

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-27437; Notice 1]

## Grote Industries, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Grote Industries, LLC (Grote) has determined that the amber reflex reflectors on certain trucks manufactured between 2004 through 2007 do not comply with S5.1.5 of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, reflective devices, and associated equipment." Grote has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Grote has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Grote's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 137,050 reflex reflectors that have been sold for installation as original equipment on trucks and were manufactured between December 28, 2004 and January 22, 2007. S5.1.5 of FMVSS No. 108 requires:

The color in all lamps, reflective devices, and associated equipment to which this standard applies shall comply with SAE Standard J578c, Color Specification for Electric Signal Lighting Devices, February 1977.

The reflex reflectors do not contain the correct reflective material required to meet the requirements of S5.1.5. Grote has corrected the problem that caused these errors so that they will not be repeated in future production. Grote believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted.

Grote first became aware of the noncompliance of these reflex reflectors when a report was received from one of its customers who noticed a shipment of reflex reflectors it had received from Grote were a different color than previous shipments. The customer was supposed to receive amber reflex reflectors that met the requirements of FMVSS No. 108 for use as front side-mounted and intermediate side-mounted reflex reflectors.

This noncompliance pertains solely to the failure of these reflectors to meet the applicable color requirements. The subject reflex reflectors were manufactured for Grote by a third-party supplier. The third-party supplier incorporated reflective tape that it purchased from a reflective material supplier. Based on the results of tests conducted for Grote, Grote believes the intermediate supplier had been using retroreflective tape that was manufactured to the specification for "selective yellow," instead of the correct specification for "amber," as set forth in the SAE J578c requirement. The intermediate supplier was operating under a certification letter from the reflective material supplier, which erroneously listed the material as compliant.

Grote believes the failure of these reflex reflectors to meet the color specification does not reduce their effectiveness in providing proper visibility to allow identification of the front and (where applicable) intermediate side points of a vehicle. Grote believes the difference between compliant amber reflex reflectors and the subject noncompliant selective yellow colored reflex reflectors is barely discernible to the naked eye when reflected with "Illuminant A" light under conditions of ambient darkness. Such conditions are intended to imitate nighttime driving conditions when reflex reflectors serve their primary purpose.

Grote states that it knows of no accidents or other issues associated with this noncompliance. The noncompliant reflex reflectors continue to perform their intended function without any identifiable reduction in safety. Therefore, Grote believes that this noncompliance is inconsequential to motor vehicle safety and that all other requirements under FMVSS No. 108 are met.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. *Mail:* Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be

submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the *Federal eRulemaking Portal*: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* May 9, 2007.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: April 3, 2007.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25546, Notice 2]

## Koenigsegg Automotive AB; Response to Application for a Temporary Exemption From the Headlamp Requirements of FMVSS No. 108; Advanced Air Bag Requirements of FMVSS No. 208

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

**ACTION:** Grant of application for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, and from certain provisions of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*.

**SUMMARY:** This document grants the Koenigsegg Automotive AB ("Koenigsegg") application<sup>1</sup> for temporary exemption from certain advanced air bag requirements of

<sup>1</sup> While Koenigsegg also petitioned for an exemption from the 49 CFR Part 581 Bumper Standard, it subsequently withdrew that portion of its petition (see Docket No. NHTSA-2006-25546-4).

FMVSS No. 208, *Occupant Crash Protection*, and from the headlamp requirements of FMVSS No. 108 through December 31, 2009. These exemptions apply to the Koenigsegg CCX. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the application<sup>2</sup> in the **Federal Register** and asked for public comments.<sup>3</sup> We received no comments on the application.

**DATES:** The exemption from the specified provisions of FMVSS No. 208 and FMVSS No. 108 is effective immediately and remains in effect through December 31, 2009.

**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.

### **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>4</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 (i.e., original vehicle manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States) were 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 addressing a petition that seeks, in part, a temporary exemption from the advanced air bag requirements. As part of the same document, we are addressing the petitioner's request for temporary exemptions from the agency's headlamp requirements. The petitioner is a manufacturer of 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, Koenigsegg petitioned the agency for a temporary exemption from certain headlamp requirements of FMVSS No. 108 (S7), advanced air bag requirements of FMVSS No. 208 (S14), and bumper requirements of 49 CFR Part 581. However, in a letter dated December 12, 2006, Koenigsegg advised the agency that recently completed testing had indicated that its modified bumper system complied with the Part 581 bumper standard and that it was withdrawing the portion of its petition requesting an exemption from that standard (*See* Docket No. NHTSA-2006-25546-4). Accordingly, we need not further discuss that portion of the Koenigsegg petition dealing with the

now-superseded request concerning the bumper standard.

The basis for each portion of the application is that compliance would cause substantial economic hardship<sup>5</sup> to a manufacturer that has tried in good faith to comply with these standards. A copy of the petition<sup>6</sup> is available for review and has been placed in the docket for this notice. The agency closely examines and considers the information provided by manufacturers in support of these factors, and, in addition, pursuant to 49 U.S.C. 30113(b)(3)(A), determines whether exemption is in the public interest and consistent with the Safety Act.<sup>7</sup>

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.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a

<sup>5</sup> When considering financial matters involving companies based in the European Union (EU), it is important to recognize that EU and U.S. accounting principles have certain differences in their treatment of revenue, expenses, and profits. Public statements by EU manufacturers relating to financial results should be understood in this context. This agency analyzes claims of financial hardship carefully and in accordance with U.S. accounting principles.

<sup>6</sup> The company requested confidential treatment under 49 CFR Part 512 for certain business and financial information submitted as part of its petition for temporary exemption. Accordingly, the information placed in the docket does not contain such information that the agency has determined to be confidential.

<sup>7</sup> The Safety Act is codified as Title 49, United States Code, Chapter 301.

<sup>2</sup> To view the application, go to: <http://dms.dot.gov/search/searchFormSimple.cfm> and enter Docket No. NHTSA-2006-25546.

<sup>3</sup> *See* 71 FR 50974 (August 28, 2006) (Docket No. NHTSA-2006-25546-1).

<sup>4</sup> *See* 65 FR 30680 (May 12, 2000) (Docket No. NHTSA-2000-7013).

“temporary basis,”<sup>8</sup> the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned 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 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, along with the manufacturer’s on-going 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.

### III. Petition of Koenigsegg

**Background.** Koenigsegg Automotive is a Swedish corporation formed in 1999 to produce high-performance sports cars. This application concerns the Koenigsegg CCX which was developed as the next generation of Koenigsegg vehicles after production of the CCR model ended on December 30, 2005. The CCX model (the company’s only model at this point) is scheduled to go into production in 2006 and to continue at least through the end of 2009. Originally, Koenigsegg planned to sell vehicles only in the European, Mid-East, and Far-East markets, but the company decided in late 2005 to seek entry to the U.S. market for reasons related to ongoing financial viability. The retail price for the CCX is reported to be over \$700,000 per vehicle.

As discussed in further detail below, the petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the headlamp and advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. after January 1, 2007.

**Eligibility.** Koenigsegg is a small, privately-owned company with 30 full-time staff members and several part-time employees. The company is a small volume manufacturer whose total production is less than 50 cars per year, having produced between four and eight vehicles per year for the past four years. According to the company, its sales revenues have averaged approximately \$3.7 million per year. Koenigsegg is not affiliated with any other automobile manufacturer.

According to its current forecasts, Koenigsegg anticipates the following number of CCX vehicles would be imported into the United States, if its

requested exemptions were to be granted: 25 in calendar year (CY) 2007; 30 in CY 2008, and 30 in CY 2009.

**Requested exemptions.** Koenigsegg stated that it intends to certify the CCX as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner stated that it previously determined the CCX’s compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Koenigsegg stated that it, therefore, cannot at present say with certainty that the CCX will comply with the unbelted test requirement under S14.5.2, which is a 20–25 mph rigid barrier test.

As for the CCX’s compliance with the other advanced air bag requirements, Koenigsegg stated that it does not know whether the CCX will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Koenigsegg is requesting an exemption for the CCX from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Koenigsegg further requested exemption from the headlamp requirements set forth in S7 of FMVSS No. 108.

Koenigsegg stated its intention to produce a second generation of the CCX model by late 2009, which would be certified as complying with all applicable U.S. standards, including ones for head lamps (FMVSS No. 108, S7) and advanced air bags (FMVSS No. 208, S14). Accordingly, the company is requesting exemption from the enumerated requirements for the period from January 1, 2007 through December 31, 2009.

**Economic hardship.** Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the CCX project will result in financial losses unless Koenigsegg obtains a temporary exemption.<sup>9</sup>

In the past three years (2003 to 2005), the company has had losses totaling \$1,637,398, and during this time period, the company’s factory burned to the ground and had to be rebuilt. Koenigsegg did make a profit of \$58,341 in 2003 and \$722,406 in 2004, but it incurred a substantial loss of \$2,418,145 in 2005.

As of the time of the application, Koenigsegg has invested over \$3.2 million in the CCX project in order to have the vehicle meet U.S. standards—not including the provisions 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.

Koenigsegg stated that costs for external assistance with developing an advanced air bag system would cost over \$3 million (over \$9 million if internal costs are included for interior redesign, testing, and tooling), and meeting the headlamp requirements would entail an additional expenditure of at least \$500,000.

In its petition, Koenigsegg reasoned that worldwide sales (including the U.S. market) of the current CCX in higher volumes over the next three years is necessary to reduce production costs and to make available funding for development of the next generation of the CCX, which would be compliant with all U.S. air bag and headlamp requirements. In essence, Koenigsegg argued 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, Koenigsegg projects a net loss of over \$10.5 million over the period from 2006–2009. However, if the petition is granted, the company anticipates a profit of nearly \$3.5 million during that same period. The petitioner argued that a denial of this petition could preclude entry into the U.S. market until 2010 or later, a development which would have a highly adverse impact on the company. According to the petitioner, if

discrepancies were discovered between the company’s Part 555 application and its supporting financial statements. These discrepancies were ultimately determined to be the result of the company’s inadvertent error in failing to convert Swedish kronas to U.S. dollars. Koenigsegg subsequently submitted two errata sheets to correct these errors (see Docket No. NHTSA–2006–25546–3); we note that these corrections did not substantively change the company’s underlying financial position as would affect the agency’s determination of economic hardship under 49 CFR Part 555. This document utilizes the company’s updated figures denominated in U.S. dollars.

<sup>8</sup> 49 U.S.C. 30113(b)(1).

<sup>9</sup> During the course of the agency’s consideration of Koenigsegg’s petition, certain minor

the exemption request is not granted, the company would face a "virtually insurmountable problem" in terms of funding and introducing a vehicle that meets all applicable U.S. requirements, and it might ultimately drive the company out of business because the rest of the world export market would be inadequate to ensure profitability.

*Good faith efforts to comply.* As stated above, Koenigsegg initially planned to produce vehicles for the European, Mid-East, and Far-East markets, but once it was determined in 2005 that entry into the U.S. market was a necessary part of its business plan, the company invested over \$3.2 million in research and development and tooling for its U.S. CCX program. In 18 months, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations other than those which are the subject of the present exemption petition, as well as the emissions regulations administered by the Environmental Protection Agency (EPA).

In light of limited resources, the petitioner stated that it was necessary to first develop the vehicle with a standard U.S. air bag system (i.e., one meeting the requirements of FMVSS No. 208, other than the advanced air bag requirements). The company reengineered the CCX with an Audi TT driver air bag system and developed a new passenger air bag system, a \$641,000 project.

According to its petition, Koenigsegg anticipates that two years will be needed to install an advanced air bag system on the CCX. Modifications would involve development of new components, such as changes to the instrument panel design and incorporation of advanced air bag installation components such as mountings and brackets. Vehicle testing would also be conducted during that time.

Furthermore, because the vehicle was not originally designed for the U.S. market, it likewise did not have headlamps that comply with U.S. requirements. According to Koenigsegg, achieving compliance with those requirements will necessitate a redesign of the headlamps. Koenigsegg explained that it has undertaken significant efforts in pursuit of CCX compliance with the headlamp requirements of FMVSS No. 108, but problems have stemmed from the company's inability to find a supplier. The petitioner stated that given the unique shape of the CCX, there is no available "off-the-shelf" headlamp system available, and efforts to find a supplier willing to undertake the project to produce a FMVSS No.

108-compliant headlamp for the CCX have been unavailing, presumably due to the ultra-low quantity of vehicles involved.<sup>10</sup>

Instead, Koenigsegg decided to produce a headlamp for the CCX in-house (homologated to European Union requirements), utilizing a lighting source from a major lighting manufacturer (Hella). The petitioner stated that the plexiglass lens of the headlamp box is an integral part of the vehicle body and design. The company explained that despite its good faith efforts, the headlamps for the CCX as yet do not fully comply with the headlamp requirements of FMVSS No. 108. Specifically, while the CCX headlamps have been designed to pass the geometry requirements of FMVSS No. 108, the required aerodynamic lens will not pass environmental testing and must be re-engineered.

According to Koenigsegg, the company did explore the possibility of developing an "interim U.S. headlamp" without a polycarbonate cover. However, that alternative was determined to be unworkable for the following reasons. First, there were concerns that the absence of the polycarbonate lens "ruins the design of the body," a result which customers were deemed unlikely to accept and which was expected to result in decreased sales.<sup>11</sup> Second, the petitioner determined that an interim headlamp without a polycarbonate lens would have unacceptable aerodynamic effects which would negatively impact vehicle performance. Third, there were concerns that by engineering an interim headlamp exclusively for the U.S. market, the company would lose the advantages associated with producing a "world car" which can be introduced into any market, something of great importance for an ultra-low-volume manufacturer. In addition, Koenigsegg determined that the cost of developing the interim headlamp could not be justified when amortized over the small number of units involved.

In light of the above, the company again stated that because of the cost and length of this project, such headlighting

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. 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. 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.

#### IV. Agency Decision on Koenigsegg Petition

The following discussion provides our decision regarding Koenigsegg's temporary exemption requests

<sup>10</sup> In an August 10, 2006 supplement to its application (included in this docket, following the Koenigsegg petition), Koenigsegg stated that it may have now identified a large lighting manufacturer interested in developing a FMVSS No. 108-compliant headlighting system for the CCX, but it would be "at a price higher than the \$500,000 thus far estimated."

<sup>11</sup> The petitioner asserted that such considerations were a factor in the agency's earlier decision to grant a "waiver" for the headlamp of the Lotus Elise (see 69 FR 5658 (Feb. 5, 2005) (Docket No. NHTSA-2003-16341-5)).

pertaining to the advanced air bag requirement of FMVSS No. 208 and the headlamp requirements of FMVSS No. 108. These exemption requests will be discussed separately, in order to examine the engineering challenges and the good faith efforts that the manufacturer has made to meet the applicable requirements. However, because the agency's analyses related to economic hardship and the public interest are essentially the same for these requested exemptions, a single discussion of those matters is provided at the end of our decision.

**Advanced Air Bag Requirements.** We are granting the Koenigsegg petition to be exempted from portions of the advanced air bag regulation required by S14.2 (specifically S14.5.2, S15, S17, S19, S21, S23, and S25). The exemption does not extend to the provision requiring a belted 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Koenigsegg must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a unique challenge because they would require Koenigsegg to undertake a major redesign of its vehicles, in order to overcome the engineering limitations of the CCX. Specifically, Koenigsegg would be required to undertake significant interior redesign in order to upgrade the vehicle's standard air bag system to an advanced air bag system. While the petitioner was aware of the new requirements for some time, its business plans did not initially involve sales in the U.S. However, Koenigsegg subsequently determined that it would be necessary to introduce the CCX into the U.S., thereby raising the problem of compliance with the advanced air bag requirements. Once the determination was made to seek entry into the U.S. market in late 2005, Koenigsegg undertook significant homologation efforts in order to meet applicable U.S. requirements, but compliance with the advanced air bag provisions of FMVSS No. 208 are beyond the company's capabilities at the present time. Koenigsegg plans to utilize proceeds from sales of the current generation of CCX vehicles to finance the development of a fully compliant successor vehicle.

Koenigsegg explained the main engineering challenges precluding incorporation of advanced air bag into the CCX at this time, as follows. The

company must undertake redesign work to the vehicle's instrument panel and must incorporate a number of advanced air bag installation components.

Furthermore, the petitioner stated that it would need an additional two years time to work with an advanced air bag supplier (because very low volume manufacturers have had to wait for technology to "trickle down" from larger manufacturers and suppliers), to make the necessary changes, and to conduct testing. Koenigsegg has made clear that such a prospect would pose a unique challenge to the company, due to the high cost of development and its extremely small sales volumes.

Based upon the information provided by the petitioner, we understand that Koenigsegg made good faith efforts to bring the CCX into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. As a small specialty manufacturer, the company had a difficult time in gaining access to advanced air bag systems and components (which presumably reflects restraint system suppliers' initial focus on meeting the needs of large volume manufacturers), so alternative means of compliance were not available as a practical matter. Small manufacturers such as Koenigsegg are dependent upon air bag suppliers for the engineering expertise and technology transfer necessary for compliance with FMVSS No. 208. This further reduced the lead time available for development.

Furthermore, because Koenigsegg is an independent automobile manufacturer, there was no possibility of technology transfer from a larger parent company that also manufactures motor vehicles. Consequently, no viable alternatives remain. The petitioner is unable to redesign its vehicle in time to meet the new advanced air bag requirements that became effective on September 1, 2006 for small volume manufacturers.

**Headlamp Requirements.** We are granting the Koenigsegg petition to be exempted from the headlamp requirements of FMVSS No. 108 (S7). We understand that vehicle design involves numerous complex design, engineering, and production challenges. To some extent, small volume manufacturers may face difficulties in situations where they must wait for advanced technologies to "trickle-down" from major suppliers (e.g., advanced air bag systems), but we do not expect that every vehicle component or system would fall in that category. Accordingly, the agency will carefully consider the modifications to the vehicle necessary to achieve compliance

with the relevant safety standard(s), as well as the good faith efforts made by the manufacturer to meet those requirements.

In the present case, we agree that it may be desirable for Koenigsegg to incorporate a specialized headlamp for a variety of reasons, including aesthetics and aerodynamics. While we acknowledge that the company undertook good faith effort to comply with the headlamp requirements of FMVSS No. 108 and that current financial and production limitations would make compliance impractical in the near term, we expect that it would be possible to achieve compliance with all applicable headlamp requirements by the conclusion of the exemption period requested by Koenigsegg. We do not believe that the required modifications would be as complex as those associated with advanced air bags. Our reasoning is explained in further detail below.

To start, we would note that passenger vehicles generally are not designed to accommodate "off the shelf" headlamp systems, but instead incorporate specialized headlamp designs dedicated to the specific vehicle. Thus, developing a specialized headlamp for the CCX may be necessary, but it is not an unusual event. Furthermore, as discussed below, we believe that it would be possible to make modifications to the headlamp independent of changes to the bumper system.

As noted above, there are several reasons why we believe that Koenigsegg should install FMVSS No. 108-compliant headlamps on the CCX as rapidly as possible, even for the small numbers involved here. First, one should not lose sight of the fact that headlamps are safety devices intended to illuminate the roadway and overhead signs for the driver and to also make the vehicle visible to other drivers and pedestrians. Accordingly, styling characteristics of the headlamp are a secondary consideration. We further note that the petitioner did not provide any basis for its speculative arguments regarding decreased sales that would be expected to result from installation of an interim headlamp without a polycarbonate lens, but which would comply with FMVSS No. 108. The petitioner also provided no details as to the negative impact on vehicle performance that would be expected from incorporation of an FMVSS No. 108-compliant interim headlamp design or support for its contention that such a headlamp would "ruin the design of the body."

Likewise, we disagree with the petitioner's contention that construction of an FMVSS No. 108-compliant headlamp would deprive the manufacturer of the advantages associated with building a "world car." On the contrary, developing a headlamp for the CCX that meets the requirements of the Economic Commission for Europe (ECE) regulations, as well as FMVSS No. 108, provides the opportunity to build the CCX as a world car. As the Koenigsegg petition suggests, these two sets of regulations are quite similar, with a primary difference being the requirement in FMVSS No. 108 for photometric test points intended to ensure illumination of overhead signs. However, it is possible to manipulate the headlamp's beam pattern to achieve compliance with the photometric requirements for both sets of regulations.

In support of its request for a temporary exemption from the headlamp requirements of FMVSS No. 108, Koenigsegg argued that the agency granted a similar exemption to Group Lotus Plc (Lotus) (*see* 69 FR 5658 (Feb. 5, 2004) (Docket No. NHTSA-2003-16341-5)). As discussed in that notice, Lotus made many of the same arguments that Koenigsegg is currently making regarding engineering challenges, aesthetic concerns, loss of performance, and decreased sales. However, as compared to the Koenigsegg headlamp, there were significant differences in the headlamp for the Lotus Elise, which supported the agency's decision to grant a temporary exemption for nearly three years. Specifically, Lotus stated that not only were its headlamp's photometrics very close to the requirements of FMVSS No. 108, but the lamp also had been subjected to relevant environmental testing and exhibited a strong warranty record for this aspect of the vehicle.

In contrast, Koenigsegg stated that the CCX's current headlamps are designed to pass the geometry requirements of FMVSS No. 108, but they would not pass the environmental requirements of the standard.<sup>12</sup> Thus, even if the CCX headlamps were to meet all the photometric requirements of the standard at the time of vehicle certification, performance could deteriorate if the lenses on those headlamps could not meet the applicable weathering, vibration, or abrasion requirements. Such degraded performance (resulting from the lamp's failure to meet relevant photometric test

points) could negatively impact the vehicle's forward illumination and increase glare for oncoming drivers. Choosing to grant Koenigsegg's requested exemption from FMVSS No. 108's headlamp requirement required considerable deliberation within the agency, and it was only after careful balancing of the manufacturer's good faith efforts, the small number of vehicles involved, and the potential safety consequences that we decided to do so. Because we are hesitant to set a precedent in terms of granting temporary exemptions for vehicles whose headlamps do not meet the environmental requirements of the standard, we would state that the agency will carefully examine and decide such petitions on a case-by-case basis.

In further support of expediently achieving compliance with the headlamp requirements of FMVSS No. 108, we understand from the petition that Koenigsegg now has identified a large lighting manufacturer willing to develop a FMVSS No. 108-compliant headlighting system for the CCX. Having identified such a supplier, we would expect this arrangement to accelerate Koenigsegg's efforts to develop a FMVSS No. 108-compliant headlamp.

In sum, the information supplied by the petitioner demonstrates that the company to date has made good faith efforts to achieve compliance with the headlamp requirements of FMVSS No. 108 and that it would not be economically or technically feasible to meet these requirements until late 2009. We are also cognizant of the very small number of vehicles at issue here, many of which will probably have limited road use. For these reasons, we have decided to grant Koenigsegg a temporary exemption from the headlamp requirements of FMVSS No. 108 through December 31, 2009. However, we urge the company to achieve full compliance with FMVSS No. 108 earlier, to the maximum extent possible.

For the reasons discussed above, we believe that this period should provide sufficient time to engage with the identified lighting manufacturer and to conduct any necessary retooling of components related to the headlamps. We also believe that it would be possible to modify the CCX's headlamps in a manner that would not change the shape of the outer lens; accordingly, it should be possible to undertake headlamp and bumper modifications independently. In addition, we note that achieving compliance with FMVSS No. 108 would benefit the company by allowing the CCX to attain "world car" status sooner. Finally, in terms of

economic feasibility, the petitioner's financial submissions demonstrated that if its requested temporary exemptions are granted, it anticipates profits of nearly \$3.5 million over the period from 2006–2009, so a portion of the profits expected to be generated during the first year of the exemption period (nearly \$2.5 million in 2007) could be channeled into headlamp development.

*Economic Hardship.* We now turn to our analysis more broadly to the issues of the economic hardship facing the petitioner and the impact on motor vehicle safety surrounding the requested temporary exemptions from the advanced air bag and headlamp requirements discussed above. After review of the income statements provided by the petitioner, the agency notes that the company has faced ongoing financial difficulties, experiencing net operating losses of about \$1.6 million over the past three years (2003–2005). The company did turn a small profit in 2003 (about \$58,000) and a larger profit in 2004 (about \$722,000), but these were overwhelmed by an over \$2.4 million loss in 2005. These figures suggest that the company's current profitability situation is somewhat precarious. If the petitioner's request for a temporary exemption is denied, the company will be precluded from selling any vehicles in the U.S. market at this time. The resulting loss of sales would cause substantial economic hardship within the meaning of the statute, potentially amounting to the difference between a profit of nearly \$3.5 million (if an exemption is granted) and a loss of over \$10.5 million (if an exemption is denied) over the period from 2006–2009. Ultimately, denial of the exemption request could preclude development of a U.S.-compliant vehicle and jeopardize the continued existence of Koenigsegg.

According to Koenigsegg, absent the exemption, the company anticipates being unable to enter the U.S. market until 2010 or later. However, Koenigsegg's problems would be compounded without its requested temporary exemption, because it needs the revenue from sales of the CCX over the next two years to finance development of a fully compliant vehicle for delivery to the U.S. market. Granting the exemption will allow Koenigsegg to earn the resources necessary to bridge the gap in terms of development of a successor vehicle for the current generation of the CCX that meets all U.S. requirements.

While some of the information submitted by Koenigsegg has been granted confidential treatment and is

<sup>12</sup> It is unclear from the petition whether the CCX headlamps would meet all applicable geometric and photometric requirements in Standard No. 108.

not detailed in this document, the petitioner made a comprehensive showing of its good faith efforts to comply with the requirements of S14.2 of FMVSS No. 208 and S7 of FMVSS No. 108 and detailed engineering and financial information demonstrating that failure to obtain the exemption would cause substantial economic hardship. Specifically, the petitioner provided the following:

1. Chronological analysis of Koenigsegg's efforts to comply, showing the relationship to the rulemaking history of the advanced air bag requirements.
2. Itemized costs of each component that would have to be modified in order to achieve compliance.
3. Discussion of alternative means of compliance and reasons for rejecting these alternatives.
4. A detailed OEM price-volume quotation from an advanced air bag supplier, including detailed costs for the necessary components for each stage of the development program.
5. Explanations as to why components from newer, compliant vehicle lines could not be borrowed.
6. Corporate income statements and balance sheets for the period from 2002–2005, and projected income statements for the period from 2006–2009 (analyzing alternative scenarios in which the petition is granted and denied).

We believe that this exemption will have negligible impact on motor vehicle safety because of the limited number of vehicles affected (approximately 85 to be imported for the duration of the requested three-year exemption). Furthermore, 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.

We also note that the CCX features several advanced “active” safety features. These features are listed in the petitioner's application.<sup>13</sup> While the availability of these features is not critical to our decision, it is a factor in considering whether the exemption is in the public interest.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208 and the headlamp requirements of Standard No. 108. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a

label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards 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.

We note that the text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. Specifically in the case of FMVSS No. 208, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, “except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to \* \* \*”. We note that the phrase “Advanced Air Bag Requirements” is an abbreviated form of the title of S14 of Standard No. 208. Similarly, regarding the temporary exemption for the CCX's headlamps, we believe that the two labels should read in relevant part, “except for S7 of Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, exempted pursuant to \* \* \*”. We believe it is reasonable to interpret § 555.9 as requiring this language.

In sum, the agency concludes that Koenigsegg has demonstrated good faith effort to bring the CCX into compliance with the advanced air bag requirements of FMVSS No. 208 and the headlamp requirements of FMVSS No. 108 and has also demonstrated the requisite financial hardship. Further, we find these exemptions to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, and the headlamp

requirements of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption from these provisions would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Koenigsegg CCX is granted NHTSA Temporary Exemption No. EX 06–10, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208 and from S7 of 49 CFR 571.108. The exemption is effective immediately and continues in effect through December 31, 2009.

Issued on: March 29, 2007.

**Nicole R. Nason,**  
*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition to Modify an Exemption of a Previously Approved Antitheft Device; General Motors Corporation

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

**ACTION:** Grant of a petition to modify an exemption from the Parts Marking Requirements of a previously approved antitheft device.

**SUMMARY:** On August 15, 1989, the National Highway Traffic Safety Administration (NHTSA) granted in part General Motors Corporation's (GM) petition for an exemption in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard* for the Chevrolet Camaro vehicle line. The exemption was granted because the agency determined that the antitheft device proposed to be placed on the line as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. On November 10, 2006, GM petitioned the agency to amend the exemption previously granted for the Chevrolet Camaro vehicle line. NHTSA is granting in full GM's petition to modify the exemption because it has determined that the modified antitheft device to be placed on the Chevrolet Camaro line as standard equipment will also likely be as effective in reducing

<sup>13</sup> See page 16 of Koenigsegg's petition.