

Abstract: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, issued joint final rules establishing procedures for the development and implementation of safety integration plans ("SIPs" or "plans") by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA uses the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class I's and some Class II's) address critical safety issues unique to the amalgamation of large, complex railroad operations.

Annual Estimated Burden Hours: 528 hours.

Title: Locomotive Crashworthiness.

OMB Control Number: 2130-0564.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: In a final rule published June 28, 2006, the Federal Railroad Administration (FRA) issued comprehensive standards for locomotive crashworthiness. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a locomotive collision. The collection of information is used by FRA to ensure that locomotive manufacturers and railroads meet minimum performance standards and design load requirements for newly manufactured and re-manufactured locomotives in order to help protect locomotive cab occupants in the event that one of these covered locomotives collides with another locomotive, the rear of another train, a piece of on-track equipment, a shifted load on a freight car on an adjacent parallel track, or a highway vehicle at a rail-highway grade crossing.

Annual Estimated Burden Hours: 6,672 hours.

Title: Safety Appliance Concern Recommendation Report; Guidance Checklist Forms.

OMB Control Number: 2130-0565.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.4(a)-(q).

Abstract: In an ongoing effort to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations, FRA has developed a safety concern recommendation report

form, and a group of guidance checklist forms that facilitate railroad, rail car owner, and rail equipment manufacturer compliance with agency Railroad Safety Appliance Standards regulations. In lieu of completing an official inspection report (Form FRA F 6180.96), which takes subject railroad equipment out of service and disrupts rail operations, Form FRA F 6180.4(a) enables Federal and State safety inspectors to report to agency headquarters systemic or other safety concerns. FRA headquarters safety specialists can then contact railroads, car owners, and equipment manufacturers to address the reported issue(s) and institute necessary corrective action(s) in a timely fashion without unnecessarily having to take affected rail equipment out of service, unless deemed defective. Forms FRA F 6180.4(b)-(q) are used in conjunction with the Special Inspection of Safety Appliance Equipment form (Form FRA F 6180.4) to assist Federal Motive, Power, and Equipment (MP&E) field inspectors in ensuring that critical sections of 49 CFR Part 231 (Railroad Safety Appliance Standards), pertaining to various types of freight equipment, are complied with through use of a check-off list. By simplifying their demanding work, check-off lists for 16 essential sections of Part 231 ensure that FRA MP&E field personnel completely and thoroughly inspect each type of freight car for compliance with its corresponding section in Part 231. The Guidance Checklist forms may later be used by state field inspectors as well. FRA believes that this collection of information will result in improved construction of newly designed freight cars and improved field inspections of all freight cars currently in use. This, in turn, will serve to reduce the number of accidents/incidents and corresponding injuries and fatalities that occur every year due to unsafe or defective equipment that was not promptly repaired/replaced.

Annual Estimated Burden Hours: 182 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer, or via e-mail to OMB at the following address:

oir_submissions@omb.eop.gov.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the

Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on January 22, 2008.

D.J. Stadler,

*Director, Office of Financial Management,
Federal Railroad Administration.*

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0013]

Tesla Motors, Inc.; Grant of Application for a Temporary Exemption From Advanced Air Bag Requirements of Federal Motor Vehicle Safety Standard No. 208

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

ACTION: Grant of Application for a Temporary Exemption from Certain Advanced Air Bag Requirements of Federal Motor Vehicle Safety Standard No. 208.

SUMMARY: This notice grants the Tesla Motors, Inc. (Tesla) application for a temporary exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. The exemption applies to the Tesla Roadster vehicle. 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 exemption will be effective for a period of three years.

The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the application on July 31, 2007, and afforded an opportunity for comment.¹

DATES: The exemption is effective immediately and remains in effect until January 28, 2011.

¹ See 72 FR 41814 (July 31, 2007), Docket Number NHTSA-2007-28821-1.

FOR FURTHER INFORMATION CONTACT: Mr. Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820; E-mail ari.scott@dot.gov.

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 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 advanced air bag requirements were 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 September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of an electric-powered, high-performance sports car.

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Tesla has petitioned the agency for a temporary exemption from certain advanced air bag requirements 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. The requested exemption would apply to Tesla Roadster model vehicles and would extend for a period of three years.

III. Statutory Background for Economic Hardship Exemptions

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 include any provision indicating that a manufacturer might have 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 an entity may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer, if the sponsor had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"³ 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 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 on-going 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.

IV. Petition of Tesla and Notice of Receipt

Background. Tesla is a small, start-up motor vehicle manufacturer that was founded in California in July 2003. The company plans to produce its first model, the Tesla Roadster, shortly. Tesla is not affiliated with any other automobile manufacturer, and currently employs approximately 170 people in the United States, the United Kingdom, and Taiwan.

This application concerns the Tesla Roadster (the first model of vehicle that Tesla plans to produce) which as the company states will be an electric vehicle that will achieve the performance equivalent to a high performance car. The vehicle utilizes an energy storage system that provides power to the entire vehicle, and Tesla expects the vehicle will be able to travel approximately 200 miles on a single charge. To date, Tesla has not produced any vehicles for sale in the U.S. or other markets.

According to the petition, Tesla had originally planned to produce a vehicle that would comply with the advanced air bag requirements in effect since September 2006. The Tesla Roadster utilizes the chassis and several other systems of the Group Lotus plc (Lotus) Elise, which at the time of design was a vehicle that was intended to comply with the advanced air bag requirements by 2006. However, Lotus could not achieve compliance with the requirements by that date, and was granted an exemption for the Elise on August 31, 2006. This deprived Tesla of a FMVSS No. 208-compliant air bag system that could have been used in the Roadster.

The petitioner stated that it first became aware of Lotus's inability to obtain a compliant advanced air bag system in mid-2005, after it had committed to base the Roadster on the Elise platform. Tesla therefore argued that it tried in good faith, but cannot bring the vehicle into compliance with the advanced air bag requirements, and

² See 65 FR 30680 (May 12, 2000).

³ 49 U.S.C. 30113(b)(1).

would incur substantial economic hardship if it cannot sell vehicles in the United States.

Eligibility. As discussed in the petition, Tesla is an independent company formed in 2003. The entire organization currently employs approximately 170 people. The Roadster will be manufactured under Tesla's supervision at Lotus's automobile factory in the United Kingdom. However, Lotus has no ownership interest in Tesla, and the reverse is likewise true. No other entity has an ownership interest in Tesla. Stated another way, Tesla is an independent automobile manufacturer which does not have any common control or is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer that has never produced any motor vehicles for sale. According to its current forecasts, Tesla anticipates that worldwide production of the Roadster would be approximately 800 vehicles in the first year of production, and projected production would be 3,000 vehicles per year in the two years after that. Tesla also expects to produce a second model of automobile, the White Star, beginning in 2010, but believes that the company's total production will be less than 10,000 vehicles per year during the duration of the exemption request.

As indicated earlier, 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). Moreover, 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.

As we noted in our July 2007 notice of receipt of petition, in this case, it appears that Lotus, as well as Tesla, may be considered a manufacturer of the vehicle. Tesla indicated in its petition that in addition to utilizing the chassis and several other systems of the Lotus Elise, "the Roadster will be manufactured under Tesla's supervision and direction at a factory owned by Lotus * * *." The term "manufacturer" is defined as a person "manufacturing or assembling motor vehicles or motor vehicle equipment" or "importing motor vehicles or motor vehicle equipment for resale." See 49 U.S.C. 30102. It appears that Lotus is manufacturing or assembling the vehicles at issue in its factory under contract.

We noted, however, that Lotus is a small manufacturer, and NHTSA granted a temporary exemption regarding this same issue for the Lotus Elise. See 71 FR 52851; September 7, 2006. Moreover, the combined production of vehicles for Lotus and Tesla is fewer than 10,000 vehicles in the year preceding the petition. Therefore, we believed that Tesla, for purposes of this petition, was eligible for a hardship exemption. We also noted that as production of the Tesla vehicles proceeds, there could be an issue of whether combined production of Lotus' own vehicles and those it builds under contract may increase to more than 10,000 vehicles per year. The agency requested comments to assist it in further evaluating this situation; specifically, whether it should influence the eligibility for future exemptions, or the duration of the current exemption, if granted.

Requested exemption. Tesla stated that it intends to certify the Tesla Roadster as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1(a) of FMVSS No. 208. The petitioner stated that it previously determined the Tesla Roadster's compliance with rigid barrier unbelted test requirements using tests of prototype vehicles. As such, Tesla requested an exemption for the Tesla Roadster 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 did not make an explicit statement that it intends to comply with the advanced air bag requirements of the FMVSS upon the expiration of the temporary exemption period. We noted, however, that Lotus signaled such an intention in its petition for the Elise, and the Tesla Roadster uses the Elise's safety system.

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the Tesla Roadster project will result in financial losses unless Tesla obtains a temporary exemption. Over the period 2003–2006, Tesla has had net operational losses totaling over \$43 million. As of the time of the application, Tesla has invested

substantially on the design and development of the Tesla Roadster.

The company has stated that Lotus could not acquire or develop an advanced air bag system for the Elise, on which the advanced air bag system was to be designed, and furthermore that Tesla does not have the technical or financial resources to independently develop an advanced air bag system. As it does not have the ability to independently build or acquire an advanced air bag system, Tesla states that without an exemption, it will have to cancel its pending development of an electric-powered sedan, and would ultimately have to terminate its operations.

Good faith efforts to comply. As stated above, Tesla's compliance with the advanced air bag requirements are based upon the ability of Lotus to design or acquire an advanced air bag system. Tesla initially planned to produce vehicles that were fully compliant with all FMVSS requirements, but after it had committed to using the design and manufacturing facility of the Lotus Elise, Lotus determined that that vehicle could not be supplied with a compliant advanced air bag system. Tesla based its petition on Lotus's good faith efforts to comply with the requirements in its September 28, 2005 petition for exemption (Docket NHTSA–2006–25324–3). Tesla stated that it does not have the technical or financial resources to develop an advanced air bag system independent of Lotus, and will, therefore, need a similar exemption in order to produce Roadster models for the U.S. market. Tesla provided no further information in its petition on its own independent efforts beyond this statement.

Tesla argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Tesla argued that the vehicle will have a variant of the bonded aluminum chassis structure of the Lotus Elise, dual standard air bags, and pre-tensioning, load-limiting seat belts. Furthermore, the company emphasized that the Tesla Roadster will comply with all other applicable FMVSSs.

Moreover, the petitioner stated that the requested exemption will have a negligible impact on motor vehicle safety because of the limited number of vehicles sold. Tesla stated that it is unlikely that young children would be passengers in the Roadster, so an exemption from the advanced air bag requirements that are designed to

protect children will not create a significant safety issue. In addition, as with the Lotus Elise, the front passenger seat in the Roadster is fixed in its rearmost position, thereby reducing air bag risks to children and other passengers.

Tesla asserted that granting the exemption will benefit U.S. employment, companies, and citizens. Affected individuals include both Tesla's current employees as well as those who are likely to be involved in selling and servicing the Roadster and other future Tesla models. Furthermore, Tesla states that it has plans to open a manufacturing facility in the United States in 2009, with approximately 300 employees, a venture that will likely not go forward if the petition is denied.

V. Comments Regarding the Tesla Petition

The agency received four comments in response to the notice of receipt of petition. These comments came from Tesla, Group Lotus, Miles Automotive Group (Miles), and David H. Nguyen.

Miles Automotive Group was the only commenter that indicated it did not support the granting of the exemption. Miles stated that it is developing an electric vehicle that will meet all applicable NHTSA standards, including the advanced air bag provision. It is concerned that the granting of temporary exemptions to electric vehicles will affect the potential acceptance of those vehicles, as they may be perceived as less safe than gasoline-powered vehicles.

Miles asserted that the vehicle for which Tesla seeks exemption is far different from the vehicle for which Lotus has received a temporary exemption. This is based on the addition of the lithium ion cells in the Tesla Roadster, which will add substantially to the weight of the vehicle and the amount of energy that must be absorbed in the crash. Miles argued that the basic Lotus air bag system contained in the vehicle for which Lotus received a temporary exemption would yield far different results during testing had Lotus included in its vehicle the additional weight. Therefore, according to that company, the exemption for the Elise should not accrue to the Roadster, despite the two vehicles' similarity in design.

Mr. Nguyen indicated support for granting the petition for the following reasons. First, because of the limited number of cars that would be sold and the limited exemption period, the overall safety impact will be negligible. Second, most buyers of exotic automobiles such as those produced by

Tesla do not use their vehicles on a daily basis for transportation due to practical considerations such as comfort and utility. As a result, the Roadster would be driven considerably less than the average vehicle. Mr. Nguyen estimated that, based on Fatality Analysis Reporting System (FARS) data, the exemption would not result in any additional fatalities. Third, Mr. Nguyen suggested that the Roadster is already reasonably safe considering that it is equipped with standard air bags, safety features that many vehicles on the road today still do not have. Finally, Mr. Nguyen stated that there is strong societal interest in having electric vehicles available for sale and use in the U.S., as it will reduce America's dependence on foreign oil and provide cleaner air.

Both Lotus and Tesla submitted comments responding to issues raised in NHTSA's notice of receipt of petition. Both companies asserted that Tesla was the sole manufacturer of the vehicle, and that Tesla and Lotus should be considered as unaffiliated companies with regard to the production of the Roadster.

In its comments, Lotus argued that it should not be considered the sponsor of the Tesla Roadster. It stated that in the past, NHTSA has not aggregated production with regard to eligibility concerns when two companies had an ownership link, and therefore should not aggregate for two companies with total ownership independence operating through arms-length contracts. Lotus also made several arguments demonstrating the operational independence of the two companies:

- The Elise was designed and engineered by Lotus long before Tesla even entered the picture.
- Tesla vehicles will be imported and sold both in the U.S. and elsewhere in the world by a dealer network totally independent of Lotus.
- The companies have totally independent management, sales and marketing personnel, after sales personnel, and headquarters; each has its own R&D and engineering staffs.
- The vehicles are vastly different—the Tesla Roadster is a Battery Electric Vehicle, whereas the current Lotus vehicles are all gasoline powered.

Tesla made several arguments in its comments. First, Tesla stated that the issue of whether a manufacturer's production rising above 10,000 vehicles per year during the term of the exemption is not relevant to that manufacturers' eligibility for a financial hardship exemption. Second, like Lotus, it argued that Tesla should be considered the manufacturer of the

vehicle, and that Lotus should not be considered a sponsor. Third, Tesla argued that requiring the production of an assembler to be added to the production of a small independent vehicle manufacturer for exemption eligibility purposes would be contrary to the public interest.

Regarding the first issue, Tesla stated that the language of 49 U.S.C. 30113(d) is unambiguous, and that even if an eligible manufacturer's production increases above 10,000 during the term of an exemption, it would not act to void the exemption. Tesla stated that it is eligible for a hardship exemption under 49 U.S.C. 30113(d) because its "production in the most recent year of production is not more than 10,000" [emphasis added in Tesla's submission].

Tesla, like Lotus, also set forth an argument that Lotus should not be considered a manufacturer of the Tesla Roadster. Tesla argued that "the fact that Lotus is also the assembler of the Roadster under an arm's length contract with Tesla does not affect Tesla's status as the manufacturer of the Roadster vehicles." The company also stated that under a series of interpretations addressing the concept of "sponsorship," NHTSA has concluded that several entities, including those other than the assembler of the vehicle, can be considered the manufacturer. Tesla indicated that because the Roadster is built under its authority, and it maintains responsibility for the compliance, Tesla, and not Lotus, should be deemed the manufacturer.

Tesla also stated that the arms length dealings between themselves and Lotus and the independence of the two companies should mean that the companies' production totals should not be aggregated.

Finally, Tesla argued against aggregating the production numbers of an independent manufacturer to those of a contract assembler generally. Tesla argued that this would inhibit or preclude start-up companies, without production facilities, from obtaining hardship exemptions, since they would need to limit their search for an assembler to very small entities.

VI. Final Decision

The following discussion provides our decision regarding Tesla's temporary exemption request pertaining to the advanced air bag requirements of FMVSS No. 208.

We are granting Tesla's petition to be exempted from the following portions of the advanced air bag requirements of FMVSS No. 208: S14 (apart from section S14.5.1(a)), S15, S17, S19, S21, S23 and S25 of FMVSS No. 208. The exemption

does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Tesla must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

A. Issues Related to Eligibility

As discussed above, 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). Moreover, 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.

In considering the issue of eligibility in the present situation, Tesla Motors does not currently manufacture any vehicles. Therefore, there is no issue as to whether it manufactures vehicles other than the Tesla Roadster. We believe the petitioner can be considered a manufacturer of the planned Tesla Roadster as a "sponsor," even though the vehicle will be assembled by Lotus. Tesla designed the vehicle, supervises its assembly, and is responsible for compliance with applicable standards.

We next consider whether persons other than Tesla Motors can be considered to manufacture the Tesla Roadster. The answer is yes. Lotus will be a manufacturer of the Tesla Roadster by virtue of assembling it. See 49 U.S.C. 30102(a)(5).

Given that both Tesla Motors and Lotus can be considered manufacturers of the Tesla Roadster, there are a number of potential issues concerning how the agency should analyze the petition, e.g., whether to consider one or both companies with respect to the 10,000 vehicle limitation for eligibility, hardship, good faith efforts, etc.

As we noted in the notice of receipt, however, Lotus itself is a small manufacturer, and NHTSA granted a temporary exemption regarding this same issue for the Lotus Elise. See 71 FR 52851; September 7, 2006. This is the vehicle from which the Tesla Roadster obtains its chassis and various systems including air bag system. Also, Tesla Motors based its petition on Lotus's good faith efforts to comply with the requirements. Moreover, both Tesla Motors and Lotus separately meet the

fewer than 10,000 vehicle limitation in the year preceding the petition, counting all vehicles they manufacture (including ones that may also be attributable to another manufacturer).

Given these factors, we believe Tesla Motors is eligible to apply for an economic hardship exemption, and we also believe that Lotus' role in the manufacture of the Roadster should not preclude Tesla's eligibility to receive an exemption.

In their comments, both Lotus and Tesla argued that Tesla should be considered the exclusive manufacturer of the Roadster. Both companies point to several examples where NHTSA concluded that a parent company of a smaller subsidiary would not be considered the manufacturer of the vehicle. For example, while Fiat (which would be ineligible for an exemption) owns Ferrari, we have stated that Fiat is not considered a manufacturer of Ferrari's vehicles because of the arms-length relationship and separation of resources between the two companies.⁴ Both Lotus and Tesla argued that they have even less of an affiliation than the owner-subsidiary relationships we have analyzed in the context of other economic hardship petitions.

We believe that the discussion of owner-subsidiary relationships discussed in the Tesla and Lotus comments are not analogous to the situation in this case. In the previous instances, the parent company (e.g., Fiat) did not play a role (or played a minimal role) in the development of the vehicles at issue. There was no basis to consider the parent company a manufacturer of the vehicles in question other than the ownership interest between the companies. In that scenario, an analysis of the independent nature of the subsidiary company was in order.

More generally, in a situation where more than one company can be considered a manufacturer of a vehicle that is the subject of an economic hardship exemption, there are a number of potential issues that may arise related to eligibility. We believe it is unnecessary in responding to the petition before us to resolve how we would address all of these potential issues in other situations. Specifically, these issues happen to be moot in this instance; we will address these issues as necessary in the context of a specific petition or contemplated manufacturer relationship that is brought before us.

We note, however, that in considering the issue of eligibility it has been a longstanding practice for us to consider

whether a second vehicle manufacturer also might be deemed a manufacturer of vehicles that are the subject of an economic hardship petition. If we were to consider a petition from a "sponsor" manufacturer without regard to the circumstances of the "assembler" manufacturer, large manufacturers could potentially avoid the statutory 10,000 vehicle limit by engaging in joint ventures with small companies and having the small company submit the petition. This is an issue we would carefully consider if we received such a petition. We also note that it has also long been our practice to consider all vehicles for which the petitioner might be considered a manufacturer. In a 2003 decision, for example, in considering the number of vehicles produced by Lotus for purposes of a petition for temporary exemption from certain requirements of FMVSS No. 201, we considered the vehicles it manufactured for Opel/Vauxhall.⁵

B. Merits of Tesla's Petition and Responses to Other Comments

In our September 2006 decision⁶ granting the economic hardship petition for the Lotus Elise, we stated that the advanced air bag requirements present a unique challenge because they would require Lotus to completely redesign a major structural part of the extruded aluminum chassis in its vehicles. While Lotus was aware of the new requirements for some time, it was not able to introduce a fully compliant vehicle by September 2006 as originally intended. Accordingly, it was determined that the Elise model, designed for the European market, would need to be sold in the U.S. market in order to generate revenue for a successor vehicle that complies with all U.S. requirements, including the advanced air bag requirements of FMVSS No. 208. Although Lotus immediately engaged in homologation efforts, the company experienced a number of technical challenges precluding incorporation of advanced air bag into the Elise at that time. In the September 2006 document, we provided a discussion of why we believed that Lotus had made good faith efforts to bring the Elise into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so.

As indicated earlier, the Tesla Roadster utilizes the chassis and several other systems of the Lotus Elise, which at the time of design was a vehicle that was intended to comply with the

⁵ 68 FR 10066; March 3, 2003.

⁶ 71 FR 52851, September 7, 2006.

⁴ 55 FR 3785 (February 5, 1990).

advanced air bag requirements by 2006. However, Lotus could not achieve compliance with the requirements by that date, and was granted an exemption for the Elise in the decision published by NHTSA in September 2006. This deprived Tesla of a FMVSS No. 208-compliant air bag system that could have been used in the Roadster. Tesla indicated that it first became aware of Lotus's inability to obtain a compliant advanced air bag system in mid-2005, after it had committed to base the Roadster on the Elise platform.

Given these circumstances, including the linkage between the Lotus Elise and the Tesla Roadster, we believe it was reasonable for Tesla to rely on Lotus for designing a compliant air bag system. Moreover, by the time Tesla became aware that Lotus could not achieve compliance at the anticipated time, Tesla was already committed to basing the Roadster on the Elise platform. Finally, the technical problems faced by Lotus would have been even greater for Tesla, given the size of Tesla and the fact that it was basing the Roadster on a platform designed by Lotus. Therefore, it would not have been possible for Tesla to have separately designed a compliant air bag system for the Roadster at that time. Considering all of these factors, we believe Tesla made good faith efforts to bring the Roadster into compliance with the applicable requirements.

We also conclude that Tesla has demonstrated the requisite financial hardship. In this instance, denial of the petition would be likely to put Tesla out of business in the U.S. and potentially worldwide.

Traditionally, the agency has found that the public interest is served by affording consumers a wider variety of motor vehicles. Furthermore, the Tesla Roadster is one of the most advanced fully electric vehicles available. We believe that the public interest is served by encouraging the development of fuel-efficient and alternative-fueled vehicles.

We believe this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected and because each vehicle is likely to travel on public roads only infrequently.

The term of this exemption will be limited to three years and the agency anticipates that the Roadster will be sold in limited quantities. In total, based on Tesla's comment of August 29, 2007, we anticipate that Tesla will sell approximately 625 vehicles during the first year of the exemption, and 1,600 vehicles during each of the following two years. We anticipate that with the help of revenues derived from U.S.

sales, Tesla will be able to develop its own production facilities, begin production of a fully-compliant, electric-powered sedan, and either bring the Roadster into compliance with all applicable safety standards or cease production of the vehicle.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car 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 where an exemption covers part but not all of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14.5.2, S15, S17, S19, S21, S23, and S25⁷ (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

Miles Automotive raised two issues regarding potential adverse effects of granting the Tesla petition. First, it stated that the Tesla Roadster, while

utilizing the same chassis as a Lotus Elise, is a substantially different vehicle. Among other attributes is the fact that with the electric power system, it is substantially heavier, and therefore there will be more energy that must be absorbed in the event of a crash. Second, Miles stated that while it supports the introduction of electric vehicles, it is concerned that electric vehicles released without meeting all FMVSSs will create the impression that electric vehicles are less safe than gasoline-powered vehicles, which will discourage their use and increase fuel consumption.

With regard to Miles' first concern, because the Tesla Roadster will be manufactured in limited quantities and because each vehicle is likely to be operated only on a limited basis, the agency believes the exemption will have a negligible impact on vehicle safety. The agency also notes that the vehicles subject to this exemption are required to comply with all applicable FMVSSs with the exception of certain advanced air bag requirements, and that it is equipped with dual air bags. Regardless of any weight changes to the vehicle and the possible amount of energy absorbed in crashes, Tesla will be required to certify that the Roadster is compliant with all applicable FMVSSs except for the limited exemptions specifically granted in this document. Among other requirements, the vehicle must comply with the belted, rigid barrier provisions of S14.5.1(a).

We also do not believe that granting a temporary exemption to the Tesla Roadster will have a negative impact on how safe electric-powered vehicles are in the minds of the American public. Miles has not presented any data indicating that consumers hearing that the Tesla Roadster has an exemption will assume that the exemption is for all electric vehicles, or that electric vehicles are generally less safe than gasoline-powered vehicles.

In consideration of the foregoing, we conclude that compliance with 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 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), Tesla Motors, Inc. is granted NHTSA Temporary Exemption No. EX 08-01, from S14 (apart from section S14.5.1(a)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. The exemption shall remain for three years

⁷ We note that while Tesla did not specifically include paragraph S25 in its petition, it did ask for an exemption from the "advanced air bag requirements" generally. We believe this to be an inadvertent omission.

as indicated in the **DATES** section of this notice.

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

Issued on: January 22, 2008.

Nicole Nason,
Administrator.

[FR Doc. E8-1359 Filed 1-25-08; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 10 a.m. to 11:30 a.m. on Thursday, February 14, 2008, at the Corporation's Administration Headquarters, Suite W32-300, 1200 New Jersey Avenue, SE., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, February 8, 2008, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202-366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on January 22, 2008.

Collister Johnson, Jr.,
Administrator.

[FR Doc. E8-1369 Filed 1-25-08; 8:45 am]

BILLING CODE 4910-61-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Mutual to Stock Conversion Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 28, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906-6518; or send an e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906-5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the

approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual to Stock Conversion Application.

OMB Number: 1550-0014.

Form Numbers: 1680, 1681, 1682, and 1683.

Regulation requirement: 12 CFR Part 563b.

Description: The OTS staff makes an in-depth study of all information furnished in the application in order to determine the safety and soundness of the proposed stock conversion. The purpose of the information collection is to provide OTS with the information necessary to determine if the proposed transaction may be approved. If the information required were not collected, OTS would not be able to properly evaluate whether the proposed transaction was acceptable. The information collection allows OTS to evaluate the merits of the proposed conversion plan and application in light of applicable statutory and regulatory criteria.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit: Federal Government.

Estimated Number of Respondents: 8.

Estimated Number of Responses: 8.

Estimated Time per Respondent: 510 hours.

Estimated Frequency of Response: Other: Required once converting to stock form.

Estimated Total Burden: 4,080 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.