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(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: August 22, 2006.

Joel C. Richard,

Secretary.

[FR Doc. E6-14260 Filed 8-25-06; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25546, Notice 1]

#### Koenigsegg Automotive AB; Receipt of Application for a Temporary Exemption From Headlamp Requirements of FMVSS No. 108; Advanced Air Bag Requirements of FMVSS No. 208; and Bumper Standard of Part 581

**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. 108, *Lamps, Reflective Devices, and Associated Equipment*, FMVSS No. 208, *Occupant Crash Protection*, and 49 CFR part 581, *Bumper Standard*.

**SUMMARY:** In accordance with the procedures in 49 CFR part 555, Koenigsegg Automotive AB ("Koenigsegg") has petitioned the agency for a temporary exemption from certain head lighting requirements of FMVSS No. 108, advanced air bag requirements of FMVSS No. 208, and bumper standard requirements of 49 CFR part 581. 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.

**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. 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 advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any

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

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

temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for a temporary exemption from the advanced air bag requirements. As part of the same document, the petitioner also seeks a temporary exemption from the agency's headlamp requirements and bumper standard. The petitioner is 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, Koenigsegg has petitioned the agency for a temporary exemption from certain headlight requirements of FMVSS No. 108 (S7), advanced air bag requirements of FMVSS No. 208 (S14), and bumper requirements of 49 CFR part 581. The basis for each portion of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with these standards. A copy of the petition<sup>3</sup> 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 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 petitioner argues that it tried in good faith, but could not bring the vehicle into compliance with the headlamp, advanced air bag, and bumper 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 states 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 states 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 states 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 25 mph rigid barrier test.

As for the CCX's compliance with the other advanced air bag requirements, Koenigsegg states 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 requests an exemption from the headlamp requirements set forth in S7 of FMVSS No. 108 and the bumper standard in 49 CFR part 581.

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 headlamps (FMVSS No. 108 S7), advanced air bags (FMVSS No. 208 S14), and bumpers (49 CFR part 581). Accordingly, Koenigsegg seeks an exemption from the enumerated requirements 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.

In the past three years (2003 to 2005), the company has had losses totaling \$1,637,399, 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 \$2,418,416 in 2005.

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

<sup>3</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.

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 and bumper requirements would entail an additional \$1 million in expenditures.

In its petition, Koenigsegg reasoned that worldwide sales (including the U.S. market) of the current CCX in higher volumes over the next 3 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, headlamp, and bumper 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 \$82.4 million over the period from 2006–2009. However, if the petition is granted, the company anticipates a profit of over \$27 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 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 on 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. 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 which is nearing completion.

According to its petition, Koenigsegg anticipates that 2 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 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 or a bumper system or an underlying bumper structure that complies with U.S. requirements. According to Koenigsegg, achieving compliance with those requirements will necessitate a redesign of the vehicle body and headlamps at the same time, so to that extent, the petitioner argued that these two modifications should be considered together.

To provide a part 581-compliant bumper would require re-engineering and retooling the current CCX bumper system. The company explained that it has undertaken redesign of its front and rear bumper systems in an effort to achieve compliance with U.S. bumper standard requirements, including inserting foam and reinforcements, increasing rear deck offset, and moving the front bumper cut line as high and inboard as possible. However, Koenigsegg stated that it has been unable to fully meet the requirements of part 581, for the following reasons.

First, the petitioner stated that extremely low vehicle height and aerodynamic requirements for the vehicle dictate that the standard 20-inch pendulum height falls above the current bumper cut lines. In addition, the company stated that packaging constraints for the structure required to fulfill the high-speed crash requirements of FMVSS No. 208 and the requirements of the roof stowage under the front hood dictate the maximum size of the front bumpers. Koenigsegg argued that despite its good faith efforts, additional time will be required to achieve full compliance with part 581, and the company does not currently have the resources to fund the requisite development efforts.

As to 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>4</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>5</sup> Second, it was 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

<sup>4</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>5</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.

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.*

[FR Doc. E6-14247 Filed 8-25-06; 8:45 am]

**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:

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