

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: October 23, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014-25954 Filed 10-30-14; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0032]

Aston Martin Lagonda Limited; Partial Grant of Petition for Temporary Exemption From New Requirements of Standard No. 214

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

ACTION: Notice of partial grant of a petition for a temporary exemption from new requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 214, *Side Impact Protection*.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, NHTSA is partially granting a petition from Aston Martin Lagonda Limited (Aston Martin), a small volume manufacturer, for a temporary exemption from new side impact protection requirements of FMVSS No. 214. The agency is granting the petitioner's request for a temporary exemption from the standard's new pole test requirements, limited to 670 vehicles. The basis for the grant is that compliance would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard. In accordance with NHTSA's regulations, prominent labels must be affixed to each exempted vehicle to warn prospective purchasers that the vehicle has been exempted from the pole test requirements.

However, NHTSA is denying the petitioner's separate request for a temporary exemption from FMVSS No. 214's moving deformable barrier (MDB) test requirement. The agency does not believe that the petitioner has shown a need for such an exemption.

DATES: This exemption from the pole test requirements applies to the following vehicles:

- DB9 coupe model produced from September 1, 2014 until August 31, 2016;

- DB9 convertible model produced from September 1, 2015 until August 31, 2016;
- Vantage coupe model produced from September 1, 2014 until August 31, 2017; and
- Vantage convertible model produced from September 1, 2015 until August 31, 2017.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: NHTSA is granting a request from Aston Martin for a temporary exemption from FMVSS No. 214's new pole test requirements. The basis for the grant is that compliance would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard. NHTSA finds that Aston Martin has made a good faith effort to meet the pole test requirements by, *inter alia*, installing side air bags in its vehicles substantially ahead of the date on which it was required to do so by that standard. Further, Aston Martin believes that its test data indicate that its vehicles may in fact pass the performance criteria of the pole test with the current side air bag. However, the petitioner believes further that a tested vehicle did not produce test results with a margin sufficient to enable it to certify compliance with the pole test.

NHTSA also concludes that denying the petition regarding the pole test, thus forcing a cessation of production until the affected vehicles could be upgraded, would cause petitioner substantial economic hardship and that it is warranted under Part 555 to provide the petitioner time to produce vehicles with a side air bag system that enables the vehicle to pass the pole test requirement with a greater margin.

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act) recognizes that small manufacturers have more limited resources and capabilities than large manufacturers for meeting NHTSA's standards. The Safety Act provides the Secretary of Transportation authority to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 vehicles, if the exemption would be consistent with the

public interest and the Safety Act, and compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.¹ Such an exemption may be granted for not more than 3 years (49 U.S.C. 30113(e)).²

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. Among other matters, the petitioner must set forth the basis of the application and a description of its efforts to comply with the standards.

b. FMVSS No. 214

In 2007, NHTSA published a final rule upgrading FMVSS No. 214.³ The rule incorporated a dynamic pole test into the standard, requiring vehicle manufacturers to assure head and improved chest protection in side crashes by technologies such as head protection side air bags and torso side air bags. The final rule adopted use of two advanced test dummies in the new pole test, one called the ES-2re representing mid-size males, and the other called the SID-IIIs, which represents small stature females. The final rule also enhanced the standard's MDB test by replacing the then-existing 50th percentile adult male dummy used in the front seat of tested vehicles with the more biofidelic ES-2re dummy and by using the SID-IIIs dummy in the rear seat.

The pole and enhanced MDB test requirements were phased in, starting in 2010 for most vehicles (see S13⁴), but manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States had a different

¹ This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

² The Safety Act expressly provides for renewal of an exemption on reapplication. A renewal under subsection (b)(3)(B)(i) may be granted for not more than 3 years. However, NHTSA cautions manufacturers 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 status to an 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. We also consider the manufacturer's ongoing 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.

³ 72 FR 51908 (September 11, 2007); response to petitions for reconsideration 73 FR 32473 (June 9, 2008), 75 FR 12123 (March 15, 2010).

⁴ References in this paragraph are to sections in FMVSS No. 214.

schedule (see S9.1.3(a)(1) and S7.2.4(a)(1)). These manufacturers were excluded from the phase-in of the pole test requirements but are required to certify the compliance of vehicles manufactured on or after September 1, 2014. For convertibles, the pole test applies to vehicles manufactured on or after September 1, 2015 (S9.1.3(d)(1)). The enhanced MDB test requirement has the same phase-in schedule and compliance dates as the pole test (see MDB requirements, S7.2.1, S7.2.4(a), and S7.2.4(a)(3)).

With regard to the phase-in, Aston Martin manufactures approximately 4,000 Aston Martin brand vehicles per year worldwide. Thus, the requirements that are the subject of the petition are FMVSS No. 214's pole and enhanced MDB requirements applying to the petitioner's sedans (coupes) manufactured on or after September 1, 2014, and to its convertibles manufactured on or after September 1, 2015.

c. Overview of Petition⁵

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Aston Martin petitioned NHTSA requesting a temporary exemption from the pole test requirements and enhanced MDB test of FMVSS No. 214. The basis for the application is that compliance would cause Aston Martin substantial economic hardship and that the petitioner has tried in good faith to comply with the standard.

Aston Martin has asked for a temporary exemption for two of its four vehicle models, the DB9 and Vantage. At the time NHTSA issued the pole test and enhanced MDB test requirements in 2007, Aston Martin was planning a new generation of the DB9 and Vantage models. Aston Martin's plan was to: (a) Replace the DB9 and Vantage models with new generation models that would meet the new requirements by the 2014 compliance date; and (b) apply its resources toward redesigning two other models (the Vanquish and Rapide S), that were not scheduled for replacement before 2014, to achieve compliance with the requirements by 2014.

However, "because of little market recovery since 2009,"⁶ Aston Martin's sales volumes have not been sufficient to fund the first part of the original plan,

⁵ Aston Martin originally submitted a petition in July 2013, and then resubmitted its petition in November 2013. A copy of the November 6, 2013 petition is in the docket for this document. To view the petition, go to <http://www.regulations.gov> and enter Docket Number NHTSA-2014-0032. A summary is also provided in NHTSA's notice of receipt of the petition, 79 FR 17231, *infra*.

⁶ Aston Martin petition for temporary exemption, p. 18.

and the DB9 and Vantage models "now have to remain in production slightly longer than anticipated."⁷ The petitioner states that due to funding constraints, Aston Martin could not initiate the start of FMVSS No. 214 compliance programs on the next generation DB9 and Vantage vehicles until April 2013, when the company received funds from an investor that could be used to deliver the next generation of vehicles. The petitioner states: "This capital increase did not include monies for FMVSS 214 compliance for DB9 & Vantage car lines as the next generation of models were originally planned to be launched in August 2014."⁸ Aston Martin states it needs the exemption to continue production of the DB9 and Vantage for the U.S. market until the replacement generation vehicles are ready.

Aston Martin requested that approximately 670 vehicles be covered by the exemption. Aston Martin believes that the cost of meeting the pole and enhanced MDB requirements for these vehicles "would be cost prohibitive given that these models will cease USA production in the near term and the cost of amortization over the approximately 670 cars at issue would be economically infeasible."⁹

The petition requests an exemption for the following periods:

- DB9 coupe model production from September 1, 2014 until August 31, 2016;
- DB9 convertible model production from September 1, 2015 until August 31, 2016;
- Vantage coupe model production from September 1, 2014 until August 31, 2017; and,
- Vantage convertible model production from September 1, 2015 until August 31, 2017.

Petitioner's Assertion That Granting the Petition Is in the Public Interest

Aston Martin asserts that the requested exemption is consistent with the public interest for the following reasons.

1. Aston Martin states that it knows of no deaths or serious injuries that were

⁷ *Id.*, p. 11.

⁸ *Id.*, exhibit 6, p. 2.

⁹ The petitioner has provided engineering and financial information demonstrating how compliance or failure to obtain an exemption would cause substantial economic hardship; a description of its efforts to comply with the standards; why it believes granting the petition is in the public interest; a discussion of alternate means of compliance considered; a description of the steps it will take while the exemption is in effect and the estimated date by which full compliance will be achieved. The petitioner provided confidential production figures in support of its claims.

associated with side impact events or related to the current FMVSS No. 214 protection system in current DB9 and Vantage models. Further, the petitioner also states that¹⁰—

the pole tests that Aston Martin has performed on a DB9 test car did in fact pass the minimum pole test requirements in FMVSS 214. However, Aston Martin cannot self-certify compliance on the basis of a single test with the margin of pass obtained in that test. . . . Nonetheless the pass does indicate that the risk to the public in the existent car would not be contrary to the public interest.

2. Denial would force removal of a vehicle currently sold in the U.S.

3. The number of vehicles to be sold in the U.S. during the exemption period is very low and the number of annual miles driven in Aston Martin vehicles is very low (on average 2,617 miles).¹¹

4. Granting the exemption would protect consumer choice.¹²

5. The current DB9 and Vantage models comply with all FMVSSs other than the requirements of FMVSS No. 214 that are the subject of the petition, and meet the requirements of the upgraded roof crush resistance standard (FMVSS No. 216) ahead of the September 1, 2015 compliance date for the vehicles (final rule upgrading FMVSS No. 216, 74 FR 22348, May 12, 2009).

6. Aston Martin refers to a decision by NHTSA to grant a Lotus request for a temporary exemption from FMVSS No. 208 and states that the agency made clear that a limited exemption is considered to be far more in the public interest compared to a broad waiver. Aston Martin states: "The request here is precisely so limited."¹³

7. The denial of the exemption request would have a negative effect on U.S. employment.¹⁴

¹⁰ The petitioner provided the values recorded by the test dummy in the crash test.

¹¹ The petitioner refers to a 2006 decision by NHTSA to grant a request for a temporary exemption from Ferrari (71 FR 29389) ("Ferrari grant"), in which NHTSA noted that the low number of vehicles affected by the exemption (less than 2,000) and the low number of annual miles driven in the vehicles were factors supporting a finding that the exemption will have a negligible impact on motor vehicle safety.

¹² On this point, the petitioner cites the 2006 Ferrari grant and includes the following statement from NHTSA: "As discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices." (71 FR at 29390.)

¹³ Aston Martin petition for temporary exemption, p. 12. The petitioner did not provide a citation for "the recent Lotus decision" but we assume the reference is to NHTSA's document at 78 FR 15114, March 8, 2013, *infra*.

¹⁴ Aston Martin references the Ferrari grant, in which NHTSA stated (71 FR at 29390): "We note

II. Notice of Receipt and Summary of Comments

On March 27, 2014, NHTSA published in the **Federal Register** (79 FR 17231; Docket No. NHTSA–2014–0032) a notice of receipt of Aston Martin’s petition for a temporary exemption, and provided an opportunity for public comment. NHTSA received no comments opposing the petition.

Over 40 comments were received supporting the petition.¹⁵ These comments were from the Aston Martin dealers in the U.S., many of their employees, and some Aston Martin owners. Each of the dealers emphasized strong concerns about the negative impact that elimination of the DB9 and Vantage models would have on their dealerships,¹⁶ as the dealers would be restricted in their product range and would only be able to sell Vanquish and Rapide S, which, the commenters asserted, would impact their ability to maintain a financially viable operation. All of the dealers expressed alarm about the impact that a denial of the petition would have on all tiers of employment¹⁷ at their place of business and in their community.¹⁸ All of the dealers emphasized that jobs would be lost at their dealership if the DB9 and Vantage models could not be sold. Employees who commented expressed worry about their jobs if the petition were denied. Many dealers expressed concern about the effect of a denial on present and future customer support,¹⁹ as the “Thinning of our network could expose customers to complete loss of ownership support—ex. loss of the Seattle store would place next closest store in [San Francisco] area 850 miles away.”²⁰

Aston Martin Washington DC dealer principal James R. Walker states in his comment²¹ that currently, Aston Martin dealers are “barely profitable” and that franchise composition is fragile. Mr.

that Ferrari is a well-established company with a small but not insignificant U.S. presence and we believe that an 85 percent sales reduction would negatively affect U.S. employment. Specifically, reduction in sales would likely affect employment not only at Ferrari North America, but also at Ferrari dealers, repair specialists, and several small service providers that transport Ferrari vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner’s U.S. work force.”

¹⁵ In this section, we refer to comments by their entry number in Docket No. NHTSA–2014–0032.

¹⁶ See, e.g., comment 0028.

¹⁷ See, e.g., comments 0020 and 0032.

¹⁸ Comment 0028.

¹⁹ Comment 0048.

²⁰ Comment 0003.

²¹ *Id.*

Walker believes that the loss of sales of the DB9 and Vantage could very likely result in some dealers deciding to “shutter the franchise,” which would result in a significant impact on employment. The commenter estimates that if dealers decide to “shutter” franchises, 230 Aston Martin employees in the U.S. would face the loss of their jobs, along with a “substantial number” of another 300 jobs that are in part supported by Aston Martin.

Agency Decision

a. Pole Test Requirement

NHTSA is granting Aston Martin’s request for a temporary exemption from FMVSS No. 214’s new pole test requirements.

The granting of hardship exemptions from FMVSSs is conditioned on the agency’s finding that the petitioning manufacturer has “tried to comply with the standard in good faith.”²² A petitioning manufacturer’s effort to comply with the standard from which exemption is sought is thus extremely important to NHTSA when considering a hardship exemption.

On March 8, 2013, NHTSA granted a temporary exemption petition request from Group Lotus plc (Lotus) regarding an advanced air bag requirement²³ of FMVSS No. 208, “Occupant crash protection.” While NHTSA granted the petition, the agency did so while emphasizing an evolved agency view of such petitions.²⁴ The advanced air bag requirement had engendered a number of hardship petitions from small volume manufacturers, which typically were granted when the manufacturer had supplied standard air bags instead of advanced air bags. However, as time went on and the years passed following adoption of the advanced air bag requirements, NHTSA decided it was not in the public interest to continue to grant exemptions from the requirements “under the same terms as in the past.”²⁵ NHTSA stated in the Lotus notice (78 FR at 15115)—

In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during

²² 49 U.S.C. 30113(b)(3)(B)(i).

²³ In 2000, NHTSA published a final rule that upgraded FMVSS No. 208’s requirements for air bags in passenger cars and light trucks, requiring what are commonly known as “advanced air bags.” See final rule at 65 FR 30680, May 12, 2000.

²⁴ 78 FR 15114.

²⁵ 78 FR at 15115, col. 2. See also denial of petition of Pagani Automobili SpA, 76 FR 47641, August 5, 2011.

the exemption period and the estimated date by which full compliance will be achieved.²⁶

That announcement was made in the context of the advanced air bag hardship petitions relating to the May 2000 final rule. The majority of the petitions then before the agency were petitions for extension of previously granted exemptions. The advanced air bag exemption requests contrast somewhat with Aston Martin’s request for an exemption from the FMVSS No. 214 pole test requirement, since the latter is a new requirement adopted in 2007. Nonetheless, the announcement in the Lotus notice signaled that the agency has sharpened its focus on the effort that manufacturers make to achieve compliance when claiming financial hardship in meeting a standard.

With that background in mind, NHTSA has analyzed Aston Martin’s petition and the effort that the petitioner made to meet the pole test requirement. NHTSA believes that the petitioner has tried to comply with the pole test requirement in good faith.

The FMVSS No. 214 pole test requires vehicle manufacturers to provide head and improved chest protection in side crashes. Manufacturers currently meet the pole test requirement by way of side air bag technology. Installing a side air bag in a vehicle that does not have a side air bag is an intensive endeavor involving extensive redesign of the vehicle’s side structure and seating system, and includes installation of side impact sensors that sense when to deploy the side air bag and sensors that monitor side air bag readiness. In short, installation of side air bags involves a significant investment of effort, planning, resources, and vehicle redesign.

In 2006, Aston Martin began installing side air bags in the DB9 and Vantage model vehicles. Side air bags were considered advanced technology at the time and were generally not needed to meet the FMVSSs that had applied to passenger vehicles. Yet, motor vehicle manufacturers began incorporating side air bag technology in response to NHTSA’s call for action to improve vehicle compatibility in vehicle-to-vehicle crashes of higher-riding light trucks and vans (LTVs) with passenger cars.²⁷ The voluntary installation of side

²⁶ 49 CFR 555.6(a)(2). [Footnote in text.]

²⁷ See notice of proposed rulemaking (NPRM) on the FMVSS No. 214 pole test, 69 FR 27990, 27995; May 17, 2004. NHTSA’s call for action resulted in a “voluntary industry commitment” by vehicle manufacturers in 2003 to enhance occupant protection in side crashes of LTVs into passenger cars by accelerating the installation of side impact air bags.

impact air bags by vehicle manufacturers prior to a Federal mandate was considered by NHTSA to be a laudable industry initiative to meet the goal of saving lives “sooner than through the traditional regulatory approach.”²⁸

Aston Martin’s installation of side air bags in the DB9 and Vantage model vehicles involved a significant investment of work and resources on the part of the petitioner. We conclude that the petitioner’s installation of the safety countermeasures 8 years ahead of the September 1, 2014 effective date of the final rule is evidence of a good faith effort to meet the pole test requirement. In 2011, the manufacturer crash tested a DB9 coupe in an FMVSS No. 214 pole test and found that the performance was not with a margin sufficient to enable Aston Martin to certify compliance with the pole test. Yet, data from the test show that ES-2re dummy readings were actually below the performance threshold of FMVSS No. 214. The “passing” values obtained from the test are further evidence of the petitioner’s good faith effort to meet the pole test requirement.

We note that the petitioner has asked for a 3-year exemption for just one of the models (Vantage Coupe) and only a 1- to 2-year exemption for the other 3 models covered by the petition. These short periods indicate that the petitioner is expeditiously working toward producing fully compliant next generation DB9 and Vantage vehicles and that the exemption requested is just for a relatively short term. In addition, Aston Martin indicates that it is engineering the next generation DB9 replacement coupe to meet the requirements of FMVSS No. 226, *Ejection Mitigation*, a year earlier than required by that standard.²⁹ These factors are positive indicators of the effort Aston Martin plans to make during the exemption period to produce newly designed and fully compliant DB9 and Vantage models.

After considering Aston Martin’s early installation of side air bags, the performance of the current side air bags and petitioner’s progress toward producing the next generation DB9 and Vantage models, we believe that Aston Martin has tried to comply with the pole test requirement in good faith. Granting the petition on the pole test provides Aston Martin additional time to build on its efforts and achieve greater margins in passing the pole test, which

the petitioner believes it needs to fully certify the vehicles to FMVSS No. 214.

A grant is consistent with the Safety Act. NHTSA searched the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System Crashworthiness Data System (NASS-CDS) data for years 2000 to the present. The FARS and NASS-CDS databases do not contain any instance in which Aston Martin vehicles were involved in side crashes resulting in injury or fatality. This information, and the fact that the DB9 and Vantage vehicles already have side impact air bags, support our finding that an exemption will have a negligible impact on motor vehicle safety.

Several factors support a finding that granting Aston Martin’s exemption regarding the pole test is in the public interest. The number of vehicles at issue is 670. Further, we agree with Aston Martin that the relatively low number of miles driven by the vehicle because of its nature as a second vehicle will mean that the vehicle is less likely to be involved in a crash than a vehicle that is the primary means of transportation.

Further, denial of the request would remove a vehicle that is currently being sold in the U.S. market. Given that the DB9 and Vantage models comprise two of the four models produced by Aston Martin, the withdrawal of the models from the market would appreciably reduce Aston Martin’s presence in the U.S. for a significant period.³⁰ Denial of the petition would create hardship for U.S. workers. NHTSA has given due consideration to the comments in the docket from affected Aston Martin dealers and their employees. A grant will avoid the possibility of job losses and other negative consequences at U.S. dealerships, such as possible closure of some servicing facilities which could negatively affect the ability of customers to service, maintain, and fix any problems with their vehicles in a timely manner.

We also conclude that Aston Martin demonstrated the requisite potential financial hardship. The petitioner has had a cumulative net loss position over the past several years. Denial of the petition would require Aston Martin to expend a large amount of capital to modify the DB9 and Vantage right before the model year change or would force the petitioner to cease sales of the vehicles in the U.S. Either outcome would cause substantial economic hardship to the petitioner.

After considering all of the relevant information, we have decided to grant Aston Martin a temporary exemption from the pole test of FMVSS No. 214 for the periods designated at the beginning of this document in the **DATES** section. However, the total number of vehicles that may be produced under this exemption is limited to 670.

We note that, as explained below, prospective purchasers of the exempted vehicles will be notified that the vehicles are exempted from the pole test of FMVSS No. 214. Under 49 CFR 555.9(b), a manufacturer of an exempted passenger car must securely affix 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 in which 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. 214 generally, without an indication that the exemption is limited to the pole test provision, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of FMVSS No. 214’s requirements. For this reason, we believe the two labels should read in relevant part, “except for the pole test of Standard No. 214, Side Impact Protection, exempted pursuant to * * *.”

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Aston Martin is granted NHTSA Temporary Exemption No. EX 14-01, from the pole test requirement of 49 CFR 571.214 for the DB9 and Vantage models. The exemption is for no more than 670 vehicles and it shall remain effective for the periods designated at the beginning of this document in the **DATES** section.

b. MDB Requirement

Aston Martin also requested an exemption for the DB9 and Vantage vehicles from FMVSS No. 214’s amended MDB test requirement. The basis for the request appears to be to

²⁸Id.

²⁹Aston Martin petition for temporary exemption, p. 11.

³⁰NHTSA has traditionally found that the public interest is served by affording consumers the choice of a wider variety of motor vehicles.

basis for the request appears to be to allow the petitioner to avoid having³¹—to test pole-exempted models for new MDB compliance—and possibly have to reengineer to achieve satisfactory results. Then, before the pole test exemption ended, Aston Martin would have to retest and reengineer these pole-exempted models for A SECOND TIME, in order to achieve both new MDB and Pole test compliance. NHTSA clearly sought to allow lead time to avoid this double burden. [Emphasis in text.]

The agency is denying Aston Martin's request to be exempted from the MDB requirement. We conclude that an exemption is not necessary on the basis of the information before it. Aston Martin submitted FMVSS No. 214 MDB test data³² of a DB9 Volante convertible, Vantage coupe, and Vantage Roadster convertible tested with the mid-size adult male side impact dummy (SID) that FMVSS No. 214 had specified for use in the MDB test prior to the ES-2re. The data show that the vehicles appear to have passed the performance thresholds of FMVSS No. 214's MDB test by a wide margin with the SID.

In the final rule adopting the new MDB requirements into FMVSS No. 214 (requirements which use the ES-2re), NHTSA set forth findings indicating that manufacturers would likely not need to modify vehicles to meet the new MBD requirements when using the ES-2re in place of the SID.³³ Moreover, data indicate that vehicles that pass the MDB requirement using the SID will likely pass the MDB test using the ES-2re. The DB9 and Vantage models have easily passed the MDB test using the SID. Thus, we believe that data indicate the DB9 and Vantage models will pass the MDB test with the ES-2re and do not need a temporary exemption from the new MDB requirement. Accordingly, NHTSA is denying petitioner's request for an exemption from the new MDB requirement due to an absence of information showing such an exemption is needed.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Dated: October 22, 2014.

David J. Friedman,
Deputy Administrator.

[FR Doc. 2014-25892 Filed 10-30-14; 8:45 am]

BILLING CODE 4910-59-P

³¹ See Aston Martin petition for temporary exemption, p. 5.

³² Accorded confidential treatment by NHTSA.

³³ NHTSA believed that vehicle modifications would likely result from adding the SID-IIs 5th percentile adult female dummy to the rear seat of the MDB test. See 72 FR at 51947. The SID-IIs is not used in tests of Aston Martin vehicles because the vehicles do not have a rear seat or one large enough to accommodate the SID-IIs.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35866]

Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of Housatonic Railroad Company, Inc.

The Massachusetts Department of Transportation (MassDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Housatonic Railroad Company, Inc. (HRRC) and Maybrook Railroad Company (MRC)¹ certain railroad assets comprising a section of the “Berkshire Line,” extending from approximately milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, Mass., to a connection with CSX Transportation, Inc., at approximately milepost 86.3 at Pittsfield, Mass., a distance of approximately 36.3 miles (the Line).

According to MassDOT, the acquisition of the Line is intended to facilitate the Commonwealth's long-term plans to restore regional passenger train service linking the Berkshire region of western Massachusetts with the New York City metropolitan area and the Northeast Corridor megalopolis. MassDOT states that the acquisition of the Line is one step in what MassDOT anticipates will be an involved, multi-step process that ultimately will lead to the establishment of a new railroad passenger service route in the Northeast. MassDOT states that, pursuant to a draft Purchase and Sale Contract, MassDOT has secured the right to purchase MRC's and HRRC's respective rights, title, and interest in the right-of-way, trackage, and other physical assets (such as signboard and fiber optics unrelated to the provision of common carrier freight service) associated with the Line, subject to HRRC's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable, and transferable freight railroad operating easement. MassDOT also states that it will not acquire the right, nor will it have the ability, to provide rail common carrier service over the Line.² According to MassDOT, the agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT

¹ MassDOT states that MRC is not a rail carrier for purposes of the present transaction and, therefore, is not listed in the proceeding caption.

² A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

from interfering materially with the provision of railroad common carrier service over the Line. MassDOT, however, will be entitled in the future to initiate (itself, or through a designated third party) intercity passenger service and regional commuter rail service over the Line. MassDOT states that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

MassDOT certifies that, because it will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.

MassDOT also states that the parties expect to consummate the transaction on or about December 15, 2014, which is after the effective date of November 15, 2014.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 7, 2014 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35866, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: October 28, 2014.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014-25938 Filed 10-30-14; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. FD 35523]

CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad Company, Inc.

AGENCY: Surface Transportation Board, DOT.