

Requirements” is an abbreviated form of the title of S14 of FMVSS No. 208.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Spyker is granted NHTSA Temporary Exemption No. EX 08-03, from S19, S21, S23 and S25 of FMVSS No. 208. The exemption shall remain in effect until December 15, 2010.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: March 19, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

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

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Adoption of a railroad cost recovery procedures productivity adjustment.

SUMMARY: In a decision served on February 5, 2009, we proposed to adopt 1.012 (1.2% per year) as the measure of average change in railroad productivity for the 2003–2007 (5-year) averaging period. This value represented no change from the current measure of 1.2% that was developed for the 2002–2006 period. The decision stated that comments may be filed addressing any

perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2009.¹

On February 23, 2009, the Board received comments from the Association of American Railroads (AAR). AAR noted that they could not check the computation of the productivity value without access to certain input data. To ensure that release of this data would not violate our confidentiality practices, we conducted additional analysis of the data AAR referenced. In that review, we found inconsistencies in our application of the program processes used to compute our most recent estimate of productivity change. Therefore, we reopened this proceeding based on material error under 49 U.S.C. 722(c) to correct these inconsistencies and issued a modified annual productivity decision on March 20, 2009. We find that the increase in productivity in 2007 should have been reported as 1.018 instead of 1.004. As a result, the 5-year geometric mean of the annual change in productivity is 1.015 (or 1.5% per year), not 1.012 (or 1.2% per year), as originally reported.

¹ Since 1989, the cost recovery procedures have required that the quarterly rail cost adjustment factor (RCAF) be adjusted for long-run changes in railroad productivity. The ICC Termination Act of 1995 continues this requirement (49 U.S.C. 10708, as revised). The long-run measure of productivity is computed using a 5-year moving geometric mean. See *Productivity Adjustment-Implementation*, 9 I.C.C.2d 1072 (1993).

In its comments, AAR also requested that we eliminate reference to the arithmetic mean over the previous five years, as that mean is not required by regulation. We had originally reported the 2003–2007 productivity growth using both an arithmetic and geometric mean. The AAR is correct to note that the arithmetic mean is not used in any required applications and can be a source of confusion. Therefore, we will no longer publish the arithmetic mean in future Ex Parte No. 290 (Sub-No. 4) decisions.

DATES: *Effective Date:* The productivity adjustment is effective March 20, 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>.

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: March 20, 2009.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9-6622 Filed 3-24-09; 8:45 am]

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