

agency is able to find that granting the petition would reduce U.S. employment related to automobile manufacturing, the agency has no discretion—it must grant the petition. If the agency takes no action within the time prescribed by the statute, the statute provides that the petition will be automatically granted. Accordingly, the granting of the petition would not be a “major Federal action” within the meaning of NEPA.

Since this proceeding will not result in the issuance of a “rule” within the meaning of the Administrative Procedure Act or Executive Order 12866, neither the requirements of the Executive Order nor those of the Department’s regulatory procedures apply. Therefore, no regulatory analysis or evaluation was prepared for the proposal. For the same reasons, the requirements of the Regulatory Flexibility Act do not apply.

As appropriate, the agency will conduct further analyses of these impacts, considering information submitted during the comment period, in conjunction with the final decision on this petition.

(Authority: 49 U.S.C. 32904, delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on February 2, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA–03–16341, Notice 2]

**Group Lotus Plc.; Grant of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 108 and Part 581 Bumper Standard**

This notice grants the Group Lotus Plc. (“Lotus”) application of for a temporary exemption from Paragraph S7 of Federal Motor Vehicle Safety Standard (“FMVSS”) No. 108, *Lamps, reflective devices, and associated equipment*; and Part 581 *Bumper*

*Standard*. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on October 24, 2003, and afforded an opportunity for comment.<sup>1</sup>

**I. Background**

Lotus, which was founded in 1955, produces small quantities of performance cars. In the past five years, Lotus has sold a total of 550 automobiles in the United States. The only current Lotus vehicle sold in the United States is Lotus Esprit (“Esprit”). In the same time period, Lotus has manufactured a total of 18,888 vehicles worldwide, including Lotus Elise (“Elise”).

The Elise was introduced in 1996, but it was not originally designed or intended for the U.S. market. However, after deciding to terminate production of the Esprit by 1999<sup>2</sup>, petitioner sought to introduce the Elise in the United States. Significant management, ownership and financial hardship issues contributed to the delay in introducing the Elise model. Recently, Perushan Otomobile Nasional Berhad (“Proton”) has taken a 100% ownership of Lotus. Petitioner is now ready to introduce the Elise vehicle into the U.S. Market. A description of the Elise vehicle is set forth in the Exhibit 1 of the petition (Docket No. NHTSA–03–16341–1). For additional information on the vehicle, please go to [www.LotusCars.com](http://www.LotusCars.com).

**II. Why Lotus Needs a Temporary Exemption**

Lotus has continued to experience substantial economic hardship, previously discussed by the agency in a March 3, 2003 Renewal of a Temporary Exemption from FMVSS No. 201 (68 FR 10066).<sup>3</sup> Lotus’ latest financial submissions showed an operating loss of £43,228,000 (≈ \$69,000,000) for the fiscal year 2000; a loss £18,055,000 (≈ \$29,000,000) for the fiscal year 2001; and a loss of £2,377,000 (≈ \$4,000,000)

for its fiscal year 2002. This represented a cumulative loss for a period of 3 years of £63,660,000 (≈ \$102,000,000).<sup>4</sup>

According to the petitioner, the cost of making the Elise compliant with the headlighting requirements of FMVSS 108 and the bumper standard was beyond the company’s current capabilities. Petitioner contended that developing and building FMVSS-compliant headlamps and Part 581-compliant bumpers cannot be done without redesigning the entire body structure of the Elise. Specifically, developing Part 581-compliant bumpers would cost \$6 million dollars over a period of 2 years. Producing an actual FMVSS-compliant headlamp would cost approximately \$1.1 million. In addition, there are unspecified costs of body modifications in order to accommodate the new headlamp, because there is insufficient space in the current body structure to permit an FMVSS-compliant headlamp.

Lotus requested a three-year exemption in order to concurrently develop compliant bumpers and headlamps and make necessary adjustments to the current body structure. Petitioner anticipates the funding necessary for these compliance efforts will come from immediate sales of Elise vehicles in the United States.

**III. Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 108 and the Bumper Standard**

Petitioner contended that Lotus could not return to profitability unless it receives the temporary exemption. In support of their contention, Lotus prepared alternative forecasts for the next 3 fiscal years. The first forecast assumed that the petitioner receives exemptions from S7 of FMVSS No. 108 and the bumper standard. The second forecast assumed the exemptions are denied.<sup>5</sup> In the event of denial, Lotus anticipated extensive losses through the fiscal year 2006, because it could not bring the Elise into full compliance any earlier.

Fiscal year	Forecast if exemptions granted (in \$)	Forecast if exemptions denied (in \$)
2003 .....	≈\$975,000	≈ – \$1,700,000

<sup>1</sup> See 68 FR 61035. To view the Lotus application, please go to the DOT Docket Management System at <http://dms.dot.gov/> (Docket No. NHTSA–03–16341).

<sup>2</sup> Exprit production was eventually extended by three years while petitioner sought to bring Elise

into compliance with FMVSS. Esprit ceased production on 12/31/2003.

<sup>3</sup> We note that the Elise vehicle is FMVSS No. 201 compliant.

<sup>4</sup> All dollar values are based on an exchange rate of £1 = \$1.60.

<sup>5</sup> See Petition Exhibit 2 (Docket No. NHTSA–03–16341–1).

Fiscal year	Forecast if exemptions granted (in \$)	Forecast if exemptions denied (in \$)
2004 .....	≈\$12,520,000	≈ - \$15,402,000
2005 .....	≈\$11,749,000	≈ - \$22,718,000

According to the petition, Lotus expended substantial resources (approximately \$27,000,000) in the past 12 months in order to bring Elise into compliance with the Federal Motor Vehicle Safety Standards and other U.S. regulations. Specifically, Lotus invested approximately \$5,000,000 in order to obtain a suitable engine supplier capable of complying with U.S. emissions standards. Next, Lotus developed an FMVSS 208 compliant air bag system. Significant resources are currently being expended in order to bring Elise in compliance with all other Federal Motor Vehicle Safety Standards, including FMVSSs 208, 210, 212, 214, 219 and 301.

As previously discussed, the Elise was not designed for the U.S. market and does not have a conventional bumper system or the underlying bumper structure. Instead, it was designed with “clam shell” body parts. According to the petitioner, installing a compliant bumper system would require re-designing the entire body of the automobile.

Petitioner considered equipping the Elise with an “interim headlamp” that would comply with FMVSS No. 108. This headlamp would not feature a polycarbonate cover currently on the vehicle, and would have been assembled from “off-the-shelf” parts. However, the development of this “interim headlamp” would cost \$500,000. Because Lotus anticipated introducing an all-new, fully compliant Elise in 2006, the projected number of vehicles sold until the introduction of the new 2006 model could not justify this investment.

Petitioner contended that installation of “an interim headlamp” without a polycarbonate cover would also significantly decrease forecasted sales because aesthetic appearance of the automobile would be compromised. Lotus marketing research forecasted a sales decline of as much as 30%. Further, the absence of the polycarbonate cover would have a negative effect on vehicle aerodynamics, and would decrease fuel economy. Finally, Lotus indicated that installation of “interim headlamps” could result in U.S. customers purchasing aftermarket or “European-spec” headlamps and installing these headlamps on their vehicles.

As previously stated, Lotus plans to introduce the second generation Elise in late 2006. This vehicle will feature compliant headlamps, bumpers and advanced air bags.

#### IV. Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and the objectives of the Safety Act. Specifically:

1. Petitioner notes that the current Elise headlamp does not pose a safety risk because the headlamp’s photometrics are very close to the requirements of FMVSS 108. The headlamp has also been subjected to environmental testing, and has a good warranty record.

2. Petitioner argues that the clamshell body system utilized by the Elise vehicle acts to reduce low-speed damage even in the absence of conventional bumpers. In a situation involving greater damage, the cost of an entire fiberglass clamshell is comparable to bumper-related repair costs of other “high-end” vehicles.

3. Petitioner suggests that denial of the petition would prevent Lotus from introducing the Elise for a period of three years and would in fact cause Lotus to cease U.S. operations. This would in turn result in loss of jobs by Lotus employees in the U.S.<sup>6</sup>

4. With respect to consumers, petitioner argues that denial of the petition would limit consumer choices by eliminating Lotus from the marketplace. Lotus contends that its continued presence in the U.S. is needed in order to provide parts and service for the existing Lotus Esprit customers.

5. Lotus remarks that due to the nature of the Elise vehicle, it will, in all likelihood, be utilized infrequently, and then as a “second” or a recreational vehicle.

6. Finally, Lotus notes that the Elise does comply with all other Federal Motor Vehicle Safety Standards, and features above-average fuel economy.

<sup>6</sup> In the event the application was granted, Lotus anticipated hiring more employees and expanding its dealer network.

#### V. Comments Received on Lotus Application

The agency received a single comment in response to the notice of the application. The sole commenter was Mr. Alan Riley, the executive editor of Roadfly, an on-line automotive enthusiast community. Mr. Riley is in favor of granting the exemption. In support of his position, Mr. Riley indicated that the exemption would enable Lotus to maintain a continued presence in the U.S., which is important not only to potential Elise purchasers, but also to those individuals who already own Lotus vehicles and seek to properly maintain them.

#### VI. The Agency’s Findings

The Lotus application for a temporary exemption clearly demonstrates the financial difficulties experienced by the company, with cumulative losses in the past three years exceeding \$100,000,000. Further, the application indicates that Lotus has made a good faith effort and spent approximately \$27,000,000 to bring Elise into compliance with federal safety standards.

Traditionally, the agency has found that the public interest is served in affording continued employment to a small volume manufacturer’s work force. The agency has also found that the public interest is served by affording the consumers a wider variety of motor vehicles. In this instance, denial of the petition would most likely put Lotus out of business in the U.S. Further, an exemption would assure an adequate supply of spare parts and afford a continuing, uninterrupted commercial relationship with Lotus dealers and their employees in the United States.

The term of this exemption will be limited to three years and the agency anticipates that the Elise vehicle will be sold in limited quantities. With the help of revenues derived from U.S. sales, Lotus will introduce an all new, fully compliant vehicle that will replace the current Elise by 2006.

Because Lotus will be manufactured in limited quantities and because each vehicle is likely to be operated only on a limited basis, the agency finds that this exemption will likely have a negligible impact on the overall safety of U.S. highways. The agency notes that the vehicle subject to this petition

complies with all other applicable Federal motor vehicle safety standards.

In consideration of the foregoing, it is hereby found that compliance with the requirements of Paragraph S.7 of 49 CFR 571.208, *Lamps, reflective devices, and associated equipment*; and 49 CFR part 581 *Bumper Standard* would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that the granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Lotus is granted NHTSA Temporary Exemption No. EX 03-4, from Paragraph S.7 of 49 CFR 571.208, *Lamps, reflective devices, and associated equipment*; and 49 CFR part 581 *Bumper Standard*. The exemption shall remain in effect until January 1, 2007.

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

**FOR FURTHER INFORMATION CONTACT:**

George Feygin in the Office of Chief Counsel, NCC-112, (Phone: 202-366-2992; Fax 202-366-3820; e-Mail: [George.Feygin@nhtsa.dot.gov](mailto:George.Feygin@nhtsa.dot.gov)).

Issued on: February 2, 2004.

**Jeffrey W. Runge,**

*Administrator.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2004-16996]

**Results of the Survey on the Use of Passenger Air Bag On-Off Switches; Technical Report**

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

**ACTION:** Request for comments on technical report.

**SUMMARY:** This notice announces NHTSA's publication of a technical report describing the use of passenger air bag on-off switches in pickup trucks. The report's title is Results of the Survey on the Use of Passenger Air Bag On-Off Switches.

**DATES:** Comments must be received no later than June 4, 2004.

**ADDRESSES:** *Report:* The report is available on the Internet for viewing on line in HTML format at <http://www.nhtsa.dot.gov/cars/rules/regrev/Evaluate/AirBagOnOffSurvey/>

*index.html* and in PDF format at [http://www.nhtsa.dot.gov/cars/rules/regrev/Evaluate/AirBagOnOffSurvey/images/809\\_689.pdf](http://www.nhtsa.dot.gov/cars/rules/regrev/Evaluate/AirBagOnOffSurvey/images/809_689.pdf). You may also obtain a copy of the report free of charge by sending a self-addressed mailing label to Christina Morgan (NPO-321), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

*Comments:* You may submit comments [identified by DOT DMS Docket Number NHTSA-2004-16996] by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

You may call Docket Management at 202-366-9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Christina Morgan, Evaluation Division, NPO-321, Office of Planning, Evaluation and Budget, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202-366-2562. Fax: 202-366-2559. E-mail: [tmorgan@nhtsa.dot.gov](mailto:tmorgan@nhtsa.dot.gov).

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at <http://www.nhtsa.dot.gov> and click "Regulations & Standards" underneath "Car Safety" on the home page; then click "Regulatory Evaluation" on the "Regulations & Standards" page.

**SUPPLEMENTARY INFORMATION:** The technical report includes the results of a survey conducted by NHTSA to investigate how pickup truck drivers are using the passenger air bag on-off switches. On-off switches have been standard equipment in most pickup trucks since 1998. They enable a driver to turn off the air bag and prevent harm to a child passenger, but turn it on to protect an adult passenger. How often were the switches turned off for child

passengers and how often were they turned on for adult passengers? The survey was conducted from July to November 2000 in four States—California, Georgia, Michigan, and Texas.

On the whole, the switches have been a necessary and a fairly successful interim measure that made it possible to offer life-saving air bags to adult passengers in pickup trucks without back seats, while allowing the opportunity to protect infants and children from the hazards of air bags when they must ride in the front seats of those vehicles. Nevertheless, the survey shows many of the air bags are being left on for children and turned off for adults. Drivers with children in rear-facing child safety seats achieved the highest rate of correct use of the air bag switch—86 percent. Forty-eight percent of the air bags were left on when only child passengers 1-12 years old were in the front seat, potentially exposing these children to a deployment. There is also a problem when drivers ride with only adult passengers (age 13 and older). While 83 percent of the switches were on, as they should be, 17 percent were switched off.

**How Can I Influence NHTSA's Thinking on This Subject?**

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

**How Do I Prepare and Submit Comments?**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA-2004-16996) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at <http://dms.dot.gov> and click on