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Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0110]

Tesla Motors, Inc.; Receipt of Petition for Temporary Exemption From the Electronic Stability Control Requirements of FMVSS No. 126

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

ACTION: Notice of receipt of a petition for temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems*.

SUMMARY: In accordance with the procedures in 49 CFR part 555, Tesla Motors, Inc., has petitioned the agency for a temporary exemption from the electronic stability control requirements of FMVSS No. 126. The bases for the application are that the petitioner avers that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety level of that vehicle and that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.¹ This notice of receipt of an application for a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than September 6, 2011.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. *Telephone:* (202) 366–2992; *Fax:* (202) 366–3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 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.

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

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. *Telephone:* (202) 366–9826. *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief

Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

Only small manufacturers can obtain an economic hardship exemption. 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.

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

30113). In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether another entity also might be deemed a manufacturer of that vehicle and whether the production volumes of each of the two manufacturers should be combined in assessing whether the criterion is met. A second entity might be deemed a manufacturer of a vehicle in a variety of circumstances. For example, there are two manufacturers if one entity produces an incomplete vehicle² and another entity then modifies the incomplete vehicle so as to produce a completed vehicle.³ NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

For an exemption petition to be granted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, the petition must include specified information set forth at 49 CFR 555.6(c). The main requirements of that section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of a vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

II. Electronic Stability Control Systems Requirement

In April 2007, NHTSA published a final rule requiring that vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less be equipped with electronic stability control (ESC) systems. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). An anti-lock brake system (ABS) is a prerequisite for an ESC system because

ESC uses many of the same components as ABS. Thus, the cost of complying with FMVSS No. 126 is less for vehicle models already equipped with ABS.

Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes. This is because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 36 percent and fatal single-vehicle crashes of sport utility vehicles (SUVs) by 63 percent.⁴ NHTSA estimates that ESC has the potential to prevent 70 percent of the fatal passenger car rollovers and 88 percent of the fatal SUV rollovers that would otherwise occur in single-vehicle crashes.⁵

The ESC requirement becomes effective for substantially all vehicles on September 1, 2011.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Tesla Motors, Inc. (Tesla) submitted a petition dated June 7, 2011 asking the agency for a temporary exemption from the electronic stability control requirements of FMVSS No. 126. The bases for the application are, first, that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety level of that vehicle and, second, that compliance would cause substantial economic hardship to a petitioner that has tried in good faith to comply with the standard. Tesla has requested an exemption for the Roadster model for a period from September 1, 2011 to December 31, 2011.

Tesla is a Delaware corporation headquartered in California with sales offices throughout the United States and overseas. Tesla currently manufactures and sells only one vehicle, the Roadster. Tesla began production of the all-electric Roadster in 2008 plans to conclude production for the United States market by December 31, 2011.

The Roadster has a single-speed electrically actuated automatic transmission and three phase, four pole AC induction motor. The Roadster has a combined range of 245 miles on a

single charge. Under an agreement with Group Lotus plc (Lotus), Tesla purchases the Roadster "glider," which uses the chassis and several other systems of the Lotus Elise. The gliders are manufactured under Tesla's supervision and direction at a Lotus factory in the United Kingdom and then shipped to Menlo Park, California, where installation of the power train and other final steps are taken prior to sale of the vehicle in the United States.

Tesla sold or leased 276 Roadsters in the United States during 2010 and 62 Roadsters during the first quarter of 2011. Tesla's worldwide production for 2011 is planned to be fewer than 1,000 vehicles. Tesla contends that its relationship with Lotus does not involve any time of ownership, sponsorship, or any other type of control. However, Tesla also observes that the combined production of Lotus and Tesla was less than 10,000 vehicles for 2009 and 2010.

Tesla believes that granting the petition will support development and evaluation of a highway-capable electric vehicle. Tesla states that the development and sale of the Roadster model has allowed them to develop their next all-electric vehicle, the Model S. Tesla states that, with the permission of vehicle owners, it has used data from computers installed in on-road Roadsters related to charging condition and vehicle performance to determine how best to optimize its battery design and vehicle software for future vehicle offerings such as the Model S. Tesla believes that allowing the sale of additional Roadsters will continue to add to its database of information for its future vehicle offerings. Tesla states that it cannot replicate this data in laboratory or other environmental conditions.

Tesla believes that safety will not be unduly compromised if the exemption is granted. In support of this assertion, Tesla cites its inclusion of a traction control system (TCS) on its vehicles. Tesla's TCS is comprised of software, wheel speed sensors, and the drive system electronic control unit (ECU). Tesla states that its TCS has many elements of an ESC system required by FMVSS No. 126. Tesla claims that the TCS system is able to detect slip in the drive wheels through the vehicle's ECU and that the vehicle will limit drive power until wheel spin is controlled. However, Tesla notes that the TCS system does not have the capability to independently monitor or adjust steering inputs to prevent oversteer or understeer, nor is it capable of applying brakes independent of driver input, both of which are required by FMVSS No. 126.

⁴ Dang, J., Statistical Analysis of the Effectiveness of Electronic Stability Control (ESC) Systems—Final Report, DOT HS 810 794, U.S. Department of Transportation, Washington, DC (July 2007). Available at Docket No. NHTSA-2007-28629, item 2.

⁵ *Id.*

² 49 CFR 567.3.

³ *Id.*

Further, Tesla believes that the lack of ESC systems on the Roadster will not unduly compromise safety based on the intended use of the Roadster. The Roadster is a low, two-seat sport coupe. Tesla believes that, while the Roadster is capable of handling slippery roads due to ice and snow, most owners either do not use their Roadsters during winter months or sharply limit their use.

Tesla also contends that the failure to obtain the exemption would result in substantial economic hardship. Tesla states that it has incurred cumulative net losses of \$464 million since inception and nearly \$50 million in the first three months of 2011. Tesla states that the loss of the ability to sell the Roadster in the United States could adversely impact its compliance with financial covenants with the U.S. Department of Energy, potentially depriving it of a source of capital. Further, because the Roadster is the only vehicle Tesla offers for sale in the United States, Tesla contends that the cancellation of the program would result in a significant loss of market for Tesla.

Tesla states that it spent between \$2 million and \$3 million developing an ESC system for the Model S. Tesla does not have a precise cost to equip the Roadster with an ESC system, but applying the per vehicle cost of its Model S to the Roadster, it would cost as much as \$30,000 per vehicle to equip ESC systems onto Roadsters planned to be sold under the exemption.

Tesla notes that its chassis is based upon the Lotus Elise, which is equipped with ABS, but not an ESC system. Because Lotus is ending production of the Elise for the United States market by August 2011, Lotus will not invest in redesigns or additions to existing vehicle systems, including changes to comply with the ESC system requirements. Tesla states that, given the small number of Roadsters planned for production during the exemption period and the short time frame available to Tesla, it is technologically and economically infeasible to develop an ESC system for the Roadster.

Tesla contends that it has exerted good faith efforts to achieve compliance with FMVSS No. 126. Tesla has developed an ESC system for the upcoming Model S, which is scheduled to be introduced in the United States in 2012. Tesla also states that it has included a number of features not mandated by the FMVSSs, including the TCS system discussed earlier. Tesla notes that it had intended on ending Roadster production prior to September 1, 2011 and, thus, would not have been required to equip its vehicles with ESC

systems. Thus, Tesla did not focus development activities on meeting the requirements of FMVSS No. 126. However, due to a shift in production priorities at Lotus, Tesla was informed that an additional quantity of Roadster gliders could be produced in 2011.

Tesla also believes that the exemption is in the public interest. Tesla states that, without the exemption, it may be required to lay off a significant number of employees. Further, Tesla notes that denying this petition would result in fewer electric vehicles for sale in the United States. Finally, Tesla believes that continuing to sell a long range, highway-capable, battery-powered electric vehicle in the United States will lead to more electric vehicles entering the fleet.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition from Tesla is complete and that Tesla is eligible for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: August 2, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011-19914 Filed 8-4-11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0181, Notice 2]

Pagani Automobili SpA; Denial of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of denial of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: This notice denies the petition of Pagani Automobili SpA (Pagani)¹ for exemption from certain advanced air bag requirements of FMVSS No. 208, for the Huayra model.² The basis for the application is that the petitioner avers compliance would cause substantial economic hardship and that it has tried in good faith to comply with the standard.³ The agency has determined that Pagani has failed to demonstrate that compliance would cause substantial economic hardship. Furthermore, the agency is unable to find that an exemption would be consistent with the public interest or the objectives of the Safety Act. This action follows our publication in the **Federal Register** of a document announcing receipt of Pagani's petition and soliciting public comments.

FOR FURTHER INFORMATION CONTACT: William H. Shakely, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-326, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In general, frontal air bags for drivers and right front passengers have large net benefits. NHTSA estimates that they saved 30,232 lives from 1987 through the end of 2009.⁴ Air bags reduce overall fatality risk in purely frontal crashes by 29 percent. They reduce overall fatality risk by 12 percent for drivers of passenger cars, and by 14 percent for right front passengers of passenger cars.⁵

In 2000, NHTSA published a final rule that upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags."⁶ The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and

¹ Pagani was formerly known by Modena Design, the name reflected in the notice of receipt of the petition.

² In the original petition, this model was referred to as the C9 model. In subsequent submissions, the company indicated that the model is now known as the Huayra.

³ To view the application, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

⁴ Traffic Safety Facts—2009 Data—Occupant Protection, NHTSA Report No. DOT HS 811 390, Washington, DC, 2010.

⁵ Kahane, C.J., Lives Saved by the Federal Motor Vehicle Safety Standards and Other Vehicle Safety Technologies, 1960-2002, NHTSA Technical Report No. DOT HS 809 833, Washington, 2004, pp. 108-115.

⁶ See 65 FR 30680 (May 12, 2000).