

efforts must await the second generation of the U.S. CCX.

In short, Koenigsegg argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of U.S. CCX, the company expects that additional development efforts could start in 2007, thereby allowing production of a fully compliant vehicle in late 2009.

*Koenigsegg 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. Specifically, Koenigsegg argued that the vehicle would be equipped with a fully-compliant standard U.S. air bag system (i.e., one meeting the requirements of FMVSS No. 208 except for the advanced air bag requirements). As to headlamps, Koenigsegg stated that the CCX's current headlamps (designed to European specifications) are very close to meeting the photometric requirements of FMVSS No. 108, and consequently, they do not pose a safety risk. The petitioner stated that the CCX's carbonfibre body system should reduce low-speed damage repair costs even in the absence of a conventional bumper that meets the requirements of part 581. However, the company stated that it would also place information in the vehicle owner's manual regarding the need for greater care due to the absence of a conventional bumper system. In all other areas, Koenigsegg emphasized that the CCX will comply with applicable FMVSSs.

As additional bases for showing that its requested exemption would be in the public interest, Koenigsegg offered the following. The company asserted that there is consumer demand in the U.S. for the CCX, and granting this application will allow the demand to be met, thereby expanding consumer choice. The company also suggested another reason why granting the exemption would not be expected to have a significant impact on safety, specifically because the vehicle is unlikely to be used extensively by owners, due to its "sporty (second car) nature." Koenigsegg reasoned that given its very low production volume and customer base, the possibility of any child being in the vehicle is extremely small. Finally, Koenigsegg indicated that the CCX incorporates advanced

engineering and certain advanced safety features that are not required by the FMVSSs, including racing brakes with anti-lock capability and traction control. In addition, the company argued that the CCX has enhanced fuel efficiency due to its highly aerodynamic design.

#### V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (i.e., September 1, 2006). 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 18, 2006.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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**BILLING CODE 4910-59-P**

#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25544, Notice 1]

##### SS II of America, Inc.; Receipt of Application for a Temporary Exemption From the Air Bag Requirements of FMVSS No. 208

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

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

**SUMMARY:** In accordance with the procedures in 49 CFR part 555, SS II of America, Inc. (SS II) has petitioned the agency for a temporary exemption from the 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.<sup>1</sup>

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

<sup>1</sup>To view the application, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter the docket number set fourth in the heading of this document.

**DATES:** You should submit your comments not later than September 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

**Comments:** 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://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 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 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 a.m. and 5 p.m., 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

above. To the extent possible, we shall also consider comments filed after the closing date.

### **I. Air Bag Requirements and Small Volume Manufacturers**

Under S4.1.5.3 of FMVSS No. 208, new passenger vehicles manufactured on or after September 1, 1997 are required to be equipped with an inflatable restraint system (*i.e.*, an air bag) at the driver's and right front passenger's positions. These air bags must provide the vehicle occupants in those seating positions with frontal crash protection meeting the requirements of S5.1 of the standard by means that require no action on the part of those occupants.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags."<sup>2</sup> 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 are 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 seeking comments on a petition for a temporary exemption from the air bag requirements submitted by a manufacturer of very expensive, low volume, exotic sports cars.

### **II. Overview of Petition for Economic Hardship Exemption**

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, SS II has petitioned the agency for a temporary exemption from the air bag requirements of FMVSS No. 208 (S4.1.5.3 and S14). 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. A copy of the petition is available for review and has been placed in the docket for this notice.

### **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 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.

### **IV. Petition of SS II of America, Inc.**

*Background.* SS II is a privately-held company that was incorporated in the State of Nevada in 2005 and began operations in January 2006. According to the petitioner, SS II acquired the tooling for the Shelby Series 1 vehicle under a licensing agreement from Shelby American Corporation, pursuant to which SS II has the right to produce 250 Shelby Series II, a convertible sports car based upon the Shelby Series 1 design. The Shelby Series II will utilize the same chassis as the Shelby Series 1, but it will use modified exterior, interior, and powertrain components. SS II operates independently and is not affiliated with any other vehicle manufacturer.

In a supplement to its petition, SS II stated that Shelby American Inc. (another small volume manufacturer) produced Shelby Series 1 vehicles for sale only in model year 1999, and these vehicles were sold without an inflatable restraint system, because NHTSA granted that company a temporary exemption under part 555 (*see* 64 FR 6736 (Feb. 10, 1999)). As a result, when SS II acquired the tooling for the Shelby Series 1, there was no air bag system, so development efforts in this area must, by necessity, start from a very fundamental level.

The petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the air bag requirements of FMVSS No. 208, and that it would incur substantial economic hardship if it cannot sell vehicles in the U.S. after September 1, 2006.

*Eligibility.* SS II is a U.S. company incorporated in Nevada in 2005. The company is a small volume manufacturer of specialty sports cars with approximately 30 employees. The organization obtained the rights to produce 250 "Shelby" vehicles under a licensing agreement from Shelby American Corporation. However, SS II is an independent automobile manufacturer; no vehicle manufacturer has an ownership interest in SS II, and the reverse is likewise true.

As a relatively new company, SS II has not produced any vehicles in prior years. According to its current forecasts, SS II anticipates the following production of Shelby Series II vehicles over calendar years (CY) 2006–2008: 86 vehicles in CY 2006; 120 vehicles in CY 2007, and 44 vehicles in CY 2008.

*Requested exemption.* SS II stated its intention to certify compliance of Shelby II vehicles with all applicable U.S. standards by July 2008, including advanced air bags. The company envisions a later generation of Shelby III

<sup>2</sup> See 65 FR 30680 (May 12, 2000).

vehicles that would similarly comply with all applicable standards. Accordingly, SS II seeks an exemption from the requirements of S4.1.5.3 and S14 of FMVSS No. 208 from the date of approval of its petition to July 31, 2008.

**Economic hardship.** The financial documents submitted to NHTSA by the petitioner indicate that the SS II Shelby Series II project will result in financial losses unless SS II obtains a temporary exemption. As discussed below, the company has invested significant resources to ensure that the Shelby Series II meets current U.S. standards, and it has plans for the development of an inflatable restraint system that meets the "advanced air bag" requirements of FMVSS No. 208.

As of the time of the application, SS II has invested over \$1.4 million on the design, development, and homologation of the Shelby Series II project in order to have the vehicle meet U.S. standards—not including the air bag requirements which are the subject of the present petition for temporary exemption. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

SS II stated that costs associated with air bag engineering and development (including materials, tooling, testing, and test vehicles) have been estimated to be almost \$4.2 million. In its petition, SS II reasoned that sales in the U.S. market must commence in order to finance this work and that the exemption is necessary to allow the company to "bridge the gap" until fully compliant vehicles can be funded, developed, tooled, and introduced.

If the exemption is denied, SS II projects a net loss of nearly \$4.8 million over the period from calendar years 2006–2008. However, if the petition is granted, the company anticipates a net profit of over \$1.7 million during that same period.<sup>3</sup> According to the petitioner, if its exemption request is denied, the company would not have sufficient funds to sustain its air bag development program, and it would have to discontinue the Shelby Series II and subsequent vehicle programs for USA-compliant vehicles, thereby

causing substantial economic hardship to the company.

**Good faith efforts to comply.** As noted above, SS II has invested over \$1.4 million on the design, development, and homologation of the Shelby Series II project in order to have the vehicle meet U.S. standards (other than the air bag provisions). Furthermore, to date, SS II has invested over \$22,500 related to the installation of passenger and driver air bags in Shelby Series II vehicles. Since the company's start-up, it has been able to bring the vehicle into compliance with all applicable NHTSA regulations, except for the air bag provisions of FMVSS No. 208.

SS II considered the alternative of installing a standard air bag system (*i.e.*, one that meets the requirements of FMVSS No. 208, except for the advanced air bag provision) in the Shelby Series II, but it was determined that a temporary exemption would still be necessary, because such an interim measure could not be implemented before the second quarter of 2008. Thus, in light of limited resources, the petitioner reasoned that it would be logical to move directly to the development of an air bag system that meets the advanced air bag requirements of FMVSS No. 208, without first seeking to develop a standard air bag system. According to SS II, installation of an advanced air bag system would require just a few more months in terms of development time at slightly higher cost. In contrast, SS II stated that it would have been cost-prohibitive for the company to develop and install a non-advanced air bag, which would then be followed by an advanced air bag system. According to the petitioner, the modifications to the vehicle to implement any inflatable restraint system are substantial, and not all the changes that would be appropriate for a non-advanced system would be suitable for an advanced system, so the company reasoned that it would be a waste of resources not to immediately pursue the advanced air bag technology already mandated under FMVSS No. 208.

The petitioner estimates that development of an advanced air bag system for the SS II would entail an average expenditure of \$174,000 per month for the approximately 24 months it would take to develop and validate the system. According to its petition, even though air bags are beyond its current capabilities, SS II is nonetheless planning for the introduction of these devices.

The company expects to subcontract most of the air bag development project to an experienced outside company, and

as noted above, current plans estimate a cost of nearly \$4.2 million and a minimum lead time of 24 months for the advanced air bag project. SS II stated that the following engineering efforts are needed to equip the Shelby Series II with an advanced air bag system: (1) Tooling for both prototypes and production vehicles; (2) contractor engineering; (3) air bag system materials; (4) cost of test vehicles; (5) integration of air bag wiring; (6) radio frequency interference/electromagnetic compatibility (RFI/EMC) testing and engineering; (7) design and development of a new seat with sensors; (8) frontal barrier crash testing; and (9) system validation.

In terms of specific vehicle modifications necessary to install air bags in the Shelby Series II, the petitioner stated that the following changes are required: (1) Redesign of the dashboard exterior and supporting skeletal structure to add a passenger-side air bag; (2) redesign of the steering column to install a driver-side air bag; (3) installation of new seats with sensors; (4) integration of the air bag system's wiring harness with the vehicle's main wiring harness, and (5) installation of crash sensors and a properly calibrated restraint control module.

In short, SS II argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. With funding from sale of the current generation of Shelby Series II vehicles, the company expects that additional development efforts could commence as would permit production of a fully compliant vehicle in July 2008.

**SS II 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, SS II emphasized that the Shelby Series II will comply with all applicable FMVSSs, except for air bags.

The company asserted that granting the exemption will benefit U.S. employment, companies, and citizens, because Shelby Series II vehicles will be produced in the U.S., will have major components (*e.g.*, chassis, body, and engine) produced by U.S. companies, and will be sold and serviced through U.S. dealers. SS II also argued that

<sup>3</sup> It should be noted that the two sets of financial projections supplied by SS II reflect slightly different timeframes. For the scenario in which the agency denies the company's requested exemption, figures are provided for January 2006 to December 2008. However, for the scenario in which the agency grants the company's requested exemption, figures are provided for January 2006 to June 2008. The truncated financial figures under the "grant" scenario reflect the fact that if the petition is granted, SS II expects to have produced all 250 Shelby Series II vehicles permitted under its licensing agreement by mid-2008.

denial of the exemption request would have an adverse impact on consumer choice, suggesting that there is domestic demand for Shelby Series II vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, SS II stated that Shelby Series II vehicles have utilized advanced composite technology and lightweight materials, which provide both strength and durability. According to SS II, this reduced weight translates into improved emissions and fuel efficiency.

#### V. Issuance of Notice of Final Action

We are providing a 15-day comment period, in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers (*i.e.*, September 1, 2006). 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 18, 2006.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. E6-14261 Filed 8-25-06; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25545, Notice 1]

#### YES! Sportscars; Receipt of Application for a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

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

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

**SUMMARY:** In accordance with the procedures in 49 CFR part 555, YES! Sportscars 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.<sup>1</sup>

<sup>1</sup> To view the application, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter the docket number set fourth in the heading of this document.

This notice of receipt of an application for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the application.

**DATES:** You should submit your comments not later than September 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ed Glancy or Mr. Eric Stas, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366-2992; fax: (202) 366-3820.

**Comments:** 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://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 a.m. and 5 p.m., 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 above. To the extent possible, we shall also consider comments filed after the closing date.

#### 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."<sup>2</sup> 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 are 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

<sup>2</sup> See 65 FR 30680 (May 12, 2000).