

petitioner describes these components and systems as identical to U.S.-model components and systems.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-thefts marking must be added to vehicles that are not already so marked.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 17, 2003.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-03-16341, Notice 1]

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

In accordance with the procedures of 49 CFR part 555, Group Lotus Plc. ("Lotus") has applied for a Temporary Exemption from S7. Headlighting

requirements, of Federal Motor Vehicle Safety Standard ("FMVSS") No. 108, *Lamps, reflective devices, and associated equipment*; and Part 581 *Bumper Standard*. 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 are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

#### 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>1</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 Otomobil 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). For additional information on the vehicle, please go to <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>2</sup> Lotus' latest financial submissions show the company's 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 represents a cumulative loss for a period of 3 years of £63,660,000 (≈\$102,000,000).<sup>3</sup>

According to the petitioner, the cost of making the Elise compliant with the headlighting requirements of FMVSS 108 and the bumper standard is beyond the company's current capabilities. Petitioner contends 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 requests 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 contends that Lotus cannot 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 assumes that the petitioner receives exemptions from S7 of FMVSS No. 108 and the bumper standard. The second forecast assumes the exemptions are denied.<sup>4</sup> In the event of denial, Lotus anticipates extensive losses through the fiscal year 2006, because it cannot bring the Elise into full compliance any earlier.

<sup>3</sup> All dollar values are based on an exchange rate of £1= \$1.60.

<sup>4</sup> See Petition Exhibit 2 (Docket No. NHTSA-03-16341).

<sup>1</sup> Esprit production was eventually extended by three years while petitioner sought to bring Elise into compliance with FMVSS. Esprit will cease production on 12/31/2003.

<sup>2</sup> We note that the Elise vehicle is FMVSS No. 201 compliant.

Fiscal Year	Forecast if exemptions granted (in \$)	Forecast if exemptions denied (in \$)
2003 .....	≈\$975,000	≈ − \$1,700,000
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 anticipates 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 contends 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 seize U.S. operations. This would in turn result in loss of jobs by Lotus employees in the U.S.<sup>5</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 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>5</sup> In the event the petition is granted, Lotus anticipates hiring more employees and expanding its dealer network.

#### V. How You May Comment on Lotus’s Application

We invite you to submit comments on the application described above. You may submit comments [identified by DOT Docket Number NHTSA–03–16341] by any of the following methods:

- Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site by clicking on “Help and Information” or “Help/Info.”

- 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.

- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., 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 or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

**Docket:** For access to the docket in order to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

**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://dms.dot.gov>.

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall

also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 24, 2003.

(49 U.S.C. 30113; delegations 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: October 20, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-02-12087; Notice 2]

**Century Products; Denial of Application for Decision of Inconsequential Noncompliance**

Century Products, a Division of Graco Children's Products, Inc. (Century Products and Graco), of Macedonia, Ohio, determined that as many as 185,175 child restraints fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," and filed appropriate reports pursuant to 49 CFR Part 573, "Defect and Noncompliance Responsibility and Reports." Century Products also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to safety.

Notice of receipt of the application was published, with a 30-day comment period, on May 17, 2002, in the **Federal Register** (67 FR 35188). NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

FMVSS No. 213, Paragraph S5.1.1, states that when a child restraint system is tested in accordance with S6.1, it shall "[e]xhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than 1/4 inch or surfaces with protrusions greater than 3/8 inch above the immediate adjacent surrounding contactable surface of any structural element of the system."

In its Part 573 Defect and Noncompliance Information Report filed with the agency on December 11, 2001, Century Products stated that "On December 5, 2001, Century Products \* \* \* decided that a noncompliance with Federal Motor Vehicle Safety Standard No. 213 exists in \* \* \* certain \* \* \* "Celestia" model infant car seats manufactured by Century Products. \* \* \* "The Celestia infant seat is sold with a detachable base that may be used to permit a fixed installation into the vehicle, allowing the child seat to be taken in and out of the vehicle without having to do a complete installation each time. The Celestia infant seat can also be used without the detachable base. Century Products identified 185,175 Celestia infant car seats manufactured between January 1, 2000, and December 6, 2001, that may contain this noncompliance. In its Application for Decision of Inconsequential Noncompliance, Century Products stated that it:

has discovered variations in the plastic molding process during the manufacture of the plastic shell of the carrier portion (not the base) of the Subject Products, which can result in a void in the shell wall. This void may cause shell wall separation during the dynamic crash test specified by FMVSS No. 213 when the base is not used, rendering the seat noncompliant. \* \* \* There is no noncompliance problem when the car seat is installed in the vehicle *with the base* (emphasis in original).

In its Part 573 Report, Century Products stated that:

Graco conducted a dynamic crash test audit of its Celestia infant car seats on December 4, 2001. Graco tested (ten) 10 Celestia infant car seats without the base, randomly taken from inventory. Four (4) of the ten (10) units exhibited wall separation and the presence of a void at the initiation point of the separation. As a result of this audit testing, Graco determined that a noncompliance existed.

Century Products believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Century Products supported its application for inconsequential noncompliance with the following:

The risk of injury resulting from the wall separation during the dynamic crash test is inconsequential for several reasons. First, the shell wall separation does not affect, increase, or adversely influence the seat back angle. Thus, the restraint systems comply with FMVSS 213 S5.1.4, which provides that "[w]hen a rear-facing child restraint system is tested in accordance with S6.1, the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees."

Second, all portions of the test dummy's torso were retained within the system and all

other requirements regarding target points on either side of the dummy's head comply with FMVSS 213 S5.1.3.2.

Third, the infant shell remained securely attached to the lap belt during testing. The separation did not contribute to any degradation in the ability of the vehicle belt to retain the infant seat in its original position.

Fourth, the shell wall separation did not create an opening that contributes to the pinching, shearing, or scissoring of fingers, toes, or limbs or any other body part of either the occupant or an adjacent child seated next to the infant seat. The seat pad also acts as a mechanism to keep the occupant from contacting the separated area.

Fifth, the shell wall separation occurs at relatively high energy levels, with the separation occurring late in the application of energy of the crash test (as revealed by Century Products' review of the flexing of the infant shell wall). Few motor vehicle accidents occur at the maximum energy levels of the dynamic crash test. The possibility of a wall separation occurring in the field therefore is remote.

Sixth, the shell wall separation occurs only in a high stress area on the shell when the shell is used *without the base*. When the shell is used with the base, the area in question experiences no significant stress. All of the subject products were sold with a stay-in-the-car base. The base is the most predominately used mode with the infant shell due to its convenience of removing the carrier from the vehicle.

Seventh, in the approximately 18 months that the infant shell has been in use in the subject products, there have been no reports of any incidents or complaints regarding the wall separation on the shell.

Eighth, product owners are advised in the accompanying literature that the seat should be discarded following a crash. In addition, it is a well-known industry practice to discontinue using a child restraint after it has experienced a crash. Thus, there is little risk of injury from the wall separation during a subsequent incident.

Based on the above, Century Products believes that a child subjected to a crash will be fully protected as required by FMVSS No. 213.

NHTSA has reviewed Century Products' application and concluded that the noncompliance is not inconsequential to safety for the following reasons.

The requirements to be met in the dynamic testing of child restraints include: (1) Maintaining the structural integrity of the system, (2) retaining the head and knees of the dummy within specified excursion limits, and (3) limiting the forces exerted on the dummy by the restraint system. These requirements reduce the likelihood that a child using a complying child restraint system will be killed or injured by the collapse or disintegration of the system, by contact with the interior of the vehicle, or by imposition of intolerable forces by the restraint system. Omission