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