

U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. 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: May 25, 2007.

Claude H. Harri,

Director, Office of Vehicle, Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25544]

SS II of America, Inc.; Denial 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: Denial of application for a temporary exemption from provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: This document denies the petition of SS II of America, Inc. (SS II) for a temporary exemption from the air bag requirements of FMVSS No. 208 for the SS II Shelby Series II from September 1, 2006 through July 31, 2008. The basis for the application was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.¹ We have determined that it would not be in the

public interest or consistent with the Safety Act to grant an economic hardship exemption to permit this vehicle to be sold without air bags.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Nakama, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

SUPPLEMENTARY INFORMATION:

I. 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 units of the Shelby Series II, a convertible sports car based upon the Shelby Series 1 design. The Shelby Series II would utilize the same chassis as the Shelby Series 1, but 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.

A. 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.

B. Requested exemption. SS II stated its intention to certify compliance of Shelby II vehicles with all applicable U.S. standards by July 31, 2008, including advanced air bags. The company envisions a later generation of Shelby III 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.

II. SS II's Statement of 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.² According to the

¹ 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.

² 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,

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.

III. SS II's Statement of 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.

IV. SS II's Statement of 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 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. Notice of Receipt of Petition and Public Response

On August 28, 2006 (71 FR 50977) (Docket No. NHTSA-2006-2554), NHTSA published a Notice of Receipt of Application for a Temporary Exemption From the Air Bag Requirements of FMVSS No. 208, and asked for public comment. NHTSA received no comments in response to this notice.

VI. Agency Decision

NHTSA has decided to deny SS II's petition for the SS II Shelby Series II. As discussed below, we have concluded that it would not be in the public interest to grant an economic hardship exemption to permit this vehicle to be sold without air bags.

In discussing this decision, we begin by noting that, in order to grant an economic hardship petition, the agency must, under 49 U.S.C. 30113(b), find both that compliance with a standard would cause substantial economic hardship and that the manufacturer has tried to comply with the standard in good faith, as well as that the exemption is in the public interest and consistent with the Safety Act.³ The purpose of the Safety Act is to reduce traffic accidents

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.

³ The Safety Act is codified as Title 49, United States Code, Chapter 301.

and deaths resulting from traffic accidents.

In recent years, the agency has received a number of economic hardship petitions concerning requirements for air bags. Most of the petitions have been limited to requirements for advanced air bags, which did not become effective for small volume manufacturers until September 1, 2006. A very small number of petitioners have requested that vehicles be permitted to be manufactured and sold without air bags.

We are concerned about the potential safety implication of any temporary exemptions that may be granted by this agency. However, in considering whether a requested economic hardship exemption is in the public interest and consistent with the Safety Act, we believe it is important to distinguish between petitions requesting exemptions from requirements for advanced air bags and ones requesting exemptions to permit vehicles to be manufactured and sold without air bags.

There are significant differences between these two types of petitions. One difference relates to the length of the time that the relevant requirements have been in effect, and related technical difficulties in bringing vehicles into compliance with the requirements. The other difference relates to safety benefits.

All passenger cars manufactured on or after September 1, 1997 have been required to provide air bags at the driver and right front passenger positions. Thus, the requirements for "basic" air bags are longstanding, and a number of small volume manufacturers have found ways to meet the requirements.

By contrast, the requirements for advanced air bags did not become effective for small volume manufacturers until September 1, 2006. Because the new advanced air bag 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.

Frontal air bags for drivers and right front passengers have great net benefits. NHTSA estimates that they saved 19,659 lives from 1987 through the end of 2005.⁴ 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

Given the large benefits of frontal air bags, the number of years that the requirements have been in effect and the fact that a number of small volume manufacturers have been able to meet the requirements for "basic" air bags, we have determined that it is generally not in the public interest or consistent with the Safety Act to grant new economic hardship exemptions to permit light vehicles to be sold without air bags. We note that while the agency has granted a small number of such exemptions in the past, we believe it is more difficult with the passage of time, to justify granting such petitions, since air bag technology has been widely available and incorporated into vehicle designs for over twenty years.

As for the SS II Shelby Series II, we note that, as indicated earlier, SS II began operations in January 2006. It 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 a convertible sports car based upon the Shelby Series 1 design. The Shelby Series II would utilize the same chassis as the Shelby Series 1, but use modified exterior, interior, and powertrain components. The SS II Shelby Series II is in essence a modified version of an older vehicle that was designed without air bags. Given the safety benefits of frontal air bags, we have determined that it would not be in the public interest or consistent with the Safety Act to grant an economic hardship exemption to permit the manufacture and sale of this vehicle without air bags.

Since we have determined that the requested exemption is not in the public interest or consistent with the Safety Act, it is not necessary address the issues of economic hardship or whether or not the manufacturer has tried to comply with the standard in good faith.

Accordingly, SS II's petition for a temporary exemption is denied.

Issued on: May 24, 2007.

Nicole R. Nason,

Administrator.

[FR Doc. E7-10501 Filed 5-30-07; 8:45 am]

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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.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-28262]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Honda CR-V Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Honda CR-V multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Honda CR-V multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 2, 2007.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.] 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>.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a

⁴ Traffic Safety Facts—2005 Data—Occupant Protection, NHTSA Report No. DOT HS 810 691, Washington, 2006.