for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–22768 Filed 9–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2009–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2009 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2009 RCAF (Unadjusted) is 0.996. The fourth quarter 2009 RCAF (Adjusted) is 0.450. The fourth quarter 2009 RCAF–5 is 0.427.

DATES: *Effective Date:* October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov*. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 15, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–22743 Filed 9–21–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0157]

Automobili Lamborghini SpA; Receipt of Application for Extension of Temporary Exemption From Advanced 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 extension of a Temporary Exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: In accordance with the procedures of 49 CFR Part 555, Automobili Lamborghini SpA (''Lamborghini'') has applied for an extension of a previously received temporary exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection,* for the Lamborghini Murcielago model. Lamborghini requests extension of its temporary exemption for the advanced air bag requirements. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

NHTSA is publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and has made no judgment on the merits of the application.

DATES: You should submit your comments not later than October 22, 2009.

Comments: We invite you to submit comments on the application described below. You may submit comments identified by docket number in the heading of this notice by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Mail:* DOT Docket Management Facility, M–30, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

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.

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 (65 FR 19477–78).

Docket: For access to the docket in order to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20950, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

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).

FOR FURTHER INFORMATION CONTACT: Sarah Alves, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Phone: 202–366–2992; Fax: 202–366–3820; E-Mail: *sarah.alves@dot.gov*.

SUPPLEMENTARY INFORMATION:

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.'' [1] 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 were 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 earlier. 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 air bag systems compared to potential benefits 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 temporary exemptions granted by this agency. In the present case, we are seeking comments on a petition for an extension of a temporary exemption for certain advanced air bag requirements submitted by a manufacturer of high-performance sports cars.

[1] *See* 65 FR 30680 (May 12, 2000).

II. Overview of Petition for Economic Hardship Exemption

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Lamborghini has petitioned the agency for an extension of a temporary exemption from certain 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. The requested exemption would apply to the Lamborghini Murcielago model and would extend the original exemption for a period of 18 months beginning on September 1, 2009, ending on February 28, 2011. The requested extension would apply to certain advanced air bag requirements, specifically the requirements in S14.5.2, S15, S17, S19, S21, S23, and S25. A copy of the petition [2] is available for review and has been placed in the docket of this notice.

III. Statutory Background for Economic Hardship Exemption

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(a)(5)) 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.

[2] 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.

IV. Petition

Background. A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Lamborghini manufactured 2,580 automobiles in 2007 and estimated a total production of 2,450 automobiles in 2008, and 2,500 automobiles in 2009. Lamborghini has gone through a number of owners over the last four decades. The current owner of Lamborghini is the German automobile manufacturer Audi, but Lamborghini stated in its petition that its relationship with Audi is ''arms length'' and that Lamborghini operates independently.

In a September 2006 notice granting Lamborghini's original exemption, NHTSA concluded that Lamborghini was eligible to apply for a temporary exemption and that Audi was not a manufacturer of Lamborghini vehicles by virtue of being a ''sponsor.'' The agency explained:

> Lamborghini S.p.A. is 100% owned by Audi AG (which, in turn is 99.1% owned by Volkswagen AG). We have concluded that Lamborghini is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Lamborghini and cars produced by Audi. There is no sharing of engines, transmissions, platforms, or interior systems, and production tooling is unique to Lamborghini. Second, Lamborghini has indicated that it has paid for all services or assistance provided by Audi in ''arm's-length'' transactions. Third, cars are imported and sold through separate distribution channels independent of the Audi dealer network. Accordingly, NHTSA concludes that Audi is not a manufacturer of Lamborghini vehicles by virtue of being a sponsor.[3]

In its current petition, Lamborghini states that based on this previous finding, Lamborghini is eligible to apply for this petition. Lamborghini confirmed via a signed document submitted to NHTSA via e-mail from its U.S. consultant that Lamborghini currently certifies that all the facts it certified in its original petition concerning Lamborghini's relationship with its parent company Audi continue to be true.[4]

Requested exemption. Lamborghini has applied for an extension of its temporary exemption from the FMVSS No. 208 advanced air bag requirements. Lamborghini requested an additional 18 months for the exemption from the rigid

[3] 61 FR 52851, 52853 (Sept. 7, 2006).

[4] This document will be placed in this docket along with the petition.

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 to 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). Lamborghini's current exemption extends until August 31, 2009, and Lamborghini requested a one-and-a-half year extension that would exempt Lamborghini's Murcielago model from the listed advanced air bag requirements through February 28, 2011.

Economic hardship. In its petition Lamborghini states that its previously established financial hardship [5] continues. Lamborghini states that financial statement ''Forecasts for 2008 through 2011 are not good.'' Lamborghini states that although 2006 and 2007 financial statements have shown profitability, the recent upheaval in the global economy could have a substantial negative effect on these predictions.[6] Specifically, Lamborghini's financial information submission showed that in the absence of the requested extension, it would lose between 120 and 200 U.S. Murcielago sales over the extension's 18 month period, and that alone would translate into lost revenue of between 32,000,000 and 55,000,000 Euros ($44,480,000–$76,450,000), depending on the number of vehicles sold under the extension.[7] Murcielago sales are 25 percent of total U.S. Lamborghini sales and in its petition Lamborghini stated that the profit margin on the top-of-the-line Murcielago is the highest of any model the company sells.

Lamborghini states in its petition that the financial impact on Lamborghini of an extension denial would actually be even greater than mere lost U.S. sales or lost profits. First, by having no U.S. product in the ''supercar'' product range for 18 months, Lamborghini states that it would lose significant market share to competing brands which may never be regained. Second, because U.S. Murcielago sales are between 40 and 50 percent of total worldwide Murcielago sales, Lamborghini states in its petition that it would no longer be viable for Lamborghini to continue to produce that model for any markets. In its petition Lamborghini states that shutdown of the Murcielago production line would mean lost sales beyond lost U.S. sales and would mean layoffs at the factory that would raise the risk of permanently losing skilled workers to competing factories in the area, since the unemployment rate in the area is only between 2 and 3 percent. Lamborghini argues that such consequences demonstrate ''substantial economic hardship'' within the meaning of 49 U.S.C. 30113(b)(3)(B)(i).

Good faith efforts to comply. Lamborghini stated that since the filing of the original petition for exemption, and since its granting in late 2006, further unexpected events have transpired that require the product cycle of the current Murcielago to be extended from September 2009 until March 2011. Specifically, the launch of the Murcielago successor has been delayed by up to 18 months due to the need to develop technologies and materials that permit an even lighter weight vehicle due to the need to comply with European Union carbon dioxide and noise requirements. In its petition Lamborghini stated that such development is a very time consuming endeavor and this is the same reason behind Ferrari's advanced air bag exemption request in November 2007.[8]

Lamborghini referred to NHTSA's September 2006 decision granting Lamborghini's original petition for exemption which stated that ''[l]ike Ferrari, Lamborghini stated that its product cycles must last longer than the industry average due to the high cost of development and extremely small sales volume.'' [9] Lamborghini also quoted NHTSA's original grant as stating that ''[w]hile the petitioner was aware of the new requirements for some time, *its business plans changed,* and it was subsequently determined that the Murcielago's production run would need to be extended beyond 2006, thereby raising the problem of compliance with the advanced air bag requirements.'' [10] In its petition Lamborghini explained that as happens in the small volume automotive industry, Lamborghini's business plan has changed again for reasons that Lamborghini could not control (*i.e.*, the European Union requirements, as noted above), and Murcielago production must continue for 18 months longer.

Lamborghini stated in its petition that in 2008, when it realized that the Murcielago successor was going to be delayed, it revisited the possibility of fitting advanced air bags to the current Murcielago in case the technological and supplier situations had changed since the last efforts made by Lamborghini in 2005. Its petition stated that after this reexamination, Lamborghini reached the same conclusion it had reached in 2005: that fully compliant advanced air bags for the current Murcielago were infeasible. However, Lamborghini stated that testing that was part of this reexamination of the feasibility of advanced air bags revealed that the Murcielago could pass the upcoming belted 35 mile per hour (mph) 50th percentile dummy tests under S14.5.1(b) of FMVSS No. 208. As a result of this extra testing, Lamborghini stated that it can certify the Murcielago to the 35 mph belted 50th percentile dummy requirements in advance of the September 1, 2010 small volume manufacturer deadline. In its petition, Lamborghini stated that this is further evidence that it is taking definitive good faith steps towards a full advanced air bag system and supports its request for the extension.

Having reached the conclusion again that fully-compliant advanced air bags were not feasible for the current Murcielago, Lamborghini stated that it has continued its focus on developing advanced air bags for the Murcielago successor. In its petition Lamborghini explained that it has continued its efforts regarding 100 percent FMVSS No. 208 compliance for the Murcielago successor. Lamborghini stated that the estimated costs for FMVSS No. 208 compliance for the successor Murcielago are 10,000,000 Euros ($13,900,000).

Lamborghini argues that an exemption would be in the public interest. The petitioner states in its petition that the same reasons NHTSA determined that Lamborghini's original petition was consistent with the public interest remain valid. Lamborghini put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act. Specifically:

1. Lamborghini stated that the estimated 120 to 200 exempted vehicles that would be produced over 18 months under the requested exemption constitute a tiny fraction of the nation's vehicle fleet, and the requested

[5] *See* 71 FR 52851 (September 7, 2006).

[6] In its petition, Lamborghini cites increased sales resulting from more dealers worldwide, the development of special series high margin vehicles, individualized made-to-order cars, and the offering of special options as reasons that its 2006–2007 results have been better than forecasted.

[7] All dollar values are based on an exchange rate of 1 Euro = $1.39.

[8] 72 FR 66028.

[9] 71 FR 52851, 52854.

[10] *Id.* at 52855 (emphasis added by Lamborghini).

extension would therefore have a *de minimus* impact on the overall safety of U.S. highways.

2. The petitioner stated that the exempted vehicles would comply with all FMVSSs other than the provisions that are subject to the extension request.

3. Lamborghini stated that a denial of the requested exemption would affect its goodwill, dealers, and service personnel by their inability to continue business with the Murcielago (*i.e.,* to have a top-of-the-line model available for U.S. dealers).

4. Lamborghini stated that the Murcielago is likely to be operated only on a limited basis and the requested extension will have a negligible impact on the overall safety of U.S. highways. The petitioner stated that research indicates that the Murcielago is driven on average only about 5,000 miles per year.

5. Lamborghini stated that by its very nature, it is extremely rare that the Murcielago transports children.

6. The petitioner cited the Murcielago's safety record, which it called excellent. Both in the U.S. and the rest of the world, Lamborghini stated that it knows of no injuries caused by the Murcielago's current air bag system. Lamborghini stated that given the very low volume of Lamborghini sales, such instances of death or injury, if they were to occur, would be known to the company. Therefore, Lamborghini stated, the vehicle guarantees a very high safety level even without an advanced air bag system, due, in part, to the crashworthiness design of the vehicle necessitated by its very high performance.

7. Lamborghini argued that if the exemption is not granted, U.S. consumer choice would be harmed and that the agency has long maintained that the National Traffic and Motor Vehicle Safety Act seeks, if possible, to avoid limiting consumer choice.

8. Lamborghini stated that it provides as standard equipment safety features that are not required by the FMVSS, which it states are in the public interest, including: passenger air bag on-off switch (which serves a key purpose at which advanced air bags are aimed—protection of smaller occupants), antilock brake system (ABS), traction control, 4-wheel drive, occupant protection in a frontal pole test at 35 kilometers per hour, and roadster roof crush resistance at 2.5 times the a mass of vehicle.

V. Issuance of Notice of Final Action

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 application in the **Federal Register.**

Issued on: September 17, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–22799 Filed 9–21–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 15, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 22, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2142.
Type of Review: Extension.
Form: 8038–CP.
Title: Form 8038–CP—Return for Credit Payments to Issuers of Qualified Bonds.

Description: Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds, will be used to make direct payments to State and local governments. The American Recovery and Reinvestment Act of 2009, Public Law 111–5, provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. The bill gives State and local governments the option to receive a direct payment from the Federal government equal to a subsidy that would have been received through the Federal tax credit for bonds.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 134,600 hours.

OMB Number: 1545–2141.
Type of Review: Extension.
Title: NOT–2009–31—Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.

Description: The guidance in this notice implements temporary, elective relief under the Workers, Retirees, and Employers Relief Act of 2008 (WRERA), which was enacted this past December, for multiemployer pension plans from certain funding requirements.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,600 hours.

OMB Number: 1545–1993.
Type of Review: Extension.
Title: Notice 2006–54, Alternative Fuel Motor Vehicle Credit.

Description: This notice sets forth a process that allows taxpayers who purchase alternative fuel motor vehicles to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model, and year of vehicle qualifies as an alternative fuel motor vehicle under Sec. 30B(a)(4) and (e) of the Internal Revenue Code and the amount of the credit allowable with respect to the vehicle.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 600 hours.

OMB Number: 1545–1801.
Type of Review: Extension.
Title: Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.

Description: This revenue procedure prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 (''contingent liability transactions''). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 7,500 hours.

OMB Number: 1545–1837.
Type of Review: Extension.
Title: Revenue Procedure 2003–36, Industry Issue Program.

Description: Revenue Procedure 2003–36 describes the procedures for business taxpayers, industry associations, and others representing business taxpayers to submit issues for resolution under the IRS's Industry Issues Resolution Program.

Respondents: Businesses or other for-profits.