

[FR Doc. 03-4899 Filed 2-28-03; 8:45 am]

BILLING CODE 4910-81-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-02-13956, Notice 2]

Lotus Cars Ltd.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

This notice grants the application of Lotus Cars Ltd. ("Lotus") of Norwich, England, for a renewal of NHTSA Temporary Exemption No. 99-12, from S7, *Performance Criterion*, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact*, as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We published notice of receipt of the application on December 4, 2002, requesting public comment on it (67 FR 72267).

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99-12 from S7, *Performance Criterion*, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate another model, the Elise, for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, *Phase-in Schedule #3*, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998—September

1, 1999, and to conform 100 percent of its production thereafter.

But a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarked that the entity that ultimately controls Lotus Cars is the manufacturer of Proton cars, "the Malaysian company Perusahaan Otomobil Nasional Berhad (Proton)." We noted in the December 4, 2002, notice that Lotus' balance sheets and income statements did not indicate that this Asian entity, itself a motor vehicle manufacturer, made capital contributions to Lotus or otherwise participated in the management of this British company. Lacking these indicia of control, we stated that we had decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption.

On December 16, 2002, during the comment period, Lotus addressed the question of its relationship to Proton. At the time Lotus filed its application in May 2002, Proton owned 80 percent of the shares of Lotus but had since acquired total ownership of the company. Proton had in fact made a capital contribution to the company "since its acquisition," which allowed Lotus "to pay off certain debts, return to solvency, and thus to continue trading." It noted that "the capital infusion also permitted continued operations from a cash-flow basis." Lotus argued that we should more properly consider the facts that (1) there is no similarity of design between the cars produced by Proton and Lotus, (2) Lotus designed and engineered the Esprit without assistance from Proton, and (3) Lotus's vehicles are imported and sold both in the U.S. and Europe by a dealer/distributor network "totally independent" of Proton. In support, Lotus reminded us that we had established these three criteria in

deciding that Maserati (when it was owned by Chrysler Corporation and G.B.M. S.p.A) and Ferrari (when Fiat held a 90-percent ownership interest) were eligible to apply for hardship exemptions (See respectively, 53 FR 28324, July 27, 1988 and 54 FR 46321, November 2, 1989). These three factors also exist in the Lotus case, and an additional one of relevance: the vehicle for which exemption is sought was designed well over 20 years ago when Lotus was an independent company. Therefore, we have decided that Lotus remains a small volume manufacturer within the meaning of the exemption legislation. In 1999, Lotus produced 2,569 automobiles; in 2000, 2,993 automobiles (including 127 Opel/Vauxhall cars); and in 2001, 5,181 automobiles (including 3,046 for Opel/Vauxhall). Over the same three-year period it exported 112, 162, and 48 vehicles respectively to the United States.

Notwithstanding the increase in production between 1999 and 2001, Lotus's financial submissions show the company's operating loss of 7,513,000 Pounds for its fiscal year 2001-2002, a loss of 20,244,000 Pounds for its fiscal year 2000-2001, and an operating profit of 12,368,000 Pounds for its fiscal year 1999-2000. This represents a cumulative loss of 15,389,000 Pounds, or \$24,622,400 computed at a rate of \$1.6 = 1 Pound.

Lotus had intended to cease production of the exempted Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but "was unable to launch itself." By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, "an additional 241 employees were made redundant." However, it had located "an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles." The company stated that its "only hope for keeping the US market alive [is] to build the additional 140 Esprits, ending production on December 21, 2003," the period for which it has requested an exemption. No further exemption will be requested for the Esprit. It hopes to "find a way to finance" the M260 project for introduction in the U.S. in 2004, a vehicle being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.