

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]

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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:

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.

¹ To view the applications, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

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."

• *Fax:* 1-202-493-2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. **Telephone:** (202) 366-9826.

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

² See 65 FR 30680 (May 12, 2000).

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 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 exemptions.

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

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).

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).

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, Lotus Cars Ltd. (Lotus) 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. Lotus has requested a renewal of its exemption for a period of two years, from September 1, 2009 to August 31, 2011.

Lotus is petitioning for a renewal of its exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection*. Specifically, the petition requests an exemption from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23), and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25) in FMVSS No. 208, which relate to the advanced air bag requirements. Lotus has requested a two-year extension of its exemption for the Elise platform, which includes a convertible, a coupe, and the Exige variant of the coupe.

In a **Federal Register** document dated September 7, 2006, Lotus was granted a temporary exemption from the advanced air bag requirements of FMVSS No. 208 listed above for the Elise.⁹ The exemption was granted for the period from September 1, 2006 to August 31, 2009. 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 such exemption was in the public interest and consistent with the objectives of traffic safety.

Lotus sought renewal of its exemption in a petition dated June 15, 2009. The basis for Lotus's application is substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Lotus is a corporation organized under the laws of England. Lotus has never manufactured more than 6,000 vehicles in any calendar or model year.¹⁰ Lotus maintains that its eligibility for a

financial hardship exemption has been confirmed four times since 1999 and the material facts underlying those determinations have not changed.¹¹

The Elise platform is a sports car that has been the only model Lotus sells in the United States. Lotus introduced the Evora in 2010, which has a fully compliant advanced air bag system. The Evora is more expensive than the Elise, which remains Lotus's lowest-priced, entry-level model.

Lotus set forth five factors that favor granting its exemption. First, Lotus cited its continued financial hardship, which has been exacerbated by the global recession that has hit the automobile industry particularly hard. Second, Lotus noted the technical roadblocks to including advanced air bags in the Elise discussed in the 2006 notice. Third, Lotus stated that the next-generation Elise is behind schedule. Fourth, Lotus explained that the Evora's advanced air bag system will not carry over to the Elise, and that the company faces the challenge of developing a second advanced air bag system for the next-generation Elise. Fifth, Lotus stated that it needs to continue U.S. sales of the current Elise for 24 months while the development of the next-generation Elise and its advanced air bag system continues and is brought to completion.

Lotus contends that it continues to experience substantial economic hardship. Although Lotus states that it has had one profitable year in the last five years, it has suffered a substantial cumulative loss over a five-year period. Lotus's financial projections indicate that Lotus will be profitable with or without an exemption. However, Lotus contends that its projections of profitability with or without an exemption do not preclude a finding that the requisite financial hardship for a temporary exemption exists. Furthermore, Lotus states that its profits would be used to pay debt incurred as a result of its adoption of advanced air bags in the Evora and the next-generation Elise. Lotus claims that, without the exemption, it would lose at least 750 U.S. sales of the Elise, costing Lotus \$10.5 million in projected profit, in addition to loss of market share of its entry-level model to other brands.

Lotus also alleges that it has made a good faith effort to develop advanced air bags. First, it notes that it has developed the Evora model with advanced air bags, as it promised in its original exemption petition. Lotus stated that the final version of the next-generation Elise with

⁸ 71 FR 52851, 52859–62 (Docket No. NHTSA-2006-25324).

⁹ This number includes vehicles that Lotus has manufactured for Tesla Motors, Inc.

¹¹ See 64 FR 61379 (Nov. 10, 1999); 68 FR 10066 (Mar. 3, 2003); 69 FR 5658 (Feb. 5, 2004); 71 FR 52851, 52859–62 (Feb. 5, 2004).

¹⁰ 49 U.S.C. 30113(b)(1).

advanced air bags has been delayed 24 months because the cost of the Evora project was greater than expected, Lotus's revenues were less than expected, and its financial constraints were exacerbated by the global economic recession and automobile market downturn in late 2008. As a result, Lotus alleges that it was unable to fully fund the next-generation Elise program while developing the Evora.

Lotus also reiterates that the Evora's advanced air bag system does not carry over to the next generation Elise. Lotus notes that, after discovering this, it reexamined the possibility of equipping the current Elise with advanced air bags, in light of changes in the supplier situation since its last effort in 2005. However, Lotus concluded that advanced air bags for the current Elise remain infeasible.

Lotus also contends that an extension is in the public interest and consistent with the objectives of the Safety Act, citing the reasons stated in the September 2006 grant. Lotus states that the air bags in the Elise do not pose a safety risk. In support, Lotus cites the fact that there are no known injuries or deaths to infants, children, or other occupants caused by its air bags; that its crashworthy design provides a high level of safety without advanced air bags; and that its passenger seat is fixed in the rearmost position. In addition, Lotus makes clear in its owner's manual that it does not recommend the Elise be used for transporting children. Lotus also notes that, if an exemption is not granted, consumers would be adversely affected due to the loss of the Elise from the marketplace. Further, Lotus notes that the Elise is fuel efficient and it will comply with all other FMVSSs.

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 Lotus is complete and that Lotus is eligible for an extension of its temporary exemption. The agency has not made any judgment on the merit 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. 2011-14180 Filed 6-7-11; 8:45 am]
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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC-2011-0012]

Guidance on Deposit-Related Consumer Credit Products

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Proposed guidance with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing guidance on safe and sound banking practices in connection with deposit-related consumer credit products. Such products include automated overdraft protection and direct deposit advance programs.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Guidance on Deposit-Related Consumer Credit Products" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail:* regs.comments@occ.treas.gov.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- *Fax:* (202) 874-5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2011-0012" in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874-5750; Grovetta Gardineer, Deputy Comptroller for Compliance Policy, (202) 874-4428; or Kevin Russell, Director, Retail Credit Risk, (202) 874-5170, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The Office of the Comptroller of the Currency (OCC) is proposing supervisory guidance to clarify the OCC's application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft protection and direct deposit advance programs. This guidance details the principles that the OCC expects national banks to follow in connection with any deposit-related consumer credit product to address potential operational, reputational, compliance, and credit risks. This approach provides a high degree of flexibility for banks to structure and operate their programs in a prudent and safe and sound manner that provides for fair treatment of customers without dictating specific product terms. The OCC expects national banks to apply the principles set forth in this guidance to any deposit-related consumer credit product they offer. Appendixes to this guidance illustrate application of these principles to two specific consumer credit products—automated overdraft protection products and deposit advance products.

Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, effective July 21, 2011, all functions of the Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations is transferred to the OCC.