

Program Management, Indiana Department of Transportation, 100 North Senate Avenue, N758, Indianapolis, IN 46204, Phone: (317) 232-0694.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT) and the Indiana Department of Transportation (INDOT), will prepare a Tier One Environmental Impact Statement (EIS) for the Illiana Corridor Project. The anticipated project termini are Interstate Highway 55 in Will County, Illinois and Interstate Highway 65 in Lake County, Indiana. The study area covers approximately 950 square miles in portions of Will and Kankakee counties in Illinois and Lake County in Indiana.

The Tier One EIS will complete a broad analysis of transportation system alternative(s) in the study area and evaluate the environmental impacts at a planning level of detail using a Geographic Information System (GIS) supplemented as needed by field investigations. The primary environmental resources that may be affected are: agricultural, residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. Alternatives assessed will seek to avoid and minimize impacts to these resources, as well as cultural resources and protected lands. In accordance with FHWA, IDOT, and INDOT policies, the project is being developed using Context Sensitive Solutions as the basis for an extensive stakeholder outreach program.

A range of Alternatives will be developed and evaluated, including but not limited to: Taking no action, transportation system management strategies, existing or new transit improvements, existing roadway improvements, and new roadways on new location.

As part of the EIS process, a scoping meeting for obtaining input from Resource Agencies in both Illinois and Indiana on the level of detail and methodologies to be used in the EIS, as well as the development of a bi-state agency coordination process, will be held on June 28, 2011 at the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois.

A Stakeholder Involvement Plan (SIP), which will meet the SAFETEA-LU Coordination Plan requirements, will be developed to ensure that a full range of issues related to this proposed project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to

participate in defining transportation issues and solutions for the study area.

Comments or questions concerning this proposed action and the Tier One EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. A public hearing will be held after the Tier One Draft EIS is published and made available for public and agency review. Public notice will be given of the time and place of public meetings and hearings.

The Tier One EIS will conclude with a Record of Decision selecting a preferred corridor that can encompass one or more transportation alternatives. Following the Tier One EIS, projects with independent utility may be advanced to Tier Two NEPA documents that will focus on detailed environmental analyses.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: May 26, 2011.

Norman R. Stoner,

Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2011-14205 Filed 6-7-11; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2011-0070]

Tesla Motors, Inc.; Receipt of Petition for Renewal of Temporary Exemption from the Advanced Air Bag Requirements of FMVSS No. 208

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

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

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Tesla Motors, Inc., has petitioned the agency for renewal of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that the petitioner avers that compliance would cause it substantial economic hardship and that it has tried in good faith to

comply with the standard.¹ This notice of receipt of an application for renewal of temporary exemptions is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than July 8, 2011.

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 W41-213, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on "Help and Information" or "Help/Info."
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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.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags."² 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.³ 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 bags, 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 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 is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

NHTSA further notes that the granting of exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith."⁴ In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.⁵

NHTSA invites comment on whether and in what circumstances (*e.g.*, nature of vehicles, number of vehicles, level of efforts to comply with the requirements, timing as to number of years since the requirements were implemented, etc.) it should continue to grant petitions for first time exemptions from the advanced air bag requirements of FMVSS No. 208 and petitions for renewed exemptions from those requirements. We note that any policy statements we may make in this area would not have the effect of precluding manufacturers from submitting subsequent petitions for exemption. However, we believe it could be helpful for manufacturers to know our general views in advance of submitting a petition.

We also request comment on the issue of, to the extent any future hardship exemptions from the advanced air bag requirements are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bag requirements, should be expected. In

³ 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).

⁴ 49 U.S.C. 30113(b)(3)(B)(i)

⁵ 49 CFR 555.6(a)(2)

² See 65 FR 30680 (May 12, 2000).

this regard, we note the agency is authorized to condition the granting of exemptions on such terms as the Secretary considers appropriate.⁶ In responding to some recent petitions for exemption from the advanced air bag requirements of FMVSS No. 208, NHTSA has considered the fact that the petitioner planned to install some countermeasures for the protection of child passengers.⁷

NHTSA also invites comment on the likelihood that a child or infant will be a passenger in any vehicles that would be produced and sold in the U.S. under the requested exemption.

II. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), 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 implementing this section to NHTSA.

The Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.”

The Act also authorizes the Secretary to grant a temporary exemption from a standard, for not more than 2,500 motor vehicles per year, to a manufacturer of any size, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds either that

- 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;

- 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

- 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.

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of “manufacturer” (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,”⁸ the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency’s decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer’s ongoing

good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

Finally, we note that under 49 CFR 555.8(e), “If an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.” This petition for renewal has been submitted by the deadline stated in 49 CFR 555.8(e).

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Tesla Motors, Inc., (Tesla) has submitted a petition asking the agency for renewal of its temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Tesla has requested a renewal of its exemption for a period of two years from January 29, 2011 to January 28, 2013.

Tesla is petitioning for renewal of its exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection*. Specifically, the petition requests an exemption from the advanced air bag requirements (S14), with the exception of the belted, rigid barrier provisions of S14.5.1(a); the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15); the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17); and the requirements to provide protection for infants and children (S19, S21, and S23). Tesla has requested a two-year extension of its exemption, from January 28, 2011 to January 28, 2013, for the Roadster model.

In a **Federal Register** document dated January 28, 2008, Tesla was granted a temporary exemption from the advanced air bag requirements of FMVSS No. 208 listed above for the Roadster.⁹ The exemption was granted for the period from the date of publication until January 28, 2011. The basis for the grant was that compliance with the advanced air bag requirements of FMVSS No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard and that

⁶ 49 U.S.C. 30113(b).

⁷ See, e.g., grant of petition of Think Technology AS, 74 FR 40634–01 (Aug. 12, 2009); grant of petition of Ferrari S.p.A., 74 FR 36303–02 (July 22, 2009).

⁸ 49 U.S.C. 30113(b)(1).

⁹ 73 FR 4944 (Docket No. NHTSA–2008–0013).

such exemption was in the public interest and consistent with the objectives of traffic safety.

In a November 24, 2010 petition, Tesla sought renewal of its exemption. The basis for Tesla's application is substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Tesla is a Delaware corporation headquartered in California with sales offices throughout the United States and overseas. Tesla currently manufactures and sells only one vehicle, the Roadster. Tesla has sold or leased 287 Roadsters in the 12 months prior to filing its petition for extension. Tesla states that it continues to be eligible for a financial hardship exemption, and that it has suffered substantial losses and will continue to do so while selling the Roadster.

Tesla began production of the all-electric Roadster in 2008. The Roadster has a single-speed electrically actuated automatic transmission and three phase, four pole AC induction motor. The Roadster has a combined range of 245 miles on a single charge. Under an agreement with Group Lotus plc (Lotus), Tesla purchases the Roadster "glider," which uses the chassis and several other systems of the Lotus Elise. The gliders are manufactured under Tesla's supervision and direction at a Lotus factory in the United Kingdom and then shipped to Menlo Park, California, where installation of the power train and other final steps are taken prior to sale of the vehicle in the United States. Tesla asserts that Lotus will cease manufacturing Roadster gliders in December 2011, and Tesla plans to finish production in early 2012 and offer remaining Roadsters for sale during 2012.

According to Tesla, the Roadster was conceived as a limited proof-of-concept for later generations of Tesla vehicles. Tesla intends to introduce its next electric vehicle, a four-door fully electric sedan known as the Model S. Tesla states that the Model S would meet or exceed all FMVSSs in effect by the time the vehicle is released for production in 2012.

Tesla contends that it is eligible for an economic hardship exemption. Tesla has produced fewer than 10,000 vehicles since the company's founding in 2003. Worldwide production of the Roadster for calendar year 2010 will be approximately 600 to 700 vehicles. Tesla also states that it will not produce more than 10,000 vehicles (combined Roadster and Model S production) per year during the requested exemption period.

In the January 2008 notice granting Tesla's original exemption, the agency

determined that Lotus, as well as Tesla, was considered a manufacturer of the Roadster. The basis for this determination was information in the prior petition that Lotus would be assembling the Roadster. Nevertheless, the agency determined that Tesla was eligible for an economic hardship petition because the combined production of Lotus and Tesla was fewer than 10,000 vehicles.

In its petition for extension, Tesla contends that the relationship between Lotus and Tesla does not involve ownership, sponsorship, or any type of control of one entity over the other. Tesla also reiterates that, even if the production of Lotus and Tesla vehicles are combined, the total production is far below the threshold 10,000 vehicle per year limit for hardship exemptions.

Tesla cites five reasons why the failure to obtain the requested extension of its exemption would cause substantial economic hardship. First, Tesla has incurred cumulative net losses of \$360 million since inception through September 30, 2010, and a net loss of \$100 million for the first nine months of 2010. Tesla also expects cumulative losses to almost double before launch of the Model S. Second, Tesla contends that the loss of the ability to sell the Roadster in the United States would cause Tesla to incur severe financial harm, which would substantially increase the likelihood of breaching financial covenants in its loan documents with the U.S. Department of Energy, potentially depriving Tesla of a source of capital. Third, Tesla has committed certain remaining costs for the Roadster that cannot be cancelled, such as a fixed supply contract with Lotus and other suppliers until the end of 2011. Fourth, Tesla contends that ending U.S. sales of the Roadster would require Tesla to refund \$2.4 million in deposits on Roadster reservations, exacerbating its financial hardship. Fifth, because the Roadster is the only Tesla model available in the United States, Tesla states that cancellation of the program would result in a significant loss of market share.

Tesla also contends that Lotus, and by extension Tesla, has exerted good faith efforts to achieve compliance with the advanced air bag requirements. Tesla notes that the Roadster shares a number of common components and systems with the Lotus Elise, including the passive safety systems. Tesla believes that, for the reasons outlined in Lotus's petition for an extension of its FMVSS No. 208 exemption for the Elise, Lotus has exerted good faith efforts to comply with the advanced air bag

requirements.¹⁰ Furthermore, Tesla states that it is in no better position than Lotus to develop an advanced air bag system for the Elise-based Roadster. Like the Lotus Elise, the Tesla Roadster is coming to the end of its model life. Given the limited number of Roadsters planned for production, Tesla believes that developing an advanced air bag system for the Roadster at this time is economically impracticable. Tesla also contends that it has been using the three years of its current exemption to develop the Model S, which will include advanced air bags.

Tesla also contends that the requested extension of its exemption is in the public interest for five reasons. First, Tesla states that granting the petition would encourage development and sale of highway-capable electric vehicles by Tesla and other manufacturers. Second, Tesla contends that the public interest considerations supporting other similar extension petitions previously granted by NHTSA exist for Tesla as well. Third, Tesla states that the Roadster has a high degree of safety because of its design. Even without advanced air bags, Tesla believes that the requested exemption would have a negligible impact on vehicle safety because of the limited number of vehicles that would be sold in the United States under the extension. Fourth, Tesla contends that the Roadster does not pose an unreasonable risk to safety of infants or children because young children are unlikely to be passengers in the Roadster and neither Tesla nor Lotus has received any complaints, reports, or information of air-bag-related injuries. Fifth, Tesla contends that granting its petition will have a positive impact on U.S. employment in the automotive industry, and that denying its petition would not only directly impact the jobs of current Tesla employees supporting the Roadster, but also potentially compromise the company's ability to move forward with the Model S.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition from Tesla is complete and that Tesla is eligible for an extension of its

¹⁰ Tesla has included, as an attachment to its petition, a copy of Lotus's petition for an extension of its temporary exemption from certain provisions of FMVSS No. 208. That petition is being considered separately. A separate notice of receipt published in today's **Federal Register** addresses Lotus's petition.

temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: June 1, 2011.

Christopher J. Bonanti

Associate Administrator for Rulemaking.

[FR Doc. 2011-14183 Filed 6-7-11; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2011-0069]

Lotus Cars Ltd. Receipt of Petition for Renewal of Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

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

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

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Lotus Cars Ltd. has petitioned the agency for renewal of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that the petitioner avers that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.¹ This notice of receipt of an application for renewal of temporary exemptions is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than July 8, 2011.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

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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

² See 65 FR 30680 (May 12, 2000).