

will fall within two major categories: baseline and progress benchmarks.

- “Baseline” data elements reflect the current status and nature of 9–1–1 operations from State to State. These elements are largely descriptive in nature, are intended to provide a general view of existing 9–1–1 services across the country, and are grouped within three categories: administrative, system, and fiscal data.

- “Progress benchmarks” reflect the status of State efforts to implement advanced next generation 9–1–1 systems and capabilities. As titled, these data elements are largely implementation or deployment benchmarks against which progress can be measured. The elements involved are grouped in a logical order of planning, procurement, installation and testing, transition, and operations. Planning through testing elements reflects both State level and sub-State level activity and efforts. Transitional and operational elements specifically represent the latter.

In order to collect information needed to develop and implement effective strategies that meet the Program’s goal of providing leadership, coordination, guidance and direction to the enhancement of the Nation’s 9–1–1 services, NHTSA proposes to utilize a Web-based, data reporting and collection tool accessible through the Web site: <http://www.911resourcecenter.org>.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):*

Under this proposed effort, the 9–1–1 Resource Center would specifically request reporting entities to voluntarily collect and annually report the data described above utilizing the described Web-based data collection tool. Reporting entities are State level 9–1–1 program officials, and the data reported will reflect State-level aggregated data. The total number of respondents is identified at fifty-six (56), including the fifty States and the six U.S. Territories of Guam, U.S. Minor Outlying Islands, American Samoa, Mariana Islands, U.S. Virgin Islands, and Puerto Rico.

The above reporting entities will be requested to annually update data relating to their State or territory using the described Web-based tool.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information:*

NHTSA estimates that the time required to annually report the data described utilizing the Web-based tool

will be three hours (2 hours of preparation, 1 hour of entry to Web site) per reporting entity, for a total of 168 hours for all entities. The respondents would not incur any reporting costs from the information collection beyond the time it takes to gather the information, prepare it for reporting and then populate the Web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

**Authority:** 44 U.S.C. 3506(c)(2)(A); 47 U.S.C. 942.

Issued on: February 8, 2011.

**Michael L. Brown,**

*Acting Associate Administrator, Research and Program Development.*

[FR Doc. 2011–3119 Filed 2–10–11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0118]

#### Wheego Electric Cars, Inc.; Grant of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

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

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

**SUMMARY:** This notice grants the petition of Wheego Electric Cars, Inc. (Wheego) for the temporary exemption of its Whip LiFe model from certain advanced air bag requirements of FMVSS No. 208. The basis for the exemption is that the exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably reduce the safety level of that vehicle.

**DATES:** The exemption is effective immediately, conditioned upon Wheego’s submission to NHTSA, at least 30 days prior to the first delivery of the LiFe to a distributor or dealer for sale in the United States, the certification test data and other data in support of the certification of the LiFe’s compliance with certain FMVSSs, as discussed in the **SUPPLEMENTARY INFORMATION** section. This exemption remains in effect until February 11, 2013.

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

##### I. Advanced Air Bag Requirements

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as “advanced air bags.”<sup>1</sup> The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by deploying air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of some air bag designs. This plan also included conducting rulemaking to facilitate the depowering of air bags and conducting 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 were not subject to the advanced air bag requirements until September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers that have petitioned on the basis that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. NHTSA has granted a number of these petitions, usually in situations where the manufacturer is supplying standard air bags in lieu of advanced air bags.<sup>2</sup> In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

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’ response to the agency’s rulemaking by providing depowered air bags were successful in

<sup>1</sup> See 65 FR 30680 (May 12, 2000).

<sup>2</sup> See, e.g., grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implications of any temporary exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a plug-in electric car. The stated basis of the petition was that requiring compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the advanced air bag requirements. However, after consultation with the petitioner, we have also considered the petition under a different basis—that an exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle.

## II. Statutory Basis for Temporary Exemptions

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

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Vehicle Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety

level at least equal to the overall safety level of nonexempt vehicles.

Only small manufacturers can obtain a hardship exemption. 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 another entity also might be deemed a manufacturer of that vehicle and whether the production volumes of each of the two manufacturers should be combined in assessing whether the criterion is met. A second entity might be deemed a manufacturer of a vehicle in a variety of circumstances. For example, there are two manufacturers if one entity produces an incomplete vehicle<sup>3</sup> and another entity then modifies the incomplete vehicle so as to produce a completed vehicle.<sup>4</sup> 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.

For an exemption petition to be granted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, the petition must include specified information set forth at 49 CFR 555.6(c). The main requirements of that section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of a vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,”<sup>5</sup> the statute also expressly authorizes the agency to renew an exemption on reapplication. The agency wishes to caution

manufacturers that the agency’s decision to grant a manufacturer’s initial exemption petition in no way predetermines whether the agency will grant a petition for renewal of an initial exemption. The agency does not believe it would be consistent with section 30113 for the agency to grant repeated renewals, since doing so would impart semi-permanent exempted status to the manufacturer. This seems particularly true in the case of exemptions based on developing or evaluating a new vehicle. Accordingly, exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider the public interest, consistency with the Safety Act, generally, as well as other specific matters provided in the statute.

## III. Wheego’s Petition

Wheego submitted a petition for exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection*, pursuant to 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, for its LiFe model for a period of three years. Specifically, the petition requested an exemption from paragraphs S14 (including S14.5.2) (advanced air bag requirements), S15 (rigid barrier test requirements using 5th percentile adult female dummies), S16 (rigid barrier test procedure), S17 (offset frontal deformable barrier requirements using 5th percentile adult female dummies), S18 (test procedure for offset frontal deformable barrier), S19 (requirements to provide protection for infants in rear facing and convertible child restraints and car beds), S21 (requirements using 3-year-old child dummies), S23 (requirements using 6-year-old child dummies), S25 (requirements using an out-of-position 5th percentile adult female dummy at the driver position), S26 (procedure for low risk deployment tests of driver air bag), and S27 (option for dynamic automatic suppression system that suppresses the air bag when an occupant is out of position) of FMVSS No. 208.

In further submissions to the agency, Wheego clarified its plans with respect to S14, stating that it will certify its vehicles to comply with the belted 50th percentile male barrier impact test (S14.5.1(a)). Wheego has also since stated that it plans to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)) (with the unbelted sled test in S13 being an acceptable option for that requirement).

Although Wheego seeks exemption from S16, S18, S26, and S27, those provisions set forth compliance test

<sup>3</sup> 49 CFR 567.3.

<sup>4</sup> *Ibid.*

<sup>5</sup> 49 U.S.C. 30113(b)(1).

procedures for optional means of compliance. Wheego does not need an exemption from S16, S18, and S26, because those provisions do not set forth requirements with which Wheego must certify compliance. Instead, they set forth the compliance test procedures for the substantive requirements in S15, S17, and S25 respectively. Wheego also does not need an exemption from S27, which sets forth requirements for an optional dynamic automatic suppression system. Accordingly, we have considered Wheego's petition as seeking an exemption from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208.

The stated basis for Wheego's application is that requiring compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. According to the petition, Wheego is a privately held company incorporated in the State of Delaware, with headquarters in Atlanta, Georgia. Its total motor vehicle production during the 12 months preceding the filing of the petition was 308 vehicles. Wheego indicated that all of these vehicles were all-electric Wheego Whip LSVs (low speed vehicles). In order for a vehicle to qualify as a low speed vehicle under FMVSS No. 500, *Low-Speed Vehicles*, its top speed must not exceed 25 miles per hour.

Wheego states that the LiFe is a zero-emission, two-door, two-seat coupe that uses a lithium iron phosphate battery pack to power a 60 horsepower AC induction electric motor. The LiFe has a high strength steel unibody chassis made by Shijiazhuang ShuangHuan Automobile Co. (ShuangHuan) in China. A similar chassis (minus modifications reportedly made by ShuangHuan to the chassis sold to Wheego) is used by ShuangHuan in manufacturing a passenger car (called the "Noble") with an internal combustion engine for sale in China, Australia, Greece, and other parts of the world outside the United States. Wheego states that, by purchasing and using an existing chassis, it was able to avoid the high cost of developing and manufacturing a brand new vehicle design. Wheego also states that ShuangHuan has developed dual standard air bags for the chassis, but not an advanced air bag system.

Wheego contends that granting an exemption would be in the public interest. Wheego intends the LiFe to be "one of the first affordable electric cars available in the United States." Wheego states that electric vehicles have several benefits, including reducing the nation's reliance on foreign oil and reducing greenhouse gas and other emissions.

Wheego also contends that, allowing it to enter the market now would contribute to the development of electric vehicles in general by helping to evaluate the market and performance of electric vehicles with real world experience. Wheego also cites employment opportunities as a benefit.

Wheego intends to produce only a limited number of LiFes in the first three years of production, which it contends would limit the overall impact on motor vehicle safety. In its original petition, Wheego projected that it would sell 550 LiFes in 2010, 1,200 in 2011, 2,400 in 2012, and 5,000 in 2013. Wheego has since indicated that its anticipated production would be approximately 100 vehicles per month throughout the requested exemption period. Thus, the 12-month production total would be approximately 1,200 vehicles. Wheego states that the primary purpose of the LiFe will be as a commuter vehicle because it will have a limited range compared to that of gasoline powered vehicles. The LiFe will have a projected range of 100 miles and will require a minimum of 5 hours to regain a 50 percent charge. Because of the small sales volume and limited range, Wheego states that the number of hours that the LiFes will be on roads will be lower compared to gasoline powered vehicles, thereby reducing the likelihood of a crash.

Wheego contends that compliance with the advanced air bag requirements would cause substantial economic hardship and that Wheego has tried to comply with the standard in good faith. Wheego states that it cannot acquire an off-the-shelf advanced air bag system for the LiFe because an advanced air bag system has never been developed for the chassis used in the LiFe. Wheego states that it does not have the technical or financial resources to develop such a system independently and would have to cancel the development of a passenger car and terminate its operations if it does not obtain the requested exemption.

In October 2009, Wheego engaged J.K. Technologies in Baltimore, Maryland, for help with testing and certification requirements of the FMVSSs. Also in October 2009, Wheego approached TASS Engineering Services and Bosch for help in developing an advanced air bag system for the LiFe. Based upon this consultation, Wheego estimates that an advanced air bag system would cost \$3 million and would take 18 months to test and implement. In its original petition, Wheego stated that it intended to spend \$1 million in each of 2011, 2012, and 2013, obtained from sales of the LiFe, in an effort to develop a

system that will comply with the advanced air bag requirements. Wheego stated that, based on its projected revenues, by the end of the third year of an exemption, Wheego should be able to build cars with advanced air bags at no additional cost. However, Wheego has since indicated that, if their exemption petition is granted, they expect a substantial investment in their business that would allow them to meet the advanced air bag requirements by September 2012.

#### IV. Notice of Receipt

On August 23, 2010, we published in the **Federal Register** (75 FR 51870) a notice of receipt of Wheego's petition for temporary exemption, and provided an opportunity for public comment. We received one comment, which was from Wheego. It addressed only the issue of sponsorship.

#### V. Agency Analysis and Decision

In this section, we provide our analysis and decision regarding Wheego's temporary exemption request concerning advanced air bag requirements of FMVSS No. 208.

As discussed below, we are granting Wheego's petition for the LiFe to be exempted, for a period of two years after the date of publication of this notice in the **Federal Register**, from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a), Wheego must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement. This exemption is further conditioned upon Wheego's submitting to the agency, at least 30 days before the first delivery of the LiFe to a distributor or dealer for sale in the United States, all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with the following FMVSSs: FMVSS No. 135, *Light Vehicle Brake Systems*; FMVSS No. 138, *Tire Pressure Monitoring Systems*; FMVSS No. 208, *Occupant Crash Protection*;<sup>6</sup> FMVSS No. 214, *Side Impact Protection*; and FMVSS No. 216, *Roof Crush Resistance*.

<sup>6</sup> Excluding the sections of FMVSS No. 208 from which Wheego would be exempt.

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

*a. Change in Basis for Exemption*

As discussed above and in the notice of receipt, Wheego's application for an exemption from the advanced air bag requirements of FMVSS No. 208 was based upon an argument that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. However, upon further review of Wheego's application and after discussions with Wheego, the agency and Wheego agreed that its request for an exemption would instead be considered on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle. Wheego stated that it would not object to NHTSA considering the petition on this basis, if necessary to grant the petition. In meetings with the agency and in post petition correspondence, Wheego has submitted additional information to the agency.<sup>7</sup>

There are two reasons the agency has considered Wheego's petition under a different basis than stated in the application. First, as discussed in the notice of receipt, there is a question of Wheego's eligibility to apply for an economic hardship exemption. A manufacturer is eligible to apply for an economic 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 entity also might be deemed a manufacturer of that vehicle. We indicated in the notice of receipt that another manufacturer, ShuangHuan, produces and supplies the unibody chassis of the LiFe. The chassis supplied by ShuangHuan is similar to the chassis of its Noble model. We sought comment on whether ShuangHuan might also be considered a manufacturer of the LiFe, and Wheego's comment addresses that issue. We believe that there is reason to regard ShuangHuan as a manufacturer of the LiFe. However, considering Wheego's petition on the basis of facilitating the development of a low-emission vehicle moots the question of Wheego's eligibility for a hardship exemption.

Second, although there are different limitations on exemptions based on the development of a low-emission vehicle, Wheego's petition and subsequently provided information together meet all of those requirements except for one—the length of the exemption sought. Wheego has revised its production targets such that not more than 2,500 exempted vehicles would be sold in the United States in any 12-month period for which an exemption may be granted. Wheego has provided information substantiating that it is producing a low-emission vehicle, documentation establishing that a temporary exemption would not unreasonably degrade the safety of the vehicle, substantiation that a temporary exemption would facilitate the development and field evaluation of the vehicle, and a statement that Wheego intends to comply with all of the requirements of FMVSS No. 208 at the end of the exemption period. As for the duration of the exemption, Wheego sought a three-year hardship exemption. However, exemptions for the development of a low-emission motor vehicle are limited to a two-year duration. Accepting Wheego's assertion that it would take 18 months to develop an advanced air bag system and allowing additional time for initiating that process and retooling, we believe that a maximum two-year extension is warranted based upon Wheego's application.

Based on the foregoing, we have considered Wheego's petition for an exemption from the advanced air bag requirements of FMVSS No. 208 on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, notwithstanding the fact that Wheego sought its exemption based upon economic hardship. We address below Wheego's satisfaction of the criteria for such an exemption.

*b. Eligibility*

NHTSA believes that the requested exemption would make the development or field evaluation of a low-emission motor vehicle easier. Wheego has stated that the LiFe will be one of the first affordable electric cars available in the United States. Wheego has also stated that allowing them into the market by granting the exemption will expand consumer choices and contribute to the development of electric cars in general by helping to evaluate the market for electric vehicles. We agree that an exemption would permit Wheego to offer a lower priced electric vehicle and allow for the

evaluation of the market for these vehicles.

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

Furthermore, we have also considered child safety issues related to the exemption requested by Wheego. With respect to transporting children and infants, Wheego noted that the LiFe is equipped with an on-off switch for its passenger air bag. Wheego stated that dealers will instruct purchasers on the use of the on-off switch and that information also would be contained in the owner's manual. The passenger seat is also equipped with a child seat LATCH system.<sup>8</sup> The LiFe will also have the permanently affixed "sun visor air bag warning label" and a removable "warning label on the dashboard" that NHTSA developed/requires for vehicles without advanced air bags. Thus, parents and others will be able to transport children in the passenger seat of the LiFe without exposing them to the risks of air bags, and the vehicles will have warning labels concerning the risks of air bags. This helps minimize any safety risks resulting from the vehicle not meeting requirements for advanced air bags.

We also observe that only a limited number of vehicles would be produced under the temporary exemption. Manufacturers granted exemptions on the basis of furthering the development of low-emission vehicles are limited to selling 2,500 exempted vehicles in any 12-month period. Given that this is a two-year exemption, no more than 5,000 vehicles could be built that lack the advanced air bag protection of FMVSS No. 208. Wheego has indicated that it anticipates producing approximately 100 vehicles per month throughout the duration of the exemption period for a total of approximately 2,400 vehicles.

Based upon the above discussion concerning safety, we believe that any impact on safety from granting the exemption would be negligible, and that Wheego has satisfied the eligibility criteria for an exemption for the development or field evaluation of a low-emission motor vehicle.

<sup>8</sup> Lower Anchors and Tethers for Children (LATCH) Restraint System.

<sup>7</sup> A copy of all of Wheego's submissions and a summary of the meeting are available in the docket. See Docket No. NHTSA-2010-0118.

### c. Public Interest Considerations

NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles, by encouraging the development of fuel-efficient and alternative-energy vehicles, and providing additional employment opportunities. We believe that all three of these public interest considerations would be served by granting Wheego's petition.

Given the relatively small number of vehicles that will be produced during the two-year exemption and the above discussion, we believe that the requested exemption would have a negligible effect on motor vehicle safety.

### d. Conditions

Pursuant to 49 U.S.C. 30113(b)(1), the Secretary, acting through the NHTSA, may grant temporary exemptions "on terms the Secretary considers appropriate." Through the course of Wheego's application process, issues have been raised that warrant the attachment of a condition to this temporary exemption.

As stated above, the advanced air bag requirements were adopted, in part, to minimize the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes. Wheego's initial petition made no mention of any features in the vehicle that would minimize the risks posed by air bags to infants, children, and other occupants in low-speed crashes. Only after a notice of receipt was published did Wheego inform the agency of its actions to address these risks. Similarly, and as we stated in the notice of receipt, Wheego's petition provided little to explain its relationship with ShuangHuan. It was only through Wheego's comment on the notice of receipt and its subsequent petitions that we learned of the modifications to the Noble chassis made by Wheego for the LiFe.

To assist the agency in learning more about Wheego's efforts to make design changes to the Noble to meet all of the FMVSSs, we are conditioning the grant of exemption on Wheego's submitting to NHTSA's Office of Vehicle Safety Compliance all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with the following FMVSSs: FMVSS No. 135, *Light Vehicle Brake Systems*; FMVSS No. 138, *Tire Pressure Monitoring Systems*; FMVSS No. 208,

*Occupant Crash Protection*;<sup>9</sup> FMVSS No. 214, *Side Impact Protection*; and FMVSS No. 216, *Roof Crush Resistance*.

We are requiring that this data be submitted at least 30 days prior to Wheego delivering a LiFe to a distributor or dealer for sale in the United States. If this data is not submitted to NHTSA, Wheego cannot offer vehicles for sale under this exemption. NHTSA's evaluation of this data will help the Administrator determine if the temporary exemption continues to be in the public interest. We note that 49 CFR 555.8(d)(1) allows the Administrator to revoke a temporary exemption if it is no longer consistent with the public interest and the objectives of the Safety Act.

Although Wheego seeks a three-year exemption, we explained above that only a two-year exemption is available under the low-emission motor vehicle exemption. In addition, we explained above our reasons why a three-year exemption is not warranted. NHTSA is considering generally whether it is in the public interest to continue to grant petitions seeking temporary exemptions from the advanced air bag requirements and, to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of advanced air bags, should be expected. In contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers have access to advanced air bag technology. In light of this reconsideration, we reiterate that the exemption we are granting to Wheego is temporary. Based upon Wheego's commitment to having FMVSS No. 208 compliant advanced air bags in the LiFe by the end of the exemption period, we would not view a petition to renew this temporary extension favorably, absent a substantial change in Wheego's circumstances.

### e. Labels

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 vehicle must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA

<sup>9</sup> Excluding the sections of FMVSS No. 208 from which Wheego would be exempt.

Exemption No. \_\_\_\_." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part but not all of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number would be of little use to consumers, since they would not know the subject of those specific provisions.<sup>10</sup> For these reasons, we believe the two labels should read in relevant part, "except for the 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.

### f. Decision

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

In accordance with 49 U.S.C. § 30113(b)(3)(B)(iii), Wheego is granted NHTSA Temporary Exemption No. EX 11-01, from S14 (apart from S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a), Wheego must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this

<sup>10</sup> We recognize that, in prior grants of exemptions from the advanced air bag requirements, the agency has required the manufacturer to list the exempted paragraphs by number on the label.

exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

The exemption is for the LiFe model and shall remain in effect until two years after the date on which notice of this decision is published in the **Federal Register**, as indicated in the **DATES** section of this document. However, this grant of exemption is conditioned on Wheego's providing to NHTSA, at least 30 days before delivering a vehicle to a distributor or dealer for sale, all certification test data, including any objective data, simulation data, engineering analyses, and any other data that forms the basis for Wheego's certification of the LiFe's compliance with FMVSS Nos. 135, 138, 208, 214, and 216.

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

Issued on: February 8, 2011.

**David L. Strickland,**  
Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 34554 (Sub-No. 14)]

#### Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

Pursuant to a modified written trackage rights agreement dated January 18, 2011, BNSF Railway Company (BNSF) has agreed to extend the December 18, 2010 expiration date of the local trackage rights granted to the Union Pacific Railroad Company (UP)<sup>1</sup> over a BNSF line of railroad extending from BNSF milepost 579.3 near Mill Creek, Okla., to BNSF milepost 631.1 near Joe Junction, Tex., a distance of approximately 52 miles.<sup>2</sup>

<sup>1</sup> UP submits that the trackage rights being granted here are only temporary rights but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *R.R. Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, UP concurrently has filed a petition for partial revocation of this exemption in Docket No. FD 34554 (Sub-No. 15), *Union Pacific Railroad—Temporary Trackage Rights Exemption—BNSF Railway*, wherein UP requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about December 18, 2011, as provided in the parties' agreement. That petition will be addressed by the Board in a separate decision.

<sup>2</sup> The trackage rights were originally granted in *Union Pacific Railroad—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway*, FD 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed notices of

The transaction is scheduled to be consummated on or after February 26, 2011, the effective date of the exemption (30 days after the exemption is filed).

The purpose of this transaction is to modify the temporary trackage rights exempted in Docket No. FD 34554 (Sub-No. 12) to further extend the expiration date to on or about December 18, 2011. The modified trackage rights will permit UP to continue to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employee affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 18, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 34554 (Sub-No. 14), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Elisa B. Davies, General Attorney, Union Pacific

exemption several times based on their agreements to extend expiration dates of the same trackage rights. See FD 34554 (Sub-No. 2) (STB served February 11, 2005); FD 34554 (Sub-No. 4) (STB served March 3, 2006); FD 34554 (Sub-No. 6) (STB served January 12, 2007); FD 34554 (Sub-No. 8) (STB served January 4, 2008); FD 34554 (Sub-No. 10) (STB served January 8, 2009); and FD 34554 (Sub-No. 12) (STB served December 31, 2009). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See FD 34554 (Sub-No. 1) (STB served November 24, 2004); FD 34554 (Sub-No. 3) (STB served March 25, 2005); FD 34554 (Sub-No. 5) (STB served March 23, 2006); FD 34554 (Sub-No. 7) (STB served March 13, 2007); FD 34554 (Sub-No. 9) (STB served March 20, 2008); FD 34554 (Sub-No. 11) (STB served March 11, 2009); and FD 34554 (Sub-No. 13) (STB served March 15, 2010). At the time of the extension authorized in Docket No. FD 34554 (Sub-No. 12), the parties anticipated that the authority to allow the rights to expire would be exercised by December 18, 2010. However, the parties filed on January 27, 2011 in Docket No. FD 34554 (Sub-No. 14) their most recent notice of exemption to allow the trackage rights to be extended to on or about December 18, 2011, which we are addressing here.

Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: February 7, 2011.

By the Board.

**Rachel D. Campbell,**  
Director, Office of Proceedings.  
**Andrea Pope-Matheson,**  
Clearance Clerk.

[FR Doc. 2011-3012 Filed 2-10-11; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35462]

#### Union Pacific Railroad Company— Trackage Rights Exemption— California Northern Railroad Co.

Pursuant to a written trackage rights agreement dated July 1, 2010, California Northern Railroad Co. (CFNR) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 1.8 miles of rail line between milepost 83.0 (Tracy, Cal.) and milepost 84.8 (Lyoth, Cal.), on CFNR's Los Banos Subdivision.

The transaction may be consummated on or after February 24, 2011, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to enable UP to move trains between its Oakland, Cal., Subdivision and its Tracy Industrial Lead.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 17, 2011 (at least 7 days before the exemption becomes effective). An original and 10 copies of all pleadings, referring to Docket No. FD 35462, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must