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**FOR FURTHER INFORMATION CONTACT:**

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979, E-mail [Joann.Spittle@dot.gov](mailto:Joann.Spittle@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LEI LANI is:

*Intended Commercial Use Of Vessel:* "sight seeing charters."

*Geographic Region:* "California."

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

By the Order of the Maritime Administrator

Dated: June 23, 2011.

**Murray Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 2011-16220 Filed 6-28-11; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket No. Marad 2011-0086]

**Information Collection Available for Public Comments and Recommendations**

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before August 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joe Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-4161; or e-mail: [joe.strassburg@dot.gov](mailto:joe.strassburg@dot.gov). Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Seamen's Claims, Administrative Action and Litigation.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133-0522.

*Form Numbers:* None.

*Expiration Date of Approval:* Three years from date of approval by the Office of Management and Budget.

*Summary of Collection of Information:* The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The filing of a claim is a jurisdictional requirement for MARAD liability for such claims. MARAD reviews the information and makes a determination regarding agency liability and payments.

*Need and Use of the Information:* This information will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed and settled, payment is made to the claimant.

*Description of Respondents:* Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of the officers or crew members.

*Annual Responses:* 60.

*Annual Burden:* 750.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at <http://www.regulations.gov>. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. E.D.T. (or E.S.T.), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://www.regulations.gov>.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator,

Dated: June 23, 2011.

**Murray Bloom,**

*Acting Secretary, Maritime Administration.*

[FR Doc. 2011-16221 Filed 6-28-11; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2010-0154]

**Terrafugia, Inc.; Grant of Application for Temporary Exemption From Certain Requirements of FMVSS No. 110, Tire Selection and Rims for Motor Vehicles, FMVSS No. 126, Electronic Stability Control Systems, FMVSS No. 205, Glazing Materials, and FMVSS No. 208, Occupant Crash Protection**

**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. 110, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 kilograms (10,000 pounds) or Less*, FMVSS No. 126, *Electronic Stability Control Systems*, FMVSS No. 205, *Glazing Materials*, and FMVSS No. 208, *Occupant Crash Protection*.

**SUMMARY:** This notice grants the petition of Terrafugia for a temporary exemption from certain FMVSS requirements for tire selection and rims for motor vehicles (FMVSS No. 110), electronic stability control (ESC) systems (FMVSS No. 126), glazing materials (FMVSS No. 205), and advanced air bag requirements (FMVSS No. 208). The basis for the exemption is that compliance with these requirements would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. This action follows our publication in the **Federal Register** of a document announcing receipt of

Terrafugia's petition and soliciting public comments.

**DATES:** The exemption from FMVSS No. 126 and from the advanced air bag requirements of FMVSS No. 208 is effective from June 1, 2012, through May 31, 2013. The exemption from certain provisions of FMVSS No. 110 and FMVSS No. 205 is effective from June 1, 2012, through May 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** William H. Shakely, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-318, Washington, DC 20590. *Telephone:* (202) 366-2992; *Fax:* (202) 366-3820.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Basis for Requested Part 555 Exemption**

The National Traffic and Motor Vehicle Safety Act, as amended, codified as 49 U.S.C. chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.<sup>1</sup>

NHTSA established part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

A petitioner must provide specified information in submitting a petition for exemption.<sup>2</sup> Foremost among these requirements are that the petitioner must set forth the basis of the application under Section 555.6, and the reasons why the exemption would be in the public interest and, as applicable, consistent with the objectives of 49 U.S.C. chapter 301.

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.<sup>3</sup> 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.

Finally, while 49 U.S.C. 30113(b) states that exemptions from an FMVSS prescribed under Chapter 301 are to be granted on a "temporary basis," the statute also expressly provides for renewal of an exemption on reapplication.<sup>4</sup> 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. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation and the public interest, among other factors provided in the statute.

**II. Terrafugia's Petition**

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Terrafugia has petitioned (dated July 20, 2010) the agency for a temporary exemption from certain FMVSS requirements for the Transition,<sup>®</sup> a Light Sport Aircraft (LSA) that has road-going capability. In addition to its original petition, Terrafugia has submitted additional information regarding its compliance efforts, which has been posted to the public docket.

Terrafugia requested an exemption from certain provisions of the tire selection and rim requirements for motor vehicles (S4.1 and S4.4 of FMVSS No. 110), the ESC system requirements (FMVSS No. 126), the glazing materials requirements (S5 of FMVSS No. 205), and the advanced air bag requirements (S14 of FMVSS No. 208). The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Terrafugia has requested a three-year hardship exemption. A copy of the petition is available for review and has been placed in the docket of this notice.<sup>5</sup> In a subsequent submission, Terrafugia clarified its plans with respect to S14 of FMVSS No. 208, stating that it will certify its vehicles to comply with the belted 50th

percentile male barrier impact test (S14.5.1(a)). Terrafugia has also since stated that it plans to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)).

According to the petition, Terrafugia is a small, privately held company that was incorporated in the state of Delaware in 2006 and maintains headquarters in Woburn, Massachusetts. Terrafugia states that the company employs ten full-time employees. The company identified itself as a Massachusetts Institute of Technology (MIT) spin-off company, but stated that it does not have access to MIT's financial resources. The company also stated that it is not affiliated with any other aircraft or automobile manufacturer.

Terrafugia has designed and built the first prototype of the Transition,<sup>®</sup> which it described as a "Roadable Aircraft." Terrafugia characterized the Transition<sup>®</sup> as an LSA, as defined by the Federal Aviation Administration (FAA), and stated that the vehicle's road-going capability will provide a significant increase in operational functionality and safety for the General Aviation<sup>6</sup> pilot community by allowing pilots to safely continue their travel plans in the event of inclement weather.

To date, Terrafugia has not produced any vehicles for sale, but intends to begin delivery of the Transition<sup>®</sup> in late-2012<sup>7</sup> and anticipates producing 200 vehicles during the three-year requested exemption period. Terrafugia stated that it expects to remain a low-volume manufacturer for the foreseeable future, continuing to market the Transition<sup>®</sup> as an aircraft with road-going capability, not as a "flying car." Thus, the primary market for the Transition<sup>®</sup> will be U.S. pilots.

Terrafugia's basis for the petition is that requiring compliance with the stated provisions would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith (49 U.S.C. 30113(b)(3)(B)(i)).

*A. Terrafugia's General Statement of Economic Hardship*

Terrafugia stated that the denial of the requested exemption will result in substantial economic hardship. The company indicated that it has spent

<sup>4</sup> 49 U.S.C. 30113(b)(1).

<sup>5</sup> To view the petition, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document. The company requested confidential treatment under 49 CFR part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

<sup>6</sup> Terrafugia explained that General Aviation is the segment of the air transportation industry characterized by flight outside of the commercial airline system and military operations.

<sup>7</sup> Terrafugia initially stated that it planned to begin production in late-2011 but subsequently indicated that its production plans had been delayed.

<sup>1</sup> 49 CFR 1.50.

<sup>2</sup> 49 CFR 555.5.

<sup>3</sup> 49 U.S.C. 30113(d).

approximately \$3.5 million since 2006 on the development of the Transition<sup>®</sup> and has had no appreciable revenue during that time. Terrafugia acknowledged that it has received over 80 orders for vehicles but that, due to escrow agreements for each deposit, these funds are not accessible operating funds.

The Transition's<sup>®</sup> dual purpose as an aircraft and ground vehicle has necessitated the application of both FAA regulations for LSA and the FMVSSs established by NHTSA for new motor vehicles and motor vehicle equipment. Terrafugia contended that "it is not always possible to completely merge the two regulations without compromising safety, incurring prohibitive costs, and/or reducing core functionality."<sup>8</sup> Specifically, Terrafugia stated that in order to maintain compliance with the FAA's maximum weight requirement for LSAs,<sup>9</sup> weight must be removed from the vehicle to offset any extra weight that is added for motor vehicle safety equipment. Terrafugia calculated that for each additional pound removed, it costs \$14,500<sup>10</sup> in development costs and adds \$4,200<sup>11</sup> to the cost of the aircraft.<sup>12</sup>

Terrafugia stated that a grant of the requested exemption would allow the company to continue with LSA certification for the Transition<sup>®</sup> while pursuing lightweight compliance solutions and researching additional ways of reducing the weight of non-safety-critical systems for the aircraft.

Terrafugia noted that the Transition<sup>®</sup> is currently its only product line. Accordingly, a denial would force the company to delay all production until compliance is achieved. The company stated that a denial would delay customer delivery and initial revenue generation by at least two years and that this delay, coupled with the sharply

decreased probability of the company reaching profitability, would make additional investment capital extremely difficult to secure. Terrafugia calculated that the revenue difference between a grant and a denial of the exemption would be \$19.4 million and would double the price point of the Transition<sup>®</sup>. Accordingly, Terrafugia opined that a denial would likely force the company to abandon LSA certification and the development of the Transition<sup>®</sup>.<sup>13</sup>

#### *B. Terrafugia's Statement of the Costs of Compliance and Good Faith Efforts To Comply*

Terrafugia provided a detailed description of its efforts to comply and the compliance costs it faces. The company stated that although it might have been easier to design the Transition<sup>®</sup> as a three-wheel vehicle and certify it as a motorcycle, due to the light weight of the vehicle and the exposed side area of the folded wings, a more stable four-wheel configuration was chosen.

Below is a summary of the compliance efforts and costs for each of the requirements from which Terrafugia seeks exemption.

1. FMVSS No. 110, Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 Pounds) or Less, Paragraphs S4.1, S4.4<sup>14</sup>

Terrafugia seeks an exemption from the general tire requirements (S4.1) and rim requirements (S4.4) of FMVSS No. 110. Terrafugia stated that compliance with these requirements would cause substantial economic hardship due to the cost of reducing the weight of the vehicle in order to offset the weight of the tires and rims required by the standard, which have significantly higher speed and load ratings than that needed for the Transition<sup>®</sup>. As part of its efforts to comply with the standard, Terrafugia evaluated several passenger car tire and rim combinations. The company also investigated the development of a lighter custom rim and tire combination that would meet the requirements of FMVSS No. 110.

Based on conversations with Continental Tire, Terrafugia estimated that development and certification costs for custom tires would be approximately \$120,000 and that it would have to place a minimum order of 3,000 units at

an expense \$450,000, for a total cost of \$570,000. Terrafugia also stated that it had experienced difficulty in finding a major tire manufacturer to work on the project. The company indicated that an exemption would provide time to gather data on tire usage to justify a larger custom tire purchase, would allow the company to build relationships with tire manufacturers to facilitate custom tire development, and would provide revenue to offset the cost of the custom tire program.

If granted an exemption, Terrafugia intends to use tires and rims with proper load and speed ratings, which are certified for motorcycle use (See 49 CFR 571.119). The company stated that it had already performed takeoff and landing testing using the lighter motorcycle tires and rims, and the company asserted that they would provide an equivalent level of safety as compared to tires certified for traditional passenger vehicles, while allowing for weight savings of 25 pounds (11.3 kg). The company stated that it intended to perform handling and brake testing using the motorcycle tires and rims.

Terrafugia stated that, to date, it has spent \$50,290 towards finding a compliant rim and tire combination that would meet the speed, loading, and weight requirements for the Transition<sup>®</sup>.

2. FMVSS No. 126, Electronic Stability Control Systems<sup>15</sup>

Terrafugia seeks an exemption from the ESC system requirements of FMVSS No. 126. ESC systems employ automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations.<sup>16</sup> NHTSA's crash data study shows that ESC systems reduce fatal single-vehicle crashes of passenger cars by 36 percent and fatal single-vehicle crashes of LTVs (light trucks and vans, including pickup trucks, SUVs, minivans, and full-size vans) by 63 percent.<sup>17</sup> The agency further estimates that ESC has the potential to prevent 70 percent of the fatal passenger car rollovers and 88 percent of the fatal LTV rollovers that would otherwise occur in single-vehicle crashes.<sup>18</sup>

Terrafugia stated that it faces two challenges with an off-the-shelf ESC unit. First, an ESC system would add 6

<sup>8</sup> Terrafugia Petition, p. 3.

<sup>9</sup> Terrafugia obtained a partial grant of exemption from the FAA (FAA Docket No. FAA-2009-1087), allowing the Transition<sup>®</sup> to have a maximum takeoff weight (MTOW) of 1,430 pounds (650 kg) instead of the general MTOW requirement of 1,320 pounds (600 kg).

<sup>10</sup> Terrafugia explained that this is based on the experience of removing weight between the Proof of Concept vehicle to the prototype and the fact that as more and more weight must be removed, it becomes increasingly more difficult to do so.

<sup>11</sup> Terrafugia explained that this figure is based on identified cost vs. weight trade-offs, such as material replacement, and a minimal margin.

<sup>12</sup> Terrafugia noted that there is a physical limitation as to how much weight can be removed from the vehicle, at any cost, before it is no longer capable of safely performing its function. The dollar values provided by Terrafugia are applicable until that limit is reached, past which very little can be done at any price and the product is no longer viable.

<sup>13</sup> Terrafugia stated that not being able to certify the Transition<sup>®</sup> as an LSA would increase certification costs by up to \$100 million and would force the company to dissolve.

<sup>14</sup> 49 CFR 571.110.

<sup>15</sup> 49 CFR 571.126.

<sup>16</sup> 73 FR 54526, 54527 (September 22, 2008).

<sup>17</sup> Dang, J., Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report, DOT HS 810 794, U.S. Department of Transportation, Washington, DC (July 2007). Available at Docket No. NHTSA-2007-28629, item 2.

<sup>18</sup> *Id.*

pounds of weight to the Transition®. Removing this amount of weight from elsewhere in the vehicle would involve development costs of \$87,000 and would raise the price of the vehicle by \$25,200. These costs would be in addition to the purchase and integration costs for the system, which were not available at the time the petition was filed. Second, Terrafugia contended that an ESC system would pose a flight safety risk because, by design, an ESC system may automatically cut the engine power when activated in a vehicle, which would create a single point failure that could shut down the Transition's® engine in flight. Terrafugia indicated its belief that this additional safety risk outweighs the safety benefit of the ESC system on the ground.

Terrafugia stated that it had approached Bosch Engineering Group about developing an ESC system for the Transition,® but those discussions were terminated by Bosch due to liability concerns about installing the system on an airplane. Terrafugia indicated that it was in the process of evaluating other vendors. The company stated that it had also investigated the feasibility of developing an ESC system in-house but had determined that such a program beyond its current capabilities. Terrafugia indicated that an exemption would allow it to further investigate the issues associated with an ESC system, which might result in a petition for rulemaking to reflect the aviation safety concerns of such a system.

### 3. FMVSS No. 205, Glazing Materials, Paragraph S5<sup>19</sup>

Terrafugia seeks an exemption from the glazing material requirements (S5 of FMVSS No. 205), which affect the Transition's® windshield and side windows. Terrafugia stated that installing compliant glazing materials, such as traditional laminated safety glass, would result in 29 pounds (13.2 kg) of additional weight. Terrafugia equipped its Proof of Concept vehicle with custom-made FMVSS-compliant safety glass, but this vehicle was not light enough to comply with the LSA weight restrictions, and Terrafugia was unable to remove sufficient weight from the aircraft to accommodate compliant glazing materials. Terrafugia calculated that the removal of 29 pounds from the Transition® would cost \$420,500 in development costs, would increase the price of each vehicle by a minimum of \$121,800, and would delay production of the vehicles.

The company also determined that, in the event of a bird strike, FMVSS-

compliant safety glass would either shatter or craze to a degree that would substantially inhibit the pilot's view. Accordingly, Terrafugia investigated the possibility of using an FMVSS-compliant polycarbonate windshield. According to the petition, the polycarbonate material passed intrusion tests without cracking, but Terrafugia was still pursuing options for a scratch-resistant coating that could meet the abrasion tests. The company stated that one vendor informed them that its coating would likely pass the abrasion tests but that such tests had not yet been performed. Terrafugia indicated that it is engaged in discussions with several vendors and is planning future compliance testing of coated polycarbonate materials. In the meantime, Terrafugia stated that the Transition® would be equipped with polycarbonate glazing, and each vehicle would be required to undergo regular, frequent inspections, at which time windshields with degraded visibility would be identified and replaced.

### 4. FMVSS No. 208, Occupant Crash Protection, Paragraph S14 (Advanced Air Bags)<sup>20</sup>

Terrafugia seeks an exemption from the advanced air bag requirements of FMVSS No. 208 (S14) because the company currently does not have the financial resources to design and install an advanced air bag system, which it calculated would cost approximately \$2.4 million and result in production delays of at least 18 months.

In the meantime, the company intends to install basic air bags in the Transition®, as well as a carbon fiber omega beam "safety cage" surrounding the passenger compartment, energy-absorbing crush structures, seat belts, and other necessary passenger safety equipment not traditionally installed in an LSA. In its supplementary submissions, Terrafugia indicated that it was working with Multimatic and Tass to develop its occupant protection system and that it will certify compliance with the belted 50th percentile male barrier impact test (S14.5.1(a)). Terrafugia has also stated that it plans to certify to the unbelted 50th percentile male barrier impact test in force prior to September 1, 2006 (S5.1.2(a)).

To date, Terrafugia has spent approximately \$161,000 in its efforts to comply with FMVSS No. 208. Terrafugia anticipated using the sales revenue generated during the exemption period to pursue the development of an advanced air bag system, ideally one

that would be able to differentiate between the needs of an automotive crash and an aviation crash.

### 5. Future Compliance Efforts

Terrafugia included a schedule of its future compliance efforts during the proposed exemption period and stated that it was working toward full compliance by the end of that period. However, Terrafugia noted that the success of its plan was dependent on the availability of sufficient investment capital and the willingness of third parties to work with it. The company reiterated that it was also considering petitioning NHTSA and FAA for rulemakings to address the unique dual-purpose nature of the Transition®.

### C. Terrafugia's Statement of Public Interest

Terrafugia asserted that the requested exemption is in the public interest because the Transition® will increase the safety of flight for General Aviation in the United States, contribute to the advancement of technology for light aircraft and light-weight, fuel efficient automobiles, and improve the environment and economy.

According to Terrafugia's petition, one of the most significant causes of General Aviation accidents and fatalities is weather, and a leading cause of weather-related accidents is when pilots using visual references, rather than flight instruments, for primary orientation and navigation (Visual Flight Rules or VFR) fly into weather conditions with insufficient visibility to provide a safe visual reference (instrument meteorological conditions or IMC). In such situations, pilots can get disoriented and enter an unrecoverable situation that results in an often fatal accident. According to Terrafugia, the Transition® offers a new alternative to pilots by allowing them to divert to the nearest airport and continue the trip on the ground. Although the trip may take longer, Terrafugia stated that the Transition® is expected to eliminate the possibility of an indeterminately long delay caused by either retracing the flight route to clearer weather or diverting and waiting for the weather to pass. Accordingly, Terrafugia expects that the Transition® will help reduce these types of crashes, while also making General Aviation more appealing and accessible to a greater number of people. Additionally, because the Transition® is equipped with basic FMVSS occupant crash protection features, Terrafugia argued that it is advancing passenger safety technology in light aircraft.

<sup>19</sup> 49 CFR 571.205.

<sup>20</sup> 49 CFR 571.208.

The Transition<sup>®</sup> uses an FAA-certified, four cylinder, 100 horsepower, unleaded gasoline-fueled aircraft engine to power the vehicle both in the air and on the ground. Terrafugia contended that the use of unleaded gasoline will provide “significant ecological and energy benefits,” as compared to the leaded gasoline used in other General Aviation aircraft. Terrafugia also opined that one day a future version of the Transition<sup>®</sup> might play a role in reducing highway congestion and CO<sub>2</sub> emissions by enabling more people to shift from highway-based travel to a combination of flight and road use for mid-range trips. Terrafugia stated that the Transition<sup>®</sup> will cruise in the air at approximately 105 miles per hour and maintain highway speeds on the ground, while attaining between 25 and 40 miles per gallon in flight and on the road.

Terrafugia anticipated that the Transition<sup>®</sup> will only be operated on public roadways in conjunction with a flight. The company stated that it expects that the typical recreational owner will operate the vehicle as an aircraft for at least 65 percent of its engine-on-time and will drive the vehicle on the road less than 2,000 miles annually. Terrafugia contended that the combination of low sales volume and limited use on roadways limits the Transition's<sup>®</sup> overall impact on motor vehicle safety.

Terrafugia estimated that by 2015, the production of the Transition<sup>®</sup> will provide 500 manufacturing, engineering, and support jobs to the U.S. economy.

### III. Notice of Receipt and Summary of Comments

On November 16, 2010 we published a notice of receipt of Terrafugia's petition for temporary exemption in the **Federal Register** (75 FR 70071), and provided an opportunity for public comment. We received ten comments in response to the notice, as well as a response from Terrafugia.

Five commenters submitted six comments supporting the grant of the exemption requested by Terrafugia. These commenters included Women in Aviation International (WAI), a nonprofit organization dedicated to the encouragement and advancement of women in aviation career fields and interests, the Experimental Aircraft Association (EAA), a group of aviation enthusiasts, pilots, and aircraft owners, the Aircraft Owners and Pilots Association (AOPA), a not-for-profit membership organization consisting of more than 400,000 pilots, Sherry Grobstein, a private pilot with over 35

years of experience who has placed a deposit on a Transition<sup>®</sup>, and Kenneth J. Ramsey. Four comments raised questions regarding Terrafugia's petition. One of these comments was submitted by John Dritten, a pilot, and the other three were anonymous comments.

All of the supporting comments described the dangers associated with VFR flights entering IMC and emphasized the Transition's<sup>®</sup> ability to reduce these types of crashes by encouraging pilots to land when they encounter bad weather. WAI, EAA, and Mr. Ramsey also discussed the safety features equipped on the Transition<sup>®</sup>. WAI stated that the Transition<sup>®</sup> offers a significantly higher level of crash safety than that found in light aircraft, EAA indicated that the Transition's<sup>®</sup> safety features had the potential to reduce crash-landing fatalities, and Mr. Ramsey opined that the Transition's<sup>®</sup> safety features would provide an adequate safety margin under most circumstances.

Mr. Dritten, however, questioned Terrafugia's petition, noting that it appeared that most of the exemptions sought would be unnecessary if the Transition<sup>®</sup> was equipped with only three wheels and certified as a motorcycle. Mr. Dritten further stated that removing one wheel would eliminate approximately 100 pounds of weight from the vehicle.

Mr. Dritten also questioned Terrafugia's efforts to comply and whether the exemption sought was in the public interest. Mr. Dritten noted that development of the Transition<sup>®</sup> began in 2006 and questioned why Terrafugia had not requested an exemption earlier.

One of the anonymous commenters responded to the question we raised in the notice of receipt concerning whether the safety benefits of reducing weather-related accidents for flights of the Transition<sup>®</sup> outweigh the safety risks associated with road use of the Transition<sup>®</sup> in inclement weather. The commenter noted that an LSA piloted by a sport pilot can only be flown in daytime VFR conditions, which requires three miles of visibility. The commenter indicated that, accordingly, a pilot should not even see inclement weather if the pilot is flying legally. The commenter stated that in the face of inclement weather, VFR pilots in normal aircraft would not fly, fly around the weather, or land the aircraft and wait until the bad weather passes, and that any of these options would be safer than flying or driving the Transition<sup>®</sup> in inclement weather. The commenter indicated that without electronic

stability control, non-DOT car tires and rims, no laminated safety glass, and no advanced air bags, driving the Transition<sup>®</sup> would be less safe than flying the Transition<sup>®</sup> legally (in good weather). The commenter stated that comparing driving the Transition<sup>®</sup> in inclement weather to flying the Transition<sup>®</sup> in inclement weather (*i.e.*, illegally) was not as valuable as determining whether and to what extent granting the exemption would increase the risk of accident and injury to the occupants of the Transition<sup>®</sup> as compared to a motor vehicle that meets all FMVSSs.

The commenters offered the following comments on each of the specific exemptions sought by Terrafugia:

*FMVSS No. 110, S4.1 and S4.4*—Ms. Grobstein stated that the tires on the Transition<sup>®</sup> must allow cross wind landings as well as safe operation on the road and should be appropriate for the light weight of the vehicle. Accordingly, she opined that heavier tires would provide no benefit and take up weight that could be used for a passenger or baggage. EAA commented that it was the group's understanding that the type of tires used on the Transition<sup>®</sup> are permitted on vehicles of comparable wheel load. EAA also noted that Terrafugia's Proof of Concept vehicle successfully tested using these tires and opined that compliance appeared to involve a regulatory technicality rather than a safety matter. Mr. Ramsey opined that the tires proposed by Terrafugia would be suitable and provide an appropriate safety margin during takeoff and landing as well as while driving.

*FMVSS No. 126*—Ms. Grobstein and Mr. Ramsey stated that the Transition<sup>®</sup> has a low center of gravity and would be unlikely to roll over, and that, accordingly, an ESC system is unnecessary. EAA noted it was not unusual for suppliers to refuse to work with aircraft companies due to low production volumes and product liability concerns. EAA opined that given the physical characteristics of the Transition<sup>®</sup>, including its relatively long wheel base, wide track, low center of gravity, and low mass, it appeared that the Transition<sup>®</sup> was significantly different than vehicles displaying rollover tendencies, which drove the adoption of the ESC requirement. Accordingly, given the economic hardship Terrafugia would encounter in terms of complying with the FAA weight requirement and developing its own ESC system, EAA stated that an exemption would be in the public interest.

An anonymous commenter indicated that NHTSA's own statistics showed

that ESC systems have the ability to prevent crashes other than rollovers, which are independent of the vehicle's center of gravity.<sup>21</sup> The commenter also indicated that he had purchased off-the-shelf ESC systems and never had to disclose the intended use of the systems. The commenter opined that the ESC requirements should not be ignored because of engineering and development expense.

*FMVSS No. 205, S5*—Ms. Grobstein, EAA, and Mr. Ramsey all stated that due to the danger of bird-strikes while in flight, a polycarbonate windshield was safer for the Transition<sup>®</sup> than one that was compliant with FMVSS No. 205. Ms. Grobstein also noted that an FMVSS-compliant windshield would be heavier, and Mr. Ramsey indicated that a polycarbonate windshield would provide adequate protection while the Transition<sup>®</sup> was being driven. Additionally, EAA stated that the Transition<sup>®</sup> would be subject to annual airworthiness condition inspections, and any windshield scratches that could obscure the operator's vision would be discovered and remedied during such inspections.

An anonymous commenter stated that a polycarbonate windshield would quickly scratch and haze when exposed to road conditions, especially with the use of windshield wipers in rainy weather. The commenter also stated that, in the event of a crash, emergency personnel would have a difficult time removing a polycarbonate windshield.

*FMVSS No. 208, S14*—WAI stated that pilots are more accustomed to following seat belt and other usage guidelines than the average driver, making the installation of advanced air bags less critical. Ms. Grobstein stated that the Transition<sup>®</sup> was not an appropriate vehicle to ride long distances with a child and that her companion would not be one that required a car seat. Accordingly, she opined that advanced air bags would provide no extra safety and would only add expense and weight to the vehicle. EAA stated that due to the difficulty of finding a supplier for an advanced air bag system that would be compatible with both road travel and flight, the development of such a system would represent a significant financial burden to Terrafugia. Mr. Ramsey stated that

given the Transition's<sup>®</sup> design, it was unlikely that an unbelted out-of-position child would be in the vehicle, and, accordingly, an advanced air bag system was not warranted.

On the other hand, Mr. Dritten questioned the safety of driving the Transition<sup>®</sup>. He indicated that children would undoubtedly ride in the vehicle, noting that he flew with his own children and would continue to do so if he owned the Transition<sup>®</sup>. One anonymous commenter agreed that children would likely be riding in the vehicle, noting that EAA is a proponent of giving children the opportunity to fly with its Young Eagles program and that many of the flights in this program involve LSA.

Terrafugia submitted a response to the public comments described above. Regarding the decision to create a four-wheel, rather than three-wheel, vehicle, the company reiterated that it recognized that significant additional effort would be required to meet the applicable safety standards but indicated that it made the decision to develop a four-wheel vehicle based on its determination that a such a vehicle would be safer and more stable.

Terrafugia also discussed the probability of children riding in the Transition<sup>®</sup>. The company acknowledged that children may occasionally be driven or flown in the Transition<sup>®</sup>, but that it was not expected to be a common occurrence. The company noted that most of the customers who could afford the Transition<sup>®</sup> are beyond the age at which they would have young children and, as trained pilots, would understand the associated risks. Terrafugia further stated that the benefit garnered by occasionally giving children the opportunity to ride in the Transition<sup>®</sup> offsets the occasional, well-considered risk.

#### IV. Agency Analysis and Decision

In this section, we provide our analysis and decision regarding Terrafugia's temporary exemption request from the requirements of various FMVSSs.

As discussed below, we are granting Terrafugia's petition for the Transition<sup>®</sup> to be exempted from S4.1 and S4.4 of FMVSS No. 110, FMVSS No. 126, S5 of FMVSS No. 205, and S14 (apart from S14.5.1.(a)) of FMVSS No. 208 beginning on June 1, 2012. The Transition<sup>®</sup> is exempted from FMVSS No. 126 and S14 (apart from S14.5.1.(a)) of FMVSS No. 208 for a period of one year and is exempted from S4.1 and S4.4 of FMVSS No. 110 and S5 of FMVSS No. 205 for a period of three

years. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a) of FMVSS No. 208, Terrafugia 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) of FMVSS No. 208). For purposes of this exemption, the unbelted sled test in S13 of FMVSS No. 208 is an acceptable option for that requirement. The agency's rationale for this decision is as follows:

#### A. Eligibility

As discussed above, 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). Terrafugia indicated that at the time of the application, it had not produced any vehicles for sale and stated that it predicted producing 200 vehicles during the exemption period if an exemption is granted. Furthermore, the company stated that it is not affiliated with any other aircraft or automobile manufacturer. Accordingly, we have determined that Terrafugia is eligible to apply for an economic hardship exemption.

#### B. Economic Hardship

Terrafugia stated that it has spent approximately \$3.5 million since 2006 on the development of the Transition<sup>®</sup> and has had no appreciable revenue during that time. Terrafugia acknowledged that it has received over 80 orders for vehicles but that due to escrow agreements for each deposit, these funds are not accessible operating funds. Terrafugia's confidential records support its assertion that it has experienced a continuing and cumulative net loss position. Additionally, one commenter agreed with Terrafugia that the cost of complying with the advanced air bag requirements and the ESC system requirements would represent a significant financial burden to Terrafugia.

The touchstone that NHTSA uses in determining the existence of substantial economic hardship is an applicant's financial health, as indicated by its income statements. NHTSA has tended to consider a continuing and a cumulative net loss position as strong

<sup>21</sup> The commenter did not cite a source for the statistics listed. As stated above, NHTSA's crash studies have shown that ESC systems reduce fatal single-vehicle crashes of passenger cars by 36 percent, and fatal single-vehicle crashes of LTVs by 63 percent. The studies further estimated that ESC systems would prevent 70 percent of passenger car rollovers and 88 percent of LTV rollovers in single vehicle crashes.

evidence of hardship.<sup>22</sup> The theory behind NHTSA's rationale is that, if a company with a continuing net loss is required to divert its limited resources to resolve a compliance problem on an immediate basis, it may be unable to use those resources to solve other problems that may affect its viability. The agency has considered this especially important in its treatment of corporate petitioners during their infancy.

Additionally, Terrafugia stated that the Transition<sup>®</sup> is currently its only product line. Accordingly, a denial would force the company to delay all production until compliance is achieved. Terrafugia stated that a denial would delay customer delivery and initial revenue generation by at least two years and that this delay, coupled with the sharply decreased probability of the company reaching profitability, would make additional investment capital extremely difficult to secure. Terrafugia calculated that the difference between a grant and a denial of its petition was \$19.4 million in revenue and indicated that a denial would likely put the company out of business.

Based on these factors, we conclude that Terrafugia has demonstrated the requisite economic hardship.

#### *C. Good Faith Efforts To Comply*

Terrafugia described in detail its efforts to comply with the listed FMVSSs as well as its plans for compliance by the end of the proposed exemption period. In particular, Terrafugia provided a plan to achieve full compliance with FMVSS Nos. 110, 205, and 208 within the three-year period. Although Terrafugia budgeted for FMVSS No. 126 compliance research and indicated that it was working towards compliance with all FMVSSs by the end of the requested exemption period, the company also stated that it was currently evaluating vendors to work with to develop an ESC system and indicated that further research might lead the company to petition for rulemaking on this issue. Accordingly, it appears that Terrafugia does not know at this time whether the Transition<sup>®</sup> will be able to comply with FMVSS No. 126 by the end of the requested exemption period.

One of the public comments questioned Terrafugia's general efforts to comply. Specifically, the commenter noted that Terrafugia could have designed the Transition<sup>®</sup> with three wheels instead of four, thus saving weight, allowing for the installation of additional safety features, and avoiding

the need to comply with the safety standards required for four-wheel vehicles. The commenter also questioned why Terrafugia did not request an exemption earlier in the development process.

Regarding the decision to design a four-wheel, rather than three-wheel, vehicle, Terrafugia stated in its petition and its response to the public comments that it was aware that using a three-wheel design would lessen its regulatory burden. However, due to the light weight of the vehicle and the exposed side area of the folded wings, the company chose a four-wheel design to increase stability and make the vehicle safer. Given Terrafugia's rationale for its decision to use a four-wheel design, the agency does not believe that this decision reflects negatively on Terrafugia's efforts to comply with the FMVSSs.

Likewise, the agency does not consider the timing of Terrafugia's petition for exemption to reflect negatively on the company's efforts to comply. Terrafugia's petition is dated July 20, 2010. In the petition, Terrafugia requested an exemption beginning with the first Transition<sup>®</sup> delivery on or near December 1, 2011, over 16 months later. The agency considers this to be a sufficient period to carefully consider the merits of Terrafugia's petition and make a reasoned decision.

After reviewing Terrafugia's petition and the public comments, we believe that the company has made good faith efforts to comply with the standards from which it is seeking exemption. Terrafugia is a new company, and the Transition<sup>®</sup> is a unique, dual-purpose vehicle designed for both flying and driving. Many of the impediments to compliance that Terrafugia has encountered are a direct result of the dual nature of the Transition<sup>®</sup>, including the need to meet the strict weight requirements of an LSA. Despite these impediments, Terrafugia has devoted significant resources towards compliance, has attempted to mitigate the risks associated with noncompliance, and has developed a plan for full compliance with three of the four listed FMVSSs by the end of the requested three-year period.

In sum, we believe that, considering Terrafugia's overall situation, the efforts that the company has made to date, and the plans it has in place, Terrafugia has made good faith efforts to comply with the requirements from which it seeks a temporary exemption.

#### *D. Public Interest Considerations*

NHTSA has traditionally found that the public interest is served by affording

consumers a wider variety of motor vehicles and providing additional employment opportunities. We believe that both of these public interest considerations would be served by granting Terrafugia's petition. The Transition<sup>®</sup> is a unique vehicle that uses a variety of new technologies. An exemption would allow for the evaluation of the market for this type of vehicle as well as the further development of these new technologies. Additionally, Terrafugia estimated that by 2015, the production of the Transition<sup>®</sup> will provide 500 manufacturing, engineering, and support jobs to the U.S. economy.

Furthermore, by reducing the disincentive associated with landing an aircraft prior to reaching the pilot's planned destination, the Transition<sup>®</sup> has the potential to reduce aircraft crashes involving a pilot using VFR flying into inclement weather. One commenter noted that VFR pilots are not supposed to fly into inclement weather and asserted that comparing flying and driving in inclement weather was not as useful as focusing on the increased risk to occupants of the Transition<sup>®</sup> when it is operated on the road. We note that Terrafugia cited a report describing the occurrence of these VFR-into-IMC crashes, and the company stated that one of the purposes of the Transition<sup>®</sup> is to attempt to reduce their occurrence. Additionally, five of the comments discussed the danger of such types of crashes and supported Terrafugia's assertion that the Transition<sup>®</sup> has the potential to reduce their occurrence. Accordingly, we believe that the Transition's<sup>®</sup> stated purpose supports Terrafugia's assertion that the requested exemption is consistent with the public interest.

We have also considered motor vehicle safety issues related to the exemption requested by Terrafugia. We believe that, in general, the requested exemption will have a limited impact on motor vehicle safety because of the low number of vehicles expected to be produced and because each vehicle is likely to travel on public roads only infrequently. Terrafugia predicted producing 200 vehicles during the exemption period and estimated that, on average, each vehicle would spend less than 2,000 miles on the road annually.

However, as explained in detail below, after considering the individual requirements from which exemption is sought, the public comments, and the agency's policy on granting exemptions, we have determined that the three-year exemption requested for the ESC system requirements and the advanced air bag requirements is not warranted. Instead,

<sup>22</sup> Grant of petition of Bugatti Automobili, S.p.A., 59 FR 11649, 11650 (Mar. 11, 1994).

we are granting a one-year exemption from these requirements.

Terrafugia indicated that the tires and rims it plans on using have appropriate load and speed ratings for the Transition<sup>®</sup> and stated that it had already flight-tested this equipment. Most of the public comments supported exempting Terrafugia from the tire and rim requirements of FMVSS No. 110. One commenter expressed concern about the safety of driving the Transition<sup>®</sup> without the FMVSS-required safety equipment, including tires and rims, but did not specifically comment on any consequences of Terrafugia's proposed use of motorcycle tires and rims.

After considering these factors, we believe that the requested three-year exemption from S4.1 and S4.4 of FMVSS No. 110 is consistent with the public interest.

Regarding the ESC system requirements of FMVSS No. 126, several commenters asserted that the design of the Transition<sup>®</sup> was significantly different than vehicles displaying rollover tendencies, which drove the adoption of the ESC requirement, and, therefore, meeting the ESC system requirements would have a minor safety impact. However, one commenter asserted that, in light of NHTSA's own statistics indicating the ability of ESC systems to prevent crashes other than rollovers, the ESC requirements should not be ignored because of the associated engineering and development expense.

The agency's research has shown that ESC systems have the ability to prevent 36 percent of fatal single-vehicle crashes of passenger cars and 63 percent of fatal single-vehicle crashes of LTVs. These statistics include crashes that do not involve vehicle rollovers. Accordingly, we believe that, in spite of the Transition's<sup>®</sup> design, an ESC system will improve the safety of the vehicle.

Additionally, Terrafugia expressed concern that an ESC system would create a potential hazard while the Transition<sup>®</sup> is in flight. However, the agency notes that FMVSS No. 126 explicitly allows vehicles to be equipped with an "ESC Off" control that puts the ESC system into a mode in which it will no longer meet the performance requirements described in the standard. Terrafugia did not discuss this provision or explain why such a control would not be feasible for the Transition<sup>®</sup>.

Weighing these factors, the agency does not believe that a three-year exemption from FMVSS No. 126 is warranted. Instead, we are granting Terrafugia a one-year exemption. Although this period is shorter than that

requested by the company, the exemption will allow Terrafugia to begin production and continue to work towards compliance.

Regarding the glazing requirements of FMVSS No. 205, Terrafugia stated that using automobile safety glass would cause a potential hazard in the event of an in-flight bird strike. Several commenters supported this assertion. However, one commenter expressed concern that the polycarbonate windshield and windows equipped in the Transition<sup>®</sup> would scratch and haze easily when exposed to road conditions and the use of windshield wipers. The commenter also stated that emergency personnel would have a difficult time removing the polycarbonate windshield. We acknowledge that a polycarbonate windshield may be subject to more scratching and hazing than an FMVSS-compliant windshield. However, we believe that these concerns are mitigated by the Transition's<sup>®</sup> limited expected road use and by Terrafugia's assertions that each Transition<sup>®</sup> would be required to undergo regular, frequent inspections, at which time windshields with degraded visibility would be identified and replaced. Additionally, we do not believe that a polycarbonate windshield would meaningfully hamper rescue efforts by emergency personnel. Accordingly, we believe that the requested three-year exemption from S5 of FMVSS No. 205 is consistent with the public interest.

Finally, regarding the exemption from the advanced air bag requirements of FMVSS No. 208, there was disagreement among the commenters as to whether children would likely be riding in the Transition<sup>®</sup>, with some commenters indicating they do not fly with children in their aircraft and others indicating that they do. One commenter noted that at least one organization encourages children to fly and has set up a program to provide such opportunities. Terrafugia acknowledged that children might ride in the Transition<sup>®</sup> but indicated that, in light of the average age of the customers purchasing the vehicle, it was not expected to be a common occurrence.

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>23</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 air bags to infants,

children, and other occupants, especially in low-speed crashes.

The issuance of the advanced air bag requirements was 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 were not subject to the advanced air bag requirements until the end of the phase-in period, *i.e.*, 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, each of which has petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small motor vehicle manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA has granted a number of these petitions, usually in situations in which the manufacturer is supplying standard air bags in lieu of advanced air bags.<sup>24</sup> In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA is considering two key issues—

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

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the

<sup>24</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).

<sup>23</sup> See 65 FR 30680 (May 12, 2000).

agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA is considering whether it is in the public interest to continue to grant exemptions from these requirements, particularly under the same terms as in the past. The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA tentatively concludes that the expense of advanced air bag technology may not now be sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

As part of the review of the agency's policy regarding exemptions from the advanced air bag requirements, we have published several notices of receipt that include requests for public comment on these issues.

The agency acknowledges that Terrafugia faces impediments beyond the expense of advanced air bag technology and believes that it is consistent with the public interest to grant the requested exemption. However, in light of NHTSA's reexamination of the agency's policy regarding exemptions from the advanced air bag requirements, we do not believe that the three-year exemption requested is warranted. Instead, we are granting Terrafugia a one-year exemption from the advanced air bag requirements. Although this period is shorter than that requested by Terrafugia, this exemption will allow Terrafugia to begin production and continue its efforts toward full compliance.

As a condition of this exemption, the Transition<sup>®</sup> must have the permanently affixed "sun visor air bag warning label" and the removable "warning label on the dashboard" that NHTSA developed/ requires for vehicles without advanced air bags.

The agency acknowledges that Terrafugia's petition indicated that a three-year exemption was required to

comply with the FMVSSs and that the company may not be able to achieve full compliance with the requirements of FMVSS No. 126 and the advanced air bag requirements of FMVSS No. 208 within the one-year exemption period granted by this notice. However, as stated above, this exemption will allow Terrafugia to begin production and continue its efforts toward full compliance with these standards. Additionally, we note that Part 555 allows a manufacturer to apply for renewal of a temporary exemption, and we emphasize that our decision to grant a more limited exemption than that requested does not foreclose Terrafugia from applying for such an extension at the end of the exemption period.

#### E. Labels

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified requirements of FMVSS Nos. 110, 126, 205, and 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 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 an FMVSS. We believe that a statement that the vehicle has been exempted from an FMVSS generally, without an indication that the exemption is limited to the specified provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of the standard'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. For these reasons, we believe that, in reference to this exemption, the two labels should read in, relevant part, "except for the General Tire Requirements and Rim Requirements of Standard No. 110, Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity

Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less, Standard No. 126, Electronic Stability Control Systems, the Glazing Requirements of Standard No. 205, Glazing Materials, and the Advanced Air Bag Requirements of Standard No. 208, Occupant Crash Protection, exempted pursuant to \* \* \*." We note that the phrases used to describe the specific exempted provisions are abbreviated forms of the titles of the sections of the standards from which Terrafugia is exempted. We believe it is reasonable to interpret § 555.9 as requiring this language.

Additionally, the Transition<sup>®</sup> must have the permanently affixed "sun visor air bag warning label" and the removable "warning label on the dashboard" that NHTSA developed/ requires for vehicles without advanced air bags. The requirements for these labels are described in paragraph S4.5.1 of FMVSS No. 208.

#### F. Decision

In consideration of the foregoing, we conclude that compliance with certain requirements of FMVSS No. 110, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles With a GVWR of 4,536 kilograms (10,000 pounds) or Less*, FMVSS No. 126, *Electronic Stability Control Systems*, FMVSS No. 205, *Glazing Materials*, and 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 the granting of an exemption from these requirements 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), Terrafugia is granted NHTSA Temporary Exemption No. EX 11-02, from S4.1 and S4.4 of FMVSS No. 110, FMVSS No. 126, S5 of FMVSS No. 205, and S14 (apart from S14.5.1(a)) of FMVSS No. 208 beginning on June 1, 2012. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(a) of FMVSS No. 208, Terrafugia 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) of FMVSS No. 208). For purposes of this exemption, the unbelted sled test in S13 of FMVSS No. 208 is an acceptable option for that requirement.

This exemption is for the Transition®. The exemption from FMVSS No. 126 and S14 (apart from S14.5.1(a)) of FMVSS No. 208 shall remain in effect for one year from the effective date, and the exemption from S4.1 and S4.4 of FMVSS No. 110 and S5 of FMVSS No. 205 shall remain in effect for three years from the effective date, as indicated in the DATES section of this document. (49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: June 16, 2011.

**David L. Strickland,**  
*Administrator.*

[FR Doc. 2011-16222 Filed 6-28-11; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Designation of One Individual and One Entity Pursuant to Executive Order 13224

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of one newly-designated individual and one newly-designated entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

**DATES:** The designations by the Director of OFAC of the four individuals identified in this notice, pursuant to Executive Order 13224, are effective on June 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.*: 202/622-2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, *tel.*: 202/622-0077.

### Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland

Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 23, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual and one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. SHAHRIYARI, Behnam (a.k.a. SHAHRIARI, Behnam; a.k.a. SHAHRYARI, Behnam); DOB 1968; nationality Iran (individual) [SDGT].
2. BEHNAM SHAHRIYARI TRADING COMPANY, Ziba Building, 10th floor, North Sohrevardi Street, Tehran, Iran [SDGT].

Dated: June 23, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

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