

Street SW., Washington, DC. We apologize for any inconvenience this rescheduling may cause.

DATES: A public hearing will be held at 10 a.m. on June 29, 1995.

ADDRESSES: A public hearing will be held in room 4436 of the Nassif Building, 400 Seventh Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold Morick, Motive Power & Equipment Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202-366-4094), or Mark Tessler, Trial Attorney, Office of Chief Council, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202-366-0628).

Issued in Washington, DC, on May 18, 1995.

E.R. English,

Director, Office of Safety Enforcement.

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BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. 94-107; Notice 2]

Excalibur Automobile Corp.; Grant of Application for Decision of Inconsequential Noncompliance

Excalibur Automobile Corporation (Excalibur) of Milwaukee, Wisconsin, determined that some of its vehicles failed to comply with the automatic restraint system requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Excalibur has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety"—on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on January 5, 1995 (60 FR 1823). This notice grants the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

Excalibur manufactured 59 model year 1993, 1994, and 1995 JAC 427 Cobras without automatic restraint systems. These vehicles all contain

Type 2, three-point harness active restraint systems. However, as Excalibur noted in its part 573 Report filed concurrently with the application under consideration, "36 JAC 427 Cobras are in dealers' possession and 15 have been acquired by ultimate purchasers. The remaining automobiles remain in the possession of Excalibur." NHTSA granted Excalibur's application for temporary exemption on March 6, 1995 (60 FR 12281), an agency action that covers the 36 unsold cars in dealer stock and in Excalibur's possession. Therefore, only the 15 cars that have been sold remain subject to the application under consideration.

Excalibur supported its application for inconsequential noncompliance with the following. The 15 JAC 427 Cobras all contain Type 2, three-point harness active restraint systems. Bringing these vehicles into compliance with paragraph S4.1.4 of FMVSS 208 would be very difficult from an engineering perspective, and whatever feasible solutions may be available, would most likely result in significant expense for Excalibur, a small financially-strapped company.

As set forth below, Excalibur argued that the overall safety risk from noncompliance with paragraph S4.1.4 of FMVSS 208 is inconsequential because of (1) the vehicle's specialized and limited use and small number and (2) Excalibur's belief that Cobra owners have a relatively high level of safety belt use and (3) Excalibur's proposal to boost further Cobra safety belt use by placing a warning label in the vehicle.

1. The Overall Safety Risk From Noncompliance of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Given Their Specialized And Limited Use And Small Number

The JAC 427 Cobra is not an ordinary passenger automobile designed for daily use. It is a classically-styled automobile viewed as a collector's item by automobile purchasers. * * * The JAC 427 Cobra is a convertible which seats two persons, and has a small trunk. As a result, it is not designed to be used as a family's primary passenger vehicle. Instead, the JAC 427 Cobra is typically driven only short distances from an owner's home. Owners of these (sic) type of automobiles generally drive these automobiles no more than 4000 miles per year.

Excalibur has never planned to produce many JAC 427 Cobras due to the limited capacity of its manufacturing facilities and the nature of its manufacturing process. For example, the highest monthly total of JAC 427 Cobra automobiles ever produced was 17. Only 59 of these automobiles were produced for sale in the U.S. between January 1993 and September 1994, a 21-month period. In 1995, Excalibur's total planned production is only 100-180 JAC 427

Cobras for sale worldwide, or no more than 15 per month. Of the 100-180, only 60% of the JAC 427 Cobras, or 60-108, are proposed for sale in the U.S.

The collector's nature of the JAC 427 Cobra, the low number of miles that these types of vehicles are driven on any consistent basis, and the small number of actual JAC 427 Cobras that do not comply with FMVSS 208 illustrate the overall reduced safety risk of these vehicles, especially when compared to the overall risk posed by the average use of the standard family passenger vehicle. Thus, the total effect of the existence of only (15) JAC 427 noncomplying automobiles—which are meant for weekend pleasure driving—is inconsequential in relation to the overall level of motor vehicle safety in the U.S.

2. The Safety Risk From Noncompliance Of Excalibur's (15) JAC 427 Cobras With FMVSS 208 Is Inconsequential Due To Probable Existing Cobra Safety Belt Use And To Excalibur's Proposal To Boost Cobra Safety Belt Use

The use of safety belts has been shown to significantly reduce injuries and fatalities in automobile crashes. *See generally* NHTSA, *Evaluation of the Effectiveness of Occupant Protection—FMVSS 208 Interim Report, June 1992* (hereinafter referred to as "Interim Report"). Use of safety belts has increased dramatically since 1983 due to the enactment of state mandatory safety belt laws and the installation of automatic safety belt systems. By May of 1992, 42 states plus the District of Columbia and Puerto Rico had enacted laws requiring the use of safety belts. Interim Report at v. Safety belt use overall increased nationwide to nearly 59% in late 1991, ranging from 24% in Mississippi to 83% in Hawaii. NHTSA, *Effectiveness of Occupant Protection Systems and Their Use—Report to Congress, January 1993*. Manual safety belt use nationwide reached 56% in 1991, and may be even higher today due to increased safety awareness. *See* Interim Report at viii.

An informal survey of Excalibur automobile owners, including those of the JAC 427 Cobra, revealed that these owners on average are 45 year-old males with greater incomes and higher levels of education than the general population. Unlike youthful segments of the population who are more prone to reckless driving, Excalibur automobile owners are predominantly established, responsible people who value their personal safety and the quality and uniqueness of their investment in an Excalibur automobile. As a result, Excalibur opines that the owners of the JAC 427 Cobras are more likely to be wearing a safety belt while driving than other segments of the population, such as young single males.

To ensure even higher safety belt use in its JAC 427 Cobras, and thereby increase the safety of the driver and passenger, Excalibur proposes reminding in the strongest terms possible both the driver and passenger of the consequences of not using their safety belts. Excalibur would accomplish this by posting a warning label plainly and clearly visible to both the driver and passenger which states as follows:

WARNING: YOU MUST USE THE SEATBELT PROVIDED IN THIS VEHICLE. IT IS THE LAW. FAILURE TO USE THE SEATBELT COULD RESULT IN SERIOUS INJURY OR DEATH SINCE THIS CAR DOES NOT HAVE AN AIRBAG OR AUTOMATIC RESTRAINT SYSTEM.

Such a label should boost safety belt use by the drivers and passengers of the 59 JAC 427 Cobras, making the safety risk inconsequential by comparison to the safety risk associated with automobiles having automatic restraint systems.

No comments were received on the application.

As noted, the agency has granted Excalibur's application for temporary exemption, on grounds that immediate compliance would cause it substantial economic hardship. An additional finding was that the exemption would be consistent with the public interest and motor vehicle safety. This finding was reached in part on the limited number of vehicles that will be covered by the exemption during its life. Given the fact that there are far fewer vehicles covered by the application under consideration, and that the noncompliance apparently cannot be remedied by repair, the agency wishes to reach a decision that is consistent with that reached in granting the application for temporary exemption. Given the fact that there are 15 vehicles involved here, and that they comply with the requirements of FMVSS No. 208 that were once in effect, Excalibur's noncompliance may be deemed inconsequential to safety.

NHTSA concurs with Excalibur's plan to provide a warning label, but points out to Excalibur that not all States have mandatory seatbelt laws. Further, the label implies that it is not important to use the seatbelt if a vehicle does not have an airbag or other automatic restraint system. It is important to use the seatbelts regardless of whether there is an automatic restraint system. The agency calls this to the manufacturer's attention with the expectation that the label provided will be modified to reflect these comments.

In consideration of the foregoing, it is hereby found that the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 18, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95-12664 Filed 5-23-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances (Polybutylene, et. al); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89-61, that the list of taxable substances in section 4672(a)(3) will be modified to include polybutylene and polybutylene/ethylene.

EFFECTIVE DATE: This modification is effective July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether the substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89-61, 1989-1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On May 16, 1995, the Secretary determined that polybutylene and polybutylene/ethylene should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1990.

The rate of tax prescribed for polybutylene, under section 4671(b)(3), is \$4.70 per ton. This is based upon a conversion factor for butylene of 0.966.

The rate of tax prescribed for polybutylene/ethylene, under section 4671(b)(3), is \$4.86 per ton. This is based upon a combined conversion

factor for butylene and ethylene of 0.999.

The petitioner is Pecten Chemicals, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

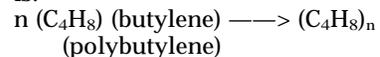
Polybutylene

HTS number: 3902.90.00.10

CAS number: 25036-29-7

Polybutylene is derived from the taxable chemical butylene. Polybutylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene is:



Polybutylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

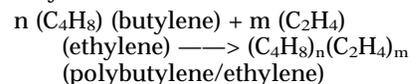
Polybutylene/Ethylene

HTS number: 3902.90.00.10

CAS number: 54570-68-2

Polybutylene/ethylene is derived from the taxable chemicals butylene and ethylene. Polybutylene/ethylene is a solid produced predominantly by the Zeigler-Nata Catalyzed, Bulk, Polymerization Process.

The stoichiometric material consumption formula for polybutylene/ethylene is:



Polybutylene/ethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95-12765 Filed 5-23-95; 8:45 am]

BILLING CODE 4830-01-U

Tax on Certain Imported Substances; Definition of Substance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.