

Issued in Washington, DC on February 23, 1995.

Reginald C. Matthews,

Assistant Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 95-5417 Filed 3-3-95; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Aspen-Pitkin County Airport/Sardy Field, Submitted by Pitkin County, Aspen, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 5, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216-6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Smith, Director of Aviation, at the following address: Aspen-Pitkin County Airport/Sardy Field, 0233 East Airport Road, Aspen, CO 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Aspen-Pitkin County Airport/Sardy Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Fels, (303) 286-5596; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216-6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Aspen-Pitkin County Airport/Sardy Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pitkin County was not substantially complete within the requirements of part 158. Pitkin County was notified by letter dated June 16, 1993, of this determination, with a request for information which would have allowed the application to meet the requirements of part 158. By letter dated June 30, 1993, Pitkin County declined to provide the supplemental information requested. A decision was made by the FAA to defer action on the application pending resolution of Airport Noise and Capacity Act (ANCA) issues. With the passage of Section 517 of Public Law 103-305 and the opening of the airport to night access by general aviation aircraft, under the conditions specified in this legislation, the ANCA issues have been resolved. This allows the FAA to make, at this time, a determination of substantially complete on this application. There has been no change to the original application.

On February 27, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Aspen-Pitkin County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 4, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00
Proposed charge effective date: July 1, 1995

Proposed charge expiration date: January 31, 1998

Total estimated PFC revenues: \$1,533,541.00

Brief description of proposed project: Relocate State Highway 82; Overlay runway 15/33.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators operating pursuant to § 135.1(a)(3) of the Federal Aviation Regulations (14 CFR).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen-Pitkin County Airport.

Issued in Renton, Washington on February 27, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95-5418 Filed 3-3-95; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 94-100; Notice 2]

Excalibur Automobile Corporation; Grant of Application for Temporary Exemption From Motor Vehicle Safety Standard No. 208

Excalibur Automobile Corporation of West Allis, Wisconsin, applied for a temporary exemption of its JAC 427 Cobra passenger car for three years from compliance with paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on December 28, 1994, and an opportunity afforded for comment (59 FR 66999). This notice grants the application.

The applicant sought an exemption for its JAC 427 Cobra passenger car, of which it produced 59 between January 1993 and September 1994. Thirty-six of these "are presently in the control of Excalibur's dealers", and the applicant asked that the exemption cover these vehicles so that they may be offered for sale and sold in compliance with the law. It plans increased production in 1995, of which 60 to 108 would be sold in the United States.

Excalibur is a small company with 37 employees and net assets of \$3,000,000. The company has had cumulative net losses of \$4,493,000 from January 1, 1992 to September 30, 1994. If it were required to comply immediately with the automatic restraint requirements of Standard No. 208, it would have to raise the retail price by more than 300 per cent which "is likely to deemed (sic) to be prohibitive by potential purchasers (and dealers), thereby significantly reducing the line's desirability, if not ending the demand entirely * * *." Denial of the petition would result in a reduction of the work force to 8 employees.

Excalibur has been owned since 1991 by German residents, who changed the company's management in August 1994. The new management has not been able

to trace the company's efforts to comply beyond December 1993 when the then Vice President of Production informed the then President that he had "just located a potential source for a retrofit driver's as well as passenger air bag system." Compliance was anticipated "within weeks." NHTSA was likewise informed of this possibility in December 1993. On May 31, 1994, in an incomplete petition for exemption from Standard No. 208, Excalibur informed the agency that its efforts to work with companies in Arizona and Florida had ended in frustration and failure and that it was currently unable to find a source for an adequate, workable airbag system.

According to its application, Excalibur will use the exemption period "to accommodate a fully-complying airbag system." It is investigating the possibility of installing Ford Mustang steering columns and airbag systems, as well as whether its existing column could accept an airbag produced by Breed Technologies. Exempted vehicles would be provided with a three-point restraint system as well as with a "clearly visible warning label reminding the vehicle's occupants of the importance of wearing their safety belts.

The company argued that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety because it presently has 17 dealers in 12 states, and "a thriving manufacturing business and dealer network not only provides employment, but will generate federal and state tax revenues." The small number of vehicles that the exemption will cover and the limited mileage they will be driven ensure that an exemption "will not materially affect overall motor vehicle safety in the U.S."

No comments were received on the application. That the applicant is experiencing "substantial economic hardship" within the meaning of the phrase, as interpreted by NHTSA, over the years, is demonstrated by its continuing and cumulative losses of approximately \$4.5 million over the 2 3/4 year period previous to filing its application. The applicant has recently

informed NHTSA that at least two of its dealers are seeking to terminate their dealership agreements and to require Excalibur to repurchase vehicles in stock because of their failure to meet the automatic restraint requirements of Standard No. 208.

The efforts of the applicant to make a good faith effort to comply with Standard No. 208 appear to have originated with the company's new ownership in 1991. NHTSA is aware that small manufacturers of open cars, such as Excalibur, have found it difficult to engineer an airbag system into their existing steering columns, let alone to find a supplier interested in providing only a low volume of airbags.

The public interest is served, of course, as the applicant argues, by providing continuing employment to those who manufacture, sell, and repair Excalibur vehicles, as well as the benefits derived from the generation of Federal and state tax revenues. It is also in the public interest to avoid litigation where possible and an exemption may forestall actions against the applicant by its dealers, which would contribute further to its hardship. The overall effect upon motor vehicle safety will be negligible due to the small number of cars that will be manufactured and sold under it, which will be equipped with a three-point restraint system and a label reminding the two passengers of the need to use their safety belts.

The company has also asked that the exemption cover the vehicles currently in the hands of its dealers. This is an unusual request. Only once before has the agency been petitioned to grant an exemption to motor vehicles already in existence. In 1989, Chrysler Corporation manufactured several electric vans for research purposes which, three years later, in 1992, it wished to sell or lease to a public utility in California. As the purpose of a temporary exemption is to allow a company for a limited time to engage in activities that would otherwise be in violation of the statute, the agency granted Chrysler's petition. NHTSA noted that an exemption would permit Chrysler to offer for sale, sell,

introduce and deliver for introduction into interstate commerce noncomplying motor vehicles, acts otherwise prohibited (See 57 FR 27506). The fact situation is somewhat different here in that noncomplying vehicles have already been manufactured for sale and delivered for introduction into interstate commerce, in violation of 49 U.S.C. 30112(a). The agency has no authority to excuse retroactively statutory violations, and these are acts for which NHTSA has the right to seek recovery of civil penalties. However, an exemption will allow the company to generate income and its dealers to offer for sale, sell, and introduce into interstate commerce the vehicles that are currently in their possession.

The applicant requested an exemption for the maximum permissible under statute, three years. Given the fact that the company began its compliance efforts in 1993 if not earlier, the agency believes that full compliance with Standard No. 208 should be the company's regulatory priority, and is providing an exemption of two years. This, of course, does not affect the right of the applicant to petition for a renewal if compliance remains elusive.

In consideration of the foregoing, it is hereby found that compliance with the automatic restraint requirements of Standard No. 208 would cause substantial economic hardship to a company that has tried to comply with the standard in good faith, and that an exemption would be consistent with the public interest and motor vehicle safety. Accordingly, Excalibur Automobile Corporation is hereby granted NHTSA Temporary Exemption No. 95-1 from paragraph S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection, expiring March 1, 1997.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: February 28, 1995.

Ricardo Martinez,
Administrator.

[FR Doc. 95-5322 Filed 3-3-95; 8:45 am]

BILLING CODE 4910-59-P