



This document is scheduled to be published in the Federal Register on 06/26/2012 and available online at <http://federalregister.gov/a/2012-15585>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0085]

Vision Motor Cars, Inc.

Receipt of Petition for Temporary Exemption from Certain Requirements of FMVSS No. 126, FMVSS No. 201, and FMVSS No. 208

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

ACTION: Notice of receipt of petition for temporary exemption.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Vision Motor Cars, Inc., (VMCI) has petitioned the agency for temporary exemption from certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 126, Electronic Stability Control Systems, FMVSS No. 201, Occupant Protection in Interior Impact, and FMVSS No. 208, Occupant Crash Protection. The basis for the application is that the petitioner avers that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standards.¹ This notice of receipt of an application for a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: William H. Shakely, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue,

¹ To view the petition, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

SE, West Building 4th Floor, Room W41-318, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

ADDRESSES: 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://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, 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. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE, West Building

Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

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://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

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 state that a manufacturer has 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.

II. Air Bag Requirements and Small Volume Manufacturers

All trucks with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998, are required to have air bags at the driver and right front passenger positions, and the vehicle must meet certain injury criteria as measured by test dummies during specified test procedures.²

The requirements for standard air bags are longstanding, and a number of small volume manufacturers have found ways to meet them. Although NHTSA granted a small number of exemptions from the standard air bag requirements in the past, the agency announced in 2007 that given the large benefits of frontal air bags, the number of years that the requirements had been in effect and the fact that a number of small volume manufacturers had been able to meet the requirements, the agency had determined that it was generally not in the public interest or consistent with the Safety Act to grant new exemptions from these requirements.³

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as “advanced air bags.”⁴ The upgrade was designed to meet the twin 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 issuance of the advanced air bag requirements was a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also

² 49 CFR 571.208, S4.2.6.2.

³ See denial of petition of SS II of America, 72 FR 30426 (May 31, 2007).

⁴ See 65 FR 30680 (May 12, 2000).

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 were not subject to the advanced air bag requirements until the end of the phase-in period, i.e., September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small volume manufacturers, each of which has petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small volume manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA has granted a number of these petitions, usually in situations in which the manufacturer is supplying standard air bags in lieu of advanced air bags.⁵ In addressing these petitions, NHTSA has recognized that small volume manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA has considered two key issues--

(1) whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and

⁵ See, e.g., grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

(2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA has determined that it is not in the public interest to continue to grant exemptions from these requirements under the same terms as in the past.⁶ The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA has concluded that the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.⁷

NHTSA further notes that the granting of hardship exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith."⁸ In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible

⁶ See denial of petition of Pagani Automobili SpA, 76 FR 47641-42 (Aug. 5, 2011).

⁷ See *id.*

⁸ 49 U.S.C. 30113(b)(3)(B)(i)

manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.⁹

NHTSA invites comment on how these considerations relate to VMCI's petition for an exemption from the standard and advanced air bag requirements of FMVSS No. 208.

III. Electronic Stability Control Systems Requirement

In April 2007, NHTSA published a final rule requiring that vehicles with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less be equipped with electronic stability control (ESC) systems. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). An anti-lock brake system (ABS) is a prerequisite for an ESC system because ESC uses many of the same components as ABS. Thus, the cost of complying with FMVSS No. 126 is less for vehicle models already equipped with ABS.

Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes. This is because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55 percent and fatal single-

⁹ 49 CFR 555.6(a)(2)

vehicle crashes of light trucks and vans (LTVs) by 50 percent.¹⁰ NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.¹¹

The ESC requirement became effective for substantially all vehicles on September 1, 2011.

IV. Occupant Protection in Interior Impact Requirement

FMVSS No. 201, Occupant Protection in Interior Impact applies to vehicles with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less. The standard establishes performance requirements designed to reduce the risk of injury in the event an occupant strikes the interior of a vehicle during a crash. Specifically, certain areas within the vehicle must be properly padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. Head impact protection performance is determined, in part, by testing specific targets on the vehicle interior. FMVSS No. 201 further specifies that doors to interior compartments must remain latched when subjected to certain forces that might be experienced in a crash.

V. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, VMCI submitted a petition asking the agency for a temporary exemption from the electronic stability control requirements of FMVSS No. 126, certain requirements of FMVSS No. 201, and the standard and advanced air bag requirements of FMVSS No. 208.¹² Specifically, VMCI requested exemption from all of FMVSS No. 126; the requirements in S5.1 (requirements for

¹⁰ Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

¹¹ *Id.*

¹² In response to a request for clarification from the agency, VMCI clarified in an email certain background information and from which requirements of FMVSS No. 208 the company was seeking exemption. A copy of this email will be posted to the docket.

instrument panels), S5.2 (requirements for seat backs), S5.3 (requirements for interior compartment doors), S6 (requirements for upper interior components), S8 (test conditions and specification of target locations), S9 (orthogonal reference system), and S10 (specification of target locations) of FMVSS No. 201; and the requirements in paragraphs S4.2.6.2 (standard air bag requirements for light trucks), S14 (advanced air bag requirements), S15 (rigid barrier test requirements using 5th percentile adult female dummies), S17 (offset frontal deformable barrier requirements using 5th percentile adult female dummies), S19 (except for S19.2.2) (requirements to provide protection for infants in rear facing and convertible child restraints and car beds), S20 (test procedure for infant requirements) S21 (requirements using 3-year-old child dummies), S22 (test procedure for 3-year-old requirements) S23 (requirements using 6-year-old child dummies), S24 (test procedure for 6-year-old requirements), S25 (requirements using an out-of-position 5th percentile adult female dummy at the driver position), and S26 (procedure for low risk deployment tests of driver air bag) of FMVSS No. 208. The petition for exemption is for the Everest model, a two-seat, all-electric light delivery truck.

The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. VMCI has requested an exemption for the Everest model for 36 months. VMCI asserts that over \$3 million has been spent so far to comply with the FMVSSs. However, the company states that the additional capital required to accomplish FMVSS certification at this time presents a hardship to the company and that an exemption would provide feedback and revenue in order to bring the Everest into compliance. VMCI states that the company intends to comply with the requirements of FMVSS Nos. 126, 201, and 208 by the end of the exemption period. VMCI is a Tennessee corporation with its headquarters in North Carolina. The company manufactured 6

vehicles in the 12 month period prior to filing the petition. The company states that it plans to produce approximately 2,500 vehicles annually during the exemption period.

Regarding FMVSS No. 126, VMCI asserts that the equipment design, fitting, testing and certification of the Everest for compliance with the ESC requirements would cost approximately \$1.4 million, and that these costs pose an economic hardship to the company. VMCI requests an exemption from the ESC requirements for 36 months. VMCI states that the lightweight nature of the vehicle (GVWR of 1,400 kg) and the fact that it will be equipped with front disc brakes and rear drum or disc braking will keep the vehicle stable in all braking conditions. VMCI further states that the placement of the vehicle's battery packs below the center of gravity will result in a much lower chance of vehicle rollover in most driving conditions. VMCI asserts that, accordingly, the risk presented to the public by the exemption is low.

Regarding the specified requirements of FMVSS No. 201, VMCI states that the Everest will be equipped with energy-absorbing materials in the interior passenger compartment target zones of potential impact. However, VMCI requests an exemption from certain requirements because, according to VMCI, the costs of testing to certify compliance would present an economic hardship to the company.¹³

VMCI requests exemption from the standard and advanced air bag requirements of FMVSS No. 208 because, according to VMCI, the costs of testing to certify compliance would present an economic hardship to the company.¹⁴ VMCI states that the Everest will be equipped with air bags on the driver and passenger sides, retracting seat belts, and reinforced doors.

¹³ VMCI has 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 the information that is the subject of this request. The precise costs of testing and certification are provided in the confidential version of the petition.

¹⁴ The precise costs of testing and certification are provided in the confidential version of the petition.

However, the company asserts that the cost of certifying the vehicle to the FMVSS requirements is prohibitive prior to production.

VMCI further states that the Everest will be equipped with an interlock that will prevent the vehicle from moving if occupants are not properly belted. The company asserts that this mitigates the risks of an exemption from the unbelted occupant requirements. Additionally, VMCI states that it is unlikely that an infant or child would be riding in the Everest because it is being targeted to the commercial light delivery market. However, the Everest will be equipped with a key switch to deactivate the passenger side air bag and a compliant air bag status telltale.

VMCI asserts that granting the exemption would serve the public good by making an all electric, affordable, practical work truck available, by creating jobs, and by reducing pollution and dependence on foreign sources of oil.

VI. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete. The agency has tentatively concluded that the petition from VMCI is complete. The agency has not made any judgment on the merits of the petition, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of VMCI's petition for a temporary exemption from FMVSS No. 126, certain requirements of FMVSS No. 201, and the standard and advanced air bag requirements of FMVSS No. 208. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

Issued on: June 15, 2012

Lori Summers
Director, Office of Crashworthiness
Standards

Billing Code 4910-59-P

[FR Doc. 2012-15585 Filed 06/25/2012 at 8:45 am; Publication Date: 06/26/2012]