitoring Systems*), and a dynamic rear spoiler that acts as a ''parachute brake'' during high speed emergency braking.

Summary of Public Comments. The agency received two comments on the Bugatti petition for a temporary exemption. As noted above, the first comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Bugatti, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

The second comment was submitted by the COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (see Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Bugatti Petition. We are granting the Bugatti petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S19, S21, S23, and S25). The extent of the exemption is limited to those provision requiring testing with child dummies (S19, S21 and S23) and the 5th percentile female dummy out-of-position testing (S25). Bugatti must certify to 50th percentile male barrier testing (S14.5.1 and S14.5.2), 5th percentile female barrier testing (S15) and 5th percentile female offset frontal testing (S17). The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Bugatti to undertake a major redesign of its vehicles. Specifically, incorporation of the advanced air bags would require significant modifications to the Veyron's steering wheel, seats, air bag system, safety belts, knee bolsters, and instrument panel. While the petitioner was aware of the new requirements for some time, manufacturing delays required the Veyron 16.4's production run to extend beyond 2006, thereby raising the problem of compliance with the advanced air bag requirements. Bugatti has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes. In addition, in light of the fact that it projects sales of only 100 vehicles per year, the company also faced difficulties in finding a supplier of advanced restraint systems, because such suppliers were focused on large volume manufacturers.

Based upon the information provided by the petitioner, we understand that Bugatti made good faith efforts to try to bring the Veyron 16.4 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties with its manufacturing operations. Even with a temporary exemption, Bugatti projects a net loss of over $3 million for 2006–2009, and without an exemption, that figure would grow to a loss of approximately $23 million. If the petitioner is forced to discontinue selling its current and only model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially driving the company out of business. Bugatti's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Veyron 16.4 over the next two years to finance development of a fully compliant successor vehicle for delivery to the U.S. market. Granting the exemption will allow Bugatti to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Veyron 16.4 that meets all U.S. requirements.

While some of the information submitted by Bugatti has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Bugatti's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Itemized costs of each component that would have to be modified in order to achieve compliance.

3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

4. List of air bag suppliers that were approached in hopes of procuring necessary components (including original equipment manufacturer (OEM) price-volume quotations).

5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Veyron 16.4 features several advanced ''active'' safety features. These features are listed in the petitioner's application.[14] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 300 for the duration of the exemption), and because Bugatti vehicles are not typically used for daily transportation. Their yearly usage is also expected to be substantially lower compared to vehicles used for everyday transportation.

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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standard. 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 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 terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (e.g., extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission. As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Bugatti has demonstrated good faith effort to bring the Veyron 16.4 into compliance with S14.2 of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the requirements of the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. 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)(i), the Bugatti Veyron 16.4 is granted NHTSA Temporary Exemption No. EX 06–3, from S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to September 1, 2008.

[14] *See* page 9 of Bugatti's petition.

V. Lotus

Background. Lotus, which was founded in 1955, produces small quantities of performance cars. The company has experienced significant financial difficulties for many years. In 1998, Lotus began to develop a fully compliant vehicle for the U.S. market. However, due to lack of capital, the project was cancelled in 2001. The petitioner instead decided to sell a vehicle designed for the European market, the Lotus Elise, in the U.S. Prior to the U.S. launch of the Elise in 2004 (currently Lotus's only U.S. model), Lotus requested and received a part 555 temporary exemption for the bumper standard and certain headlamp requirements (see 69 FR 5658 (Feb. 5, 2004)). Over the last 18 months, the petitioner continued to experience economic hardship. Nevertheless, Lotus has worked on the development of compliant bumpers and headlamps at the cost of $27 million. Compliant headlamp systems have already been put into production, and compliant bumpers likewise will be put into production in advance of the expiration of Lotus's existing temporary exemption on January 1, 2007. However, the petitioner has been unable to develop an advanced air bag system for the Elise (which has both a coupe and a convertible version). According to Lotus, sales of a fully compliant vehicle are slated to begin in 2008, but only if it is able to derive revenue from the U.S. sales of the Elise in the interim.

Eligibility. Lotus produced approximately 5,600 vehicles in 2005. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Group Lotus Plc	Worldwide production	U.S. imports
2002	4810 cars	120 cars.
2003	2955 cars	85 cars.
2004	3710 cars	1330 cars.
2005 (estimate).	5518 cars	3390 cars.

The issue of Lotus's eligibility for a financial hardship exemption was previously addressed by NHTSA on three separate occasions.[15] Although Lotus is owned by Proton Holdings Berhad, Lotus remains an operationally independent small volume manufacturer and the material facts regarding its ownership have not changed. Accordingly, NHTSA

[15] *See* 64 FR 61379 (Nov. 10, 1999)(Docket No. NHTSA–1999–6092); 68 FR 10066 (March 3, 2003)(Docket No. NHTSA–2002–13956); 69 FR 5658 (Feb. 5, 2004)(Docket No. NHTSA–2003–16341).

concludes that Lotus is eligible to apply for a hardship exemption.

Requested exemptions. Lotus states that its United States vehicle production on and after September 1, 2006 will comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1). The petitioner states that it previously determined the Elise's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Therefore, Lotus states, it cannot at present say with certainty that the Elise would comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the other advanced air bag requirements, Lotus states that it does not know whether the Elise would be compliant as Lotus has not had the financial ability to conduct the necessary research and development.

As such, Lotus is requesting an exemption for the Elise from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), 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).

Lotus is requesting the above exemption for the Elise for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Lotus has suffered substantial economic hardship for many years. In the past five years, its losses have totaled almost $125 million. When Lotus successfully petitioned NHTSA for an exemption in 2004, it forecasted profits for fiscal years 2004 and 2005. However, these profits never materialized, and Lotus instead lost $13 million in 2004 and approximately $5 million in 2005.[16]

Lotus asserts that if the exemption is not granted, the company will be forced out of the U.S. market starting in September 2006 until sometime in 2008 for lack of any product to sell. Without an exemption, Lotus predicts losses totaling over $100 million in the next three years. Lotus argues that the cash required for Lotus to maintain a presence in the U.S. and to compensate its dealers for no product would not be sustainable. Further, there would not be funds to develop a new fully compliant vehicle. In short, the company could be forced entirely out of business.

Good faith efforts to comply. Lotus asserts that it has tried in good faith to comply with the advanced air bag requirements. The development work for advanced air bags did not begin until June 2003 because Lotus was not originally planning on selling the Elise in the U.S. Instead, as noted above, a new fully compliant vehicle was intended to be sold in the U.S., but that project was cancelled.

In seeking an advanced air bag system for the Elise, Lotus encountered a number of difficulties and has been unable to acquire an ''off-the-shelf'' advanced air bag system. First, many existing advanced air bag designs, technical specifications, and tooling are the intellectual property of the original equipment manufacturer (OEM) and not the supplier. Lotus experienced reluctance to allow the transfer of this intellectual property for its use. Second, the passenger air bag size, inflator pressure, venting, and deployment angle in those pre-existing air bag systems have been specifically designed for the original OEM vehicle crash pulse and interior geometry. Therefore, to source a passenger air bag requires reverse engineering, suiting the vehicle's interior package, and modifying the vehicle crash pulse to suit the OEM air bag. Third, the suppression option for compliance was not possible due to the lack of available sensor technology. Instead, to pursue the low risk deployment option, Lotus would need a top mounted passenger air bag. However, to package the top mounted passenger air bag in the Elise would require a complete redesign of a major structural part of the extruded aluminum chassis. At the location where the passenger air bag would need to be situated, there is a major structural cross beam that is bonded into the chassis. New tooling for the instrument panel would also be required, along with a new air bag cover. The air bag cover would require a new unique design to overcome the issues of out-of-position, small occupant air bag deployments. Fourth, advanced air bag occupant classification systems require a compliant seat frame base. The Lotus Elise has a rigid shell seat with only a minimum level of foam; therefore, another technical solution would be required, such as seat frame weight sensors. Currently, this solution is under development by suppliers but is not now available as a production solution.

Lotus argues that an exemption would be in the public interest. First, Lotus asserts that the current Elise standard air bag system does not pose a safety risk. Lotus indicates that it knows of no injuries or deaths to infants, children, or other occupants caused by the Elise's current standard air bag system. Lotus further notes that the passenger seat is fixed in its rearmost position, thereby reducing air bag risks to children.

Second, Lotus argues that denial of the petition would result in loss of jobs within Lotus and by independent dealers and repair specialists in the U.S. because the petitioner would be forced to abandon the U.S. market, which could also compromise the flow of proper parts and service to existing Lotus owners. Lotus also argued that consumer choice would be adversely affected.

Summary of Public Comments. The agency received two comments on the Lotus petition for a temporary exemption. The first comment was submitted by Lotus itself.[17] In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Lotus presented the following arguments in support of its petition.

Like Ferarri, Lotus stated that it product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Lotus stated that advanced air bags were not anticipated when the Elise's vehicle platform was designed (in conjunction with its predecessor vehicle (the Elan)), and when the advanced air bag requirements were established, the company originally planned to introduce advanced air bag in the successor vehicle, the Lotus Esprit, and then to use the same technology for its Elise model. However, the company stated that due to unforeseen circumstances, the Esprit successor vehicle was delayed. Lotus stated that once this situation became clear, the company immediately tried to shift its advanced air bag program's focus to the Elise, with subsequent introduction into the Esprit successor. However, Lotus argued that despite its good faith efforts, it is not practicable to comply with the advanced air bag requirements in time to meet the September 1, 2006 deadline.

[16] Lotus also derives profits from engineering consulting for other small volume manufacturers. However, that business has declined. Fluctuations in the value of the dollar have also had a major effect on profits.

[17] Docket No. NHTSA–2006–25324–11.

Lotus argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is owned by Proton Holdings Berhad. The petitioner argued that its relationship to its parent company is similar to that of Ferarri and its parent company (Fiat). Lotus also noted that denial of its exemption request would have a negative employment impact on both its U.S. subsidiary and its U.S. dealerships.

In terms of safety impact, Lotus argued that the Elise would be equipped with standard air bags and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File showed no fatal crashes for Lotus vehicles after the 1995 model year, no crashes for Elise vehicles, and no crashes involving children.

In addition, Lotus argued that the continued weakening of the U.S. dollar vis-à-vis the British Pound, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

As noted above, the second comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Lotus, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

Agency Decision on Lotus Petition. We are granting the Lotus petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Lotus must continue to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for the requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Lotus to completely redesign a major structural part of the extruded aluminum chassis in its vehicles. While the petitioner was aware of the new requirements for some time, it was not able to introduce a fully compliant vehicle by September 2006 as originally intended. Accordingly, it was determined that the Elise model, designed for the European market, would need to be sold in the U.S. market in order to generate revenue for a successor vehicle that complies with all U.S. requirements, including the advanced air bag requirements of FMVSS No. 208. Although Lotus immediately engaged in homologation efforts, the company experienced a number of technical challenges precluding incorporation of advanced air bag into the Elise at this time, as follows.

Lotus has been unable to acquire an ''off-the-shelf'' advanced air bag system. First, many existing advanced air bag designs, technical specifications, and tooling are the intellectual property of the original equipment manufacturer (OEM) and not the supplier. Lotus experienced reluctance to allow the transfer of this intellectual property for its use. Second, the passenger air bag size, inflator pressure, venting, and deployment angle in those pre-existing air bag systems have been specifically designed for the original OEM vehicle crash pulse and interior geometry. Therefore, to source a passenger air bag requires reverse engineering, suiting the vehicles' interior package, and modifying the vehicle crash pulse to suit the OEM air bag. Third, the suppression option for compliance was not possible due to the lack of available sensor technology. Instead, to pursue the low risk deployment option, Lotus would need a top mounted passenger air bag. However, to package the top mounted passenger air bag in the Elise would require a complete redesign of a major structural part of the extruded aluminum chassis. At the location where the passenger air bag would need to be situated, there is a major structural cross beam that is bonded into the chassis. New tooling for the instrument panel would also be required, along with a new air bag cover. The air bag cover would require a new unique design to overcome the issues of out-of-position, small occupant air bag deployments. Fourth, advanced air bag occupant classification systems require a compliant seat frame base. The Lotus Elise has a rigid shell seat with only a minimum level of foam; therefore, another technical solution would be required, such as seat frame weight sensors. Currently, this solution is under development by suppliers but is not now available as a production solution. Lotus has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Lotus made good faith efforts to bring the Elise into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $125 million over the past five years. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially forcing the company out of business in the U.S. According to Lotus, absent the exemption, the company would have no product to sell in the U.S. until sometime in 2008, and losses could swell to over $100 million in the next three years. However, Lotus's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Elise over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Lotus to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Elise that meets all U.S. requirements.

While some of the information submitted by Lotus has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and

financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Lotus's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.
4. List of air bag suppliers that were approached in hopes of procuring necessary components (including OEM price-volume quotations).
5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
6. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that Lotus is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Lotus's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect not only employees of Lotus Cars USA, but also Lotus dealers and repair specialists. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We believe that this exemption will have negligible impact on motor vehicle safety, because Lotus vehicles are not typically used for daily transportation.

The agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question. These data indicate that over that period, there were no NASS CDS cases for the Elise and three fatalities in FARS for the Elise predecessor (two adult male and one adult female occupants). There were no children or small women involved in crashes of the later Lotus Elise included in these databases.

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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standard. 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.

Although our response to the supplementary comments provided by the petitioner is reflected above, in terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission.

In sum, the agency concludes that Lotus has demonstrated good faith effort to bring the Elise into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. 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)(i), the Lotus Elise is granted NHTSA Temporary Exemption No. EX 06–4, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

VI. Morgan [18]

Background. Founded in 1909, Morgan is a small privately-owned vehicle manufacturer producing approximately 600 specialty sports cars per year. Morgan manufactures several models, but only sells the Aero 8 in the U.S. Morgan intended to produce a vehicle line specific to the U.S. market, with Ford supplying the engine and transmission. However, for technical reasons, the project did not work out, and Morgan temporarily stopped selling vehicles in the U.S. in 2004. In May of 2005, Morgan obtained a temporary exemption from the Bumper Standard and began selling the Aero 8 in the U.S. Morgan now asks for a temporary exemption from advanced air bag requirements because of financial hardship. If its exemption request is granted, the company anticipates importing into the U.S. 25 vehicles in 2006, 250 vehicles in 2007, 250 in 2008, and 200 vehicles in 2009.

Eligibility. Morgan produces approximately 600 vehicles per year. Morgan is an independent company. Accordingly, NHTSA concludes that Morgan is eligible to apply for a hardship exemption.

Requested exemptions. Morgan stated that it intends for its U.S. Aero 8

[18] We note that Morgan submitted a supplement to its application, seeking a temporary exemption from all FMVSS No. 208 air bag requirements for a separate vehicle (*i.e.*, its traditional Roadster model) (*see* Docket No. NHTSA–2006–25324–4 (included with original application)). Although the Morgan Roadster previously had been equipped with standard air bags, the company stated that it has lost its original supplier for air bags for this vehicle and has been unable to find an alternate supplier. Due to the different issues involved, the agency will be addressing the supplemental request involving the Morgan Roadster in a separate **Federal Register** notice.

production on and after September 1, 2006 to comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1) and the rigid barrier belted test requirement using the 5th percentile adult female test dummy (S15.1).

Morgan states that the Aero 8's compliance with the rigid barrier unbelted test requirement using the 50th percentile adult male test dummy was determined through the S13 sled test using a generic pulse, rather than a full vehicle test. This petitioner further states that it cannot at present say with certainty that the Aero 8 would comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the other advanced air bag requirements, Morgan states that it does not know whether the Aero 8 would be compliant, as Morgan has not had the financial ability to conduct the necessary development and testing.

Morgan is requesting an exemption for the Aero 8 from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier unbelted test requirement using the 5th percentile adult female test dummy (S15.2), 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).

Morgan is requesting the above exemption for the Aero 8 for the period from September 1, 2006 to August 31, 2009.

Economic Hardship. Morgan argues that meeting the advanced air bag requirements is estimated to cost between $3,196,179 and $5,066,938 and is not within the financial capability of the company.[19] Morgan's financial submission indicates the company's losses over the last five years have totaled more than $3.6 million. In its initial petition, Morgan stated that it made a small profit in 2004 for the first time in three years. However, Morgan later supplied the agency with updated financial information for 2004 and 2005, which showed net losses for both of those fiscal years.

Without an exemption, Morgan would be forced once again to withdraw from the U.S. market. With no income from U.S. sales, Morgan asserts that it will not be able to fund an advanced air bag program for a future vehicle or return to profitability. For the period between 2006 and 2009, Morgan projects that the outcome of the agency's decision on its exemption request will amount to the difference between a profit of over $3 million and a loss of over $6 million. Morgan further asserts that if the petition is denied, it could soon become insolvent.

Good faith efforts to comply. Morgan has been working with the air bag supplier Siemens to develop an advanced air bag system for the Aero 8. However, a lack of funds and technical problems precluded the timely implementation of an advanced air bag system for the Aero 8. The minimum time needed to develop an advanced air bag system (provided that there is a source of revenue) is two years. With no other product to sell in the meantime, Morgan needs to rely on Aero 8 sales to finance this project.

Specific technical challenges include the following. Morgan does not have access to necessary sensor technology to pursue the ''full suppression'' passenger air bag option. Due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed. Chassis modifications are anticipated due to the originally stiff chassis design.

Morgan argues that an exemption would be in the public interest. Morgan put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Morgan asserts the current Aero 8's standard air bag system does not pose a safety risk. Morgan knows of no injuries caused by the Aero 8's current standard air bag system. If the exemption is denied and Morgan stops U.S. sales, Morgan's U.S. dealers would unavoidably have numerous lay-offs, resulting in decreased U.S. unemployment. Denial of an exemption would reduce the consumer choice in the specialty sports car market sector into which Morgan cars are offered. The Aero 8 will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Morgan, granting an exemption would assure the continued availability of proper parts and service support for existing Morgan owners. Without an exemption, Morgan would be forced from the U.S. market, and Morgan dealers will find it difficult to support existing customers.

Summary of Public Comments. The agency received two comments related to the Morgan petition for a temporary exemption. The first comment was submitted by Morgan itself.[20] In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Morgan presented the following arguments in support of its petition.

Like Ferrari, Morgan stated that its product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Morgan stated that it did not anticipate sale of the Aero 8 in the U.S., but the company later determined that it would be necessary to market this vehicle in the U.S. Once such decision was made, Morgan stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle.

Morgan stated that its vehicle also incorporates additional active and passive safety systems, including load limiters, electronic brakeforce distribution (EBD), ABS, drag torque control (for stability), and a tire pressure monitoring system (in advance of the compliance date for small volume manufacturers under FMVSS No. 138, *Tire Pressure Monitoring Systems*).

In terms of safety impact, Morgan argued that it intends to produce only 400 Aero 8 vehicles over three years and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File did not show any crashes involving Morgan's vehicle during that timeframe.

In addition, Morgan argued that the continued weakening of the U.S. dollar vis-a-vis the British Pound, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company. Morgan also argued that denial of its exemption request would have a negative employment impact on its U.S. dealerships.

[19] When costs for interior redesign, crash cars, and tooling are included, the estimate rises to between $5,648,679 and $7,519,438.

[20] Docket No. NHTSA–2006–25324–9.

As noted above, the second comment was submitted by Mr. Steven Blodgett (*see* the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Morgan, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

Agency Decision on Morgan Petition. We are granting the Morgan petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S15.2, S17, S19, S21, S23, and S25). The extent of the exemption is limited to those provision requiring an unbelted 5th percentile female barrier impact (S15.2), a belted 5th percentile female offset frontal impact (S17), testing with child dummies (S19, S21 and S23) and the 5th percentile female dummy out-of-position testing (S25). Morgan must certify to 50th percentile male barrier testing (S14.5.1(a) and S14.5.2), and 5th percentile female belted barrier testing (S15.1). The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Morgan to undertake a major redesign of its vehicles, in order to overcome the engineering limitations of the Aero 8. While the petitioner was aware of the new requirements for some time, its business plans to introduce a fully U.S. compliant vehicle did not materialize due to technical problems. As a result, Morgan subsequently determined that it would be necessary to introduce the Aero 8 into the U.S. market in order to finance the development of a fully compliant successor vehicle, thereby raising the problem of compliance with the advanced air bag requirements.

Morgan explained the main engineering challenges precluding incorporation of advanced air bag into the Aero 8 at this time, as follows. The company does not have access to necessary sensor technology to pursue the ''full suppression'' passenger air bag option. In addition, due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed, and chassis modifications are anticipated due to the originally stiff chassis design. The petitioner states that it would take approximately two years to resolve these technical issues surrounding advanced air bags, given adequate funding. Morgan has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Morgan made good faith efforts to bring the Aero 8 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. The company had a difficult time in gaining access to advanced air bag technology (which presumably reflects suppliers' initial focus on meeting the needs of large volume manufacturers), and this further reduced the lead time available for development. Furthermore, because Morgan is a fully independent company, there was no possibility of technology transfer from a larger parent company. Consequently, no viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, experiencing financial losses of about $4 million over the past five years (2001–2005). If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between a profit of over $3 million and a loss of over $6 million over the period from 2006–2009. Ultimately, denial of the exemption request could threaten the company's solvency.

According to Morgan, absent the exemption, the company anticipates being forced to withdraw from the U.S. market. However, Morgan's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Aero 8 over the next three years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Morgan to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Aero 8 that meets all U.S. requirements.

While some of the information submitted by Morgan has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Morgan's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. List of air bag suppliers that were approached in hopes of procuring necessary components (including OEM price-volume quotations).
4. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
5. Corporate income statements and balance sheets for the past three years, and projected income statements and balance sheets if the petition is denied.

We note that reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Morgan's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Morgan dealers and repair specialists, negatively impacting their ability to provide parts and services to current Morgan owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Aero 8 features several advanced ''active'' safety features. These features are listed in the petitioner's application.[21] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of

[21] *See* page 12 of Morgan's petition and page 1 of Morgan's comments.

vehicles affected (approximately 400 imported for the duration of the exemption), and because Morgan vehicles are not typically used for daily transportation. Their annual usage (approximately 5,000 miles per year) is substantially lower compared to vehicles used for everyday transportation.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question (which began sales in May 2005) or its predecessor vehicle (the Plus 8). These data indicate that over that period, there were no NASS CDS and no FARS cases for the Aero 8 or its predecessor. Thus, there were no children or small women involved in crashes of these Morgan vehicles included in these databases.

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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standard. 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 S15.2, 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.

Our response to the supplementary comments provided by the petitioner is reflected above. In terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission.

In sum, the agency concludes that Morgan has demonstrated good faith effort to bring the Aero 8 into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. 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)(i), the Morgan Aero 8 is granted NHTSA Temporary Exemption No. EX 06–5, from S15.2, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to August 31, 2009.

VII. Maserati

Background. Maserati is a small volume Italian automobile manufacturer formed in 1914 that produces performance sports cars and luxury automobiles. Over the years, Maserati has experienced frequent changes in ownership and financial hardship. The exemption is being sought for the Maserati Coupe/Spyder [22] for a period of 16 months.

Eligibility. Maserati produced less than 6,000 vehicles in the most recent year of production. More specifically, the petitioner reported the following worldwide production and U.S. imports over the past few years:

Maserati S.p.A	Worldwide production	U.S. imports
2003	2900 cars	1073 cars.
2004	4722 cars	1747 cars.
2005	5571 cars	2061 cars.

However, Maserati is owned by Fiat, a large vehicle manufacturer. The petitioner stated that there is no similarity of design between the cars produced by Maserati and Fiat, and that Maserati designed and engineered the Coupe/Spyder without the direct involvement of Fiat. In addition, Maserati stated that its vehicles are imported and sold though its own dealer networks, not those of Fiat. In sum, Maserati asserts that its relationship with Fiat is ''arm's-length.'' Maserati operates independently, and services provided by Fiat are paid for by Maserati.

In making our determination regarding eligibility, we note that the public comment of the COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers. Specifically, COSVAM argued that the Maserati vehicle has been engineered by Ferrari and that the technology for compliance with the requirements of FMVSS No. 208 should be readily available. The commenter asserted that at one point, the two companies shared the same staff for certification (homologation) and that the two companies have a long history of technology sharing. COSVAM stated that the two companies' recent corporate separation was defined in the public record as ''administrative rather than technological,'' and it stated that Maserati continues to use powertrains and other engineering equipment developed by and for Ferrari (which is majority-owned by Fiat S.p.A.). Thus, the commenter expressed doubt as to whether Maserati would be unable to comply with the advanced air bag requirements of FMVSS No. 208. Accordingly, the commenter argued that Maserati should be considered ineligible for a temporary exemption under part 555.

Maserati also submitted a public comment [23] on its own petition, in which it sought to clarify its relationship with its parent company, arguing that it is similar to that of Ferrari which is also majority-owned by Fiat.

[22] The Maserati vehicles in question differ only in that one is a hardtop version (the Coupe) and the other is a convertible softtop version (the Spyder).

[23] Docket No. NHTSA–2006–25324–10.

The agency examined the relationship between Maserati and Fiat (and its subsidiary Ferrari). We have concluded that Maserati is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Maserati and cars produced by Fiat (or Ferrari), and Maserati has stated that its Coupe/Spyder was designed without assistance from Fiat (or Ferrari). Second, Maserati cars are imported and sold through separate distribution channels independent of Fiat, which does not sell vehicles in the U.S, and of Ferrari. Accordingly, NHTSA concludes that Fiat (and Ferrari) are not manufacturers of Maserati vehicles by virtue of being a sponsor.

Requested exemptions. Maserati stated that it intends for the Coupe/Spyder produced for the United States market on and after September 1, 2006 to comply with the rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5).

As for the Coupe/Spyder's compliance with the other advanced air bag requirements, Maserati states that it does not know whether the Coupe/Spyder will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Accordingly, Maserati is requesting an exemption from 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).

Maserati is requesting the above exemption for the Coupe/Spyder for the period from September 1, 2006 to December 31, 2007.

Economic hardship. Over the period of 2000–2005, the company lost $385,195,998 (320,996,665 euros).[24] The petitioner argues that an exemption is needed in order to avoid massive disruptions to the Maserati production system and loss of revenue until a fully-compliant model is introduced in early 2008. The exempted vehicles will ''bridge the gap'' between the current Coupe/Spyder, with standard air bags, and the next version of the model line arriving in 2008 with advanced air bags. The petitioners stated that it does not have the resources to fund advanced air bag development for both the Coupe/Spyder and the successor vehicle due in 2008, and that an advanced air bag system tailored to the one vehicle could not be subsequently used in the other, due to completely different vehicle platforms. Furthermore, even if it were technically possible to install advanced air bags in the Coupe/Spyder, Maserati stated that the added cost on a per-vehicle basis would price the model out of the market. If the exemption is denied, the petitioner anticipates layoffs, negative impacts for Maserati dealers and owners in the U.S., and a delay in introducing a new, fully complaint vehicle.

Good faith efforts to comply. Maserati states that it has been unable to overcome engineering problems associated with installing advanced air bags in the current Coupe/Spyder, a vehicle platform that is soon to go out of production. The design of the current Coupe/Spyder started in 1996, before the advanced air bag rule was promulgated. In the late 1990s, when Maserati decided to re-enter the U.S. market, it made the decision that the Coupe/Spyder would have a life span in the U.S. of five years, from 2002 through 2006. This decision was based on the fact that the model was introduced in Europe in 1997, and that the basic platform would, therefore, have a total life span of nine years. Only in late 2005, Maserati concluded that it had to extend the life span of the Coupe/Spyder, by 16 months beyond the planned 2006 end date, because a fully compliant vehicle is not yet ready.

According to Maserati, it tried, but could not overcome the technical challenges associated with borrowing the advanced air bag system from Maserati's other model, the Quattroporte, because the steering column and steering wheel are incompatible with the electrical system in the Coupe/Spyder. Use of the Quattroporte's passenger air bag would require redesigning the entire Coupe/Spyder dashboard. To position the Quattroporte's sensors in the Coupe/Spyder, it would have been necessary to change the seats. The sensors also could not be packaged in the Coupe/Spyder due to space problems, and the sensor software was incompatible with the Coupe/Spyder's electrical system.

Maserati argues that an exemption would be in the public interest. Maserati put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Maserati asserts the current Coupe/Spyder's air bag system does not pose a safety risk. Maserati knows of no injuries caused by the Coupe/Spyder's current standard air bag system. If the exemption is denied and Maserati stops U.S. sales, Maserati states that its goodwill with its U.S. dealers would be negatively impacted. Further, Maserati asserts that denial of an exemption would reduce consumer choice in the specialty sports car market sector into which Maserati cars are offered. Masearti asserts that the Coupe/Spyder will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Maserati, granting an exemption would assure the continued availability of proper parts and service support for existing Maserati owners.

Summary of Public Comments. The agency received three comments on the Maserati petition for a temporary exemption. The first comment was submitted by Maserati itself. In its comment, the company stated that its situation is similar to Ferrari's request for a temporary exemption from the advanced air bag provisions of FMVSS No. 208, which the agency granted in a notice published in the **Federal Register** on May 22, 2006 (71 FR 29389) (Docket No. NHTSA–2005–23093). Specifically, Maserati presented the following arguments in support of its petition.

Like Ferarri, Maserati stated that it product cycles must last longer than the industry average due to the high cost of development and extremely small sales volumes. Maserati stated that it did not anticipate continued production of the Coupe/Spyder after September 1, 2006, but the company later determined that it would be necessary to continue production of that model. According to Maserati, advanced air bag requirements were not anticipated when designing the Coupe/Spyder's vehicle platform, which arose from a predecessor vehicle developed circa 1995. However, the petitioner stated that in order to meet the advanced air bag requirements, it would face the unique challenge of needing to completely redesign the vehicle before the end of its life cycle. Maserati stated that it made a good faith effort to find a practicable way to comply with the advanced air bag requirements, but it was unable to do so.

As discussed previously, Maserati argued that it is an independent manufacturer eligible for an exemption under 49 CFR part 555, despite the fact that the company is majority-owned by Fiat. The petitioner argued that its relationship to its parent company is similar to that of Ferarri, which is also majority-owned by Fiat. Maserati also noted that denial of its exemption request would have a negative

[24] The dollar-euro exchange rate used herein is 1 euro = $1.20.

employment impact on both its U.S. subsidiary and its U.S. dealerships.

Maserati stated that in addition to standard air bags, its vehicle also incorporates additional active and passive safety systems, including electronic stability control, ABS, side air bags, and a fixed rollover bar on the convertible. Furthermore, the company stated that the Coupe/Spyder has been equipped with an air bag on-off switch.

In terms of safety impact, Maserati argued that it intends to produce only about 700 Coupe/Spyder vehicles over 16 months and that these vehicles are not typically used for daily transportation, have substantially lower than average annual usage, and typically are not used to transport children. Accordingly, the petitioner argued that its requested exemption for these vehicles would have a negligible effect on safety. The company added that its search of NHTSA's Fatality Analysis Reporting System (FARS) database from 1995–2003 and 2004 Annual Report File showed no accident involving a Maserati vehicle built by the ownership-management post-DeTomaso.[25]

In addition, Maserati argued that the continued weakening of the U.S. dollar vis-a-vis the euro, when combined with competitive pressure to avoid significant vehicle price increases in the U.S. market, exacerbates the economic hardship problems confronting the company.

The second comment was submitted by Mr. Steven Blodgett (see the summary of public comments under Lamborghini for a complete discussion of this comment). Specific to Maserati, Mr. Blodgett requested the OMB and/or a separate independent contractor be used to evaluate the company's financial data. The commenter also objected to the lack of supporting documentation from air bag suppliers to verify that the requirements for which the vehicle manufacturer seeks an exemption cannot be met. As further factors for consideration by the agency in reviewing the company's temporary exemption request, Mr. Blodgett highlighted what he perceived to be the manufacturer's delay in submitting a part 555 petition from the advanced air bag requirements and its presumed continuation of vehicle production prior to receiving the agency's decision.

The third comment was submitted by COSVAM. As discussed previously, COSVAM raised the issue of whether certain of the petitioners (Bugatti, Lamborghini, Maserati) are eligible for temporary exemptions under part 555, in light of their financial relationships to larger parent companies which are also vehicle manufacturers (see Eligibility section above for details and the agency's decision on that issue).

Agency Decision on Maserati Petition. We are granting the Maserati petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S15, S17, S19, S21, S23, and S25). The exemption does not extent to the provisions requiring 50th percentile male barrier impact tests (S14.5.1(a) and S14.5.2). Thus, Maserati must certify to S14.5.1(a) and S14.5.2. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Maserati to conduct a major redesign its vehicles, in order to overcome the existing engineering and technical limitations based upon design of the Coupe/Spyder. While the petitioner was aware of the new requirements for some time, its business plans changed, and it was subsequently determined that the Coupe/Spyder's production run would need to be extended beyond 2006 (*i.e.*, for an additional 16 months) because a successor vehicle is not ready, thereby raising the problem of compliance with the advanced air bag requirements. The petitioner requested a temporary exemption in order to prevent a gap in its U.S. product portfolio, thereby maintaining its market position in the U.S. and avoiding financial harm to its dealer network.

Maserati explained the main engineering challenges precluding incorporation of advanced air bag into the Coupe/Spyder at this time, as follows. After examining available options, Maserati determined that its best chance of meeting the advanced air bag requirements would involve borrowing the advanced air bag system from Maserati's other model, the Quattroporte. However, this strategy did not work, because the Quattroporte's steering column and steering wheel are incompatible with the electrical system in the Coupe/Spyder. Furthermore, it was determined that use of the Quattroporte's passenger air bag would require redesigning the entire Coupe/Spyder dashboard and that to position the Quattroporte's sensors in the Coupe/Spyder, it would have been necessary to change the seats. The sensors also could not be packaged in the Coupe/Spyder due to space problems, and the sensor software was incompatible with the Coupe/Spyder's electrical system. Thus, Maserati has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Maserati made good faith efforts to bring the Coupe/Spyder into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. No viable alternatives remain. The petitioner is unable to redesign its vehicle by the time the new advanced air bag requirements go into effect on September 1, 2006.

After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, having lost over $385 million (320 million euros) over the period from 2001–2005. If the petitioner is forced to discontinue selling the current model in the U.S. market, the resulting loss of sales and revenue would cause substantial economic hardship within the meaning of the statute. However, Maserati's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the Coupe/Spyder over the next 16 months to finance development of a fully compliant vehicle for delivery to the U.S. market in 2008. Granting the exemption will allow Maserati to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the Coupe/Spyder that meets all U.S. requirements.

While some of the information submitted by Maserati has been granted confidential treatment and is not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208, and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Maserati's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.

2. Discussion of alternative means of compliance and reasons for rejecting these alternatives.

3. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.

[25] According to the petitioner, Maserati operated under one corporate ownership-management structure (DeTomaso), which last produced vehicles for sale in the U.S. during model year 1991. The company was subsequently sold to its current leadership, which resumed sales in the U.S. in 2001. According to the petitioner, the two generations of vehicles were significantly different, although both shared the same Maserati name.

4. Corporate incomes statements and balance sheets for the past three years.[26]

Although Maserati did not supply OEM price-volume quotation from air bag suppliers in terms of a compliant system for the Coupe/Spyder, we nevertheless believe that such discussions took place, as the company explored the alternatives of either upgrading the existing standard air bag on the Coupe/Spyder or adapting the Quattroporte's advanced air bag system to that vehicle. Neither of these alternatives proved feasible, either developmentally or commercially.

We note that Maserati is a well-established company with a small, but not insignificant U.S. presence. We believe that the reduction of sales revenue resulting from a denial of the company's requested temporary exemption would have a negative impact not only on Maserati's financial circumstances, but it would also negatively affect U.S. employment. Specifically, reduction in sales would also affect Maserati's U.S. subsidiaries, dealers, and repair specialists, which could in turn negatively impact the availability of parts and services to existing Maserati owners. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force. Furthermore, as discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.

We also note that the Coupe/Spyder features several advanced ''active'' safety features. These features are listed in the petitioner's application.[27] While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (not more than 700 for the duration of the exemption), and because Maserati vehicles are not typically used for daily transportation. Their annual usage (less than 10,000 miles per year on average) is substantially lower compared to vehicles used for everyday transportation.

In addition, Maserati has voluntarily included an air bag on-off switch for passenger air bag suppression for the protection of children being transported in the right front seating position. This will enable the passenger air bag to be manually turned off when a child is present, which supports our findings that this exemption would have a negligible impact on motor vehicle safety.

Furthermore, the agency examined the FARS (1995–2004) and the National Automotive Sampling System Crashworthiness Data System (NASS CDS) (1995–2005) for information on the vehicle in question. These data indicate that over that period, there were no NASS CDS cases and one FARS case for a model year 1987 Coupe/Spyder (male driver). Thus, there were no children or small women involved in crashes of the Maserati Coupe/Spyder included in these databases.

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 Federal motor vehicle safety standards 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 Federal motor vehicle safety standard. 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 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.

Although our response to the supplementary comments provided by the petitioner is reflected above, we would offer the following response to the other public comments received on the Maserati petition. In terms of our response to the comment submitted by Mr. Blodgett, we note that the issues raised in that comment (*e.g.*, extension of the comment period, duration of the comment period, documentation) are identical for all five petitioners. Accordingly, please see our decision for Lamborghini (Section IV of this notice) for the agency's response to this comment submission. As noted previously, the comments of COSVAM were addressed under the discussion of *Eligibility* above.

In sum, the agency concludes that Maserati has demonstrated good faith effort to bring the Coupe/Spyder into compliance with the advanced air bag requirements of FMVSS No. 208, and has also demonstrated the requisite financial hardship. Further, we find the exemption to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. 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)(i), the Maserati Coupe/Spyder is granted NHTSA Temporary Exemption No. EX 06–6, from S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective from September 1, 2006 to December 31, 2007.

Issued on: August 31, 2006.

Nicole R. Nason,

Administrator.

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[26] Because the company is wholly owned by Fiat and does not publish financial statements, Maserati did not include *pro forma* projected statements. Nevertheless, the financial statements for prior years provided by Maserati suggest that the company has a ways to go before achieving profitability on its operations. Given its cumulative losses, the company is not in a position to incur the costs of a new development program to be spread over only 700 units, thereby raising the retail price of the Coupe/Spyder significantly.

[27] *See* page 13 of Maserati's petition and page 1 of Maserati's comments.