

for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program).

Charles J. O'Neill,

*Planning & Program Mgmt. Team Leader,
Nashville, TN.*

[FR Doc. 2010-23527 Filed 9-20-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS): Route 475 (Knoxville Parkway), From Interstate 75 South of Knoxville to Interstate 75 North of Knoxville, Loudon, Knox, and Anderson Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 4, 2005 to prepare a SEIS for the proposed Route 475 (Knoxville Parkway) from Interstate 75 south of Knoxville to Interstate 75 north of Knoxville, Loudon, Knox, and Anderson Counties, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. O'Neill, Planning and Program Management Team Leader, Federal Highway Administration—Tennessee Division Office, 404 BNA Drive, Suite 508, Nashville, TN 37217. 615-781-5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, is rescinding the notice of intent to prepare a SEIS for the proposed Route 475 (Knoxville Parkway) from Interstate 75 south of Knoxville to Interstate 75 north of Knoxville, Loudon, Knox, and Anderson Counties, Tennessee. The proposed

project was approximately 36 miles in length.

The project as described in the December 18, 2001 Draft Environmental Impact Statement (DEIS) was proposed to improve the regional transportation system in the area.

Since the original Draft Environmental Impact was approved, the alternative development and screening process for the project has continued through a Context Sensitive Solution Process (CSS). This CSS process identified new alternatives to follow the general alignment of the Orange alternative, but had been shifted at various locations based on input from the CSS process. In addition, the number and type of access points along the route have been modified. The purpose of the SDEIS was to study and develop the new alternatives. The No-Build and three Build Alternatives were proposed to be studied in the SDEIS.

Revised traffic projections show a much lower level of traffic using the new proposed Route 475 (Knoxville Parkway) and a smaller diversion of traffic from Interstate 40 and Interstate 75 than was originally projected. In addition, the estimated cost of approximately one billion dollars was determined to be prohibitive.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Charles J. O'Neill,

*Planning and Program Mgmt., Team Leader,
Nashville, TN.*

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0069]

Fisker Automotive; Grant of Application for 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 grant of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*.

SUMMARY: This notice grants the petition of Fisker Automotive Corporation (Fisker) from certain advanced air bag requirements of FMVSS No. 208, for the Karma model. 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. This action follows our publication in the **Federal Register** of a document announcing receipt of Fisker's petition and soliciting public comments.

DATES: The exemption is effective immediately and remains in effect until September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Edward Glancy, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-326, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

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

¹ See 65 FR 30680 (May 12, 2000).

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.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers which have petitioned on the basis of substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. NHTSA has granted a number of these petitions, usually in situations where the manufacturer is supplying standard air bags in lieu of advanced air bags.² In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

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 exemption granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a plug-in hybrid electric car. The basis of the petition was substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

II. Statutory Basis for Requested Part 555 Exemption

The National Traffic and Motor Vehicle Safety Act, codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions.

Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

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 state that a manufacturer has 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) 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.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"³ the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith

efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Fisker's Petition

Fisker submitted a petition for exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection*, pursuant to 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*. Specifically, the petition requested an exemption from paragraphs S14, S15, S17, S19, S21, S23, and S25 of FMVSS No. 208, which relate to the advanced air bag requirements. However, the petitioner stated that it will be compliant with S14.5.1(b), barrier test requirements using belted 50th percentile adult male dummies. The basis of the petition was substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

In its petition, Fisker requested an exemption for the Karma model "for a period of one year from the date of NHTSA approval or until May 24, 2011, by which time Fisker will be able to fully comply with the requirements of Federal Motor Vehicle Safety Standard 208." In a submission dated July 30, 2010, Fisker⁴ stated that due to delays in vehicle availability for air bag system development and testing, it was requesting that the exemption be for "a period of one year from the date of NHTSA approval, by which time Fisker will be able to fully comply with the requirements of Federal Motor Vehicle Safety Standard 208."

According to the petition, Fisker is a privately held company incorporated in the State of Delaware, with headquarters in California. Its total motor vehicle production during the 12 months preceding the filing of the petition was 0 vehicles. We note that Fisker Automotive was established in September 2007 as a joint venture of Fisker Coachbuild, LLC and Quantum Fuel System Technologies Worldwide, Inc.

The petitioner stated that the Fisker Karma is a completely new passenger car model. Design and development of the Karma began in late 2007. The Karma is being designed and developed to meet all applicable FMVSS and EEC regulations, including the installation of eight air bags on the coupe version and six air bags on the convertible version. Fisker stated the air bag system is being developed through cooperation with

² See, e.g., grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

³ 49 U.S.C. 30113(b)(1).

⁴ The July 30, 2010 submission was submitted on behalf of Fisker by Global Vehicle Services Corporation.

Takata, Tass, and Bosch, which have been granted contracts to complete the development of the air bag systems. The petitioner stated that these companies were retained in 2008/2009 and are continuing the efforts to develop an air bag system that is fully compliant with the requirements of FMVSS No. 208.

Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total \$7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial economic hardship to the company.

The petitioner stated that if the exemption petition is approved, the Karma models sold under the exemption will be compliant with all FMVSSs, with the exception of certain sections of FMVSS No. 208. Fisker stated that the coupe version will be equipped with eight functional air bags (front, side, knee and curtain air bags), and the convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters. Also, according to the petitioner, both models will be compliant with the 50th percentile adult male dummy unbelted test requirements contained in section 13 of the standard.

Fisker argued that sales of the Karma are in the public interest. It stated that the Karma "is leading the way towards the introduction of advanced low-emission vehicle technologies to the US and world markets." Fisker stated that the Karma will be the first plug-in hybrid passenger car available for purchase by the general public. It also cited benefits of employment opportunities.

IV. Notice of Receipt

On June 2, 2010 we published in the **Federal Register** (75 FR 30900) a notice of receipt of Fisker's petition for temporary exemption, and provided an opportunity for public comment. We did not receive any substantive comments.⁵

⁵ Chrysler submitted a comment noting that the petition from Fisker was not posted in the docket until late in the comment period, and requested a "nominal amount of time (<10 business days)" to fully consider the petition and finalize comments. However, Chrysler did not subsequently submit a substantive comment.

V. Agency Analysis and Decision

In this section we provide our analysis and decision regarding Fisker's temporary exemption request concerning advanced air bag requirements of FMVSS No. 208.

As discussed below, we are granting Fisker's petition for the Karma to be exempted, for a period of one year, from S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(b), Fisker must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

a. Issues Related to Eligibility

As discussed above, a manufacturer is eligible to apply for an economic 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). Moreover, 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.

While Fisker developed the Karma, the vehicle will be assembled in Finland by Valmet Automotive (Valmet). The petitioner can be considered a manufacturer of the Karma as a "sponsor," even though the vehicle will be assembled by Valmet.

In considering the issue of eligibility in the present situation, Fisker does not currently manufacture any vehicles. Therefore, there is no issue as to whether it manufactures vehicles other than the Karma.

We next consider whether persons other than Fisker can be considered to manufacture the Karma. The answer is yes. Valmet will be a manufacturer of the Karma by virtue of assembling it. See 49 U.S.C. 30102(a)(5).

Given that both Fisker and Valmet can be considered manufacturers of the Karma, there are a number of potential issues concerning how the agency should analyze the petition, e.g., whether to consider one or both companies with respect to the 10,000 vehicle limitation for eligibility, hardship, good faith efforts, etc. We note, for example, that we have in the past cited the possible situation of large manufacturers potentially avoiding the

statutory 10,000 vehicle limit by engaging in joint ventures with small companies and having the small company submit the petition.⁶

Valmet is a company which is known as a contract manufacturer of specialty cars. Among other things, it has manufactured the Boxster and Cayman for Porsche.

Fisker introduced the Karma in January 2008 at the North American International Auto Show in Detroit. In July 2008, Valmet issued a press release titled "Valmet Automotive announces a Letter of Intent for an Assembly Contract with Fisker Automotive." The press release indicated that Valmet was chosen as the engineering and manufacturing supplier for Fisker after an extensive global search. In November 2008, Valmet issued a press release titled "Valmet Automotive and Fisker Automotive have signed the cooperation agreement."

As noted above, Fisker stated in its petition that the Karma is a completely new passenger car model. According to the petitioner, the chassis, body, and powertrain are being designed and developed by Fisker with assistance from a large number of suppliers, which include EDAG, Magna International, Quantum Technologies, TRW, Tass, Lear, Visteon, Rousch, Global Vehicle Services, General Motors, ESG, and Takata Holdings.

Based on the available information, we believe that Valmet's role with the Karma is primarily that of an assembly contractor, i.e., Valmet did not play a significant role in the development of the vehicle at issue. We also note that, as indicated above, the petitioner stated that the Karma is a completely new passenger car model.

Given the above, we believe Fisker should be considered eligible to apply for an economic hardship exemption without regard to the circumstances of Valmet. While Valmet is also considered a manufacturer of the Karma by virtue of assembling it, the role of an assembly contractor is a relatively limited one in the overall production of a vehicle. We believe that this particular situation does not raise concerns along the lines of a large manufacturer potentially avoiding the statutory 10,000 vehicle limit by engaging in a joint venture with a small company and having the small company submit the petition.

It is not necessary in responding to this petition to resolve all potential issues related to eligibility that may arise in a situation where more than one company can be considered a

⁶ See grant of petition to Tesla Motors, Inc., 73 FR 4944, 4948 (Jan. 28, 2008).

manufacturer of a vehicle that is the subject of an economic hardship exemption. We will address these issues as necessary in the context of a specific petition or contemplated manufacturer relationship that is brought before us.

b. Economic Hardship

As noted earlier, Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total \$7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial financial economic hardship to the company.

Fisker estimated that if the exemption is approved, it would have net income (loss) of \$ (21,724,141) in 2011 and net income of \$ 188,768,234 in 2012. The petitioner estimated that without the exemption, it would have net income (loss) of \$ (50,592,209) in 2011 and net income (loss) of \$ (132,268,961) in 2012.

After reviewing the financial and other information provided by Fisker, we believe that company has shown substantial economic hardship. Without the exemption, Fisker will not be able to begin manufacturing and selling the Karma during the one-year period it needs to complete the design and development programs necessary to meet the advanced air bag requirements. Moreover, the company does not have any other models to sell. Considering the overall circumstances of the company, the financial impacts would represent substantial economic hardship.

c. Good Faith Efforts To Comply

As noted earlier, the petitioner stated that the Fisker Karma is a completely new passenger car model. Design and development of the Karma began in late 2007. The Karma is being designed and developed to meet all applicable FMVSSs and European Economic Community (EEC) regulations, including the installation of eight air bags on the coupe version and six air bags on the convertible version. Fisker stated the air bag system is being developed through cooperation with Takata, Tass, and Bosch, which have been granted contracts to complete the development of the air bag systems. The petitioner stated that these companies were retained in 2008/2009 and are continuing the efforts to develop an air

bag system that is fully compliant with the requirements of FMVSS No. 208.

Fisker stated that it subcontracted the advanced air bag system development to experienced outside companies, and that the air bag development costs represent a very significant expenditure to the company. It provided information to show that its costs total \$7,714,857. Fisker stated that without a temporary exemption, which would enable the company to generate funds through the sale of vehicles, it may not be able to sustain the air bag and vehicle development programs, causing substantial financial economic hardship to the company.

After reviewing Fisker's petition, we believe that company has made good faith efforts to comply with the advanced air bag requirements. Fisker is a new company, and the Karma is a completely new passenger car model. While the company is designing and developing the Karma to comply with all of the FMVSSs, it is requesting a one-year exemption from the advanced air bag requirements to enable it to begin manufacturing and selling vehicles while it completes the design and development programs necessary to meet the advanced air bag requirements. We note that Fisker has contracts in place for this development.

We also note that Fisker has made significant financial investments in the Karma, including the occupant protection system. Fisker stated if the exemption petition is approved, the Karma models sold under the exemption will be compliant with all FMVSSs with the exception of the advanced air bag provisions. The coupe version will be equipped with eight functional air bags (front, side, knee and curtain air bags). The convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters. According to the petitioner, both models will be compliant with the 50th percentile male unbelted test requirements contained in S13 of FMVSS No. 208.

In sum, we believe that considering Fisker's overall situation, the efforts that company has made to date, the plans it has in place, and the fact that it intends to fully comply with the advanced air bag requirements within one year, Fisker has made good faith efforts to comply with those requirements.

d. Public Interest Considerations

NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles, by encouraging the

development of fuel-efficient and alternative-energy vehicles, and providing additional employment opportunities. We believe that all three of these public interest considerations would be served by granting Fisker's petition.

We note that on April 23, 2010, the Department of Energy (DOE) issued a press release announcing the closing of a \$529 million loan to Fisker for the development and production of two lines of plug-in hybrid electric vehicles (PHEV). DOE stated that "the loan will support the Karma, a full-size, four-door sports sedan, and a line of family oriented models being developed under the company's Project NINA program."

DOE stated that Fisker expects to manufacture the Karma and Project NINA lines at a recently shuttered General Motors (GM) factory in Wilmington, Delaware, and that the company anticipates that it will employ 2,000 American assembly workers. Industry experts expect that domestic parts suppliers and service providers also will increase employment substantially.

According to the DOE press release:

- Fisker's plug-in hybrid products will be among the first to market and will help to accelerate the introduction of fuel-saving electrified vehicles in the U.S.
- Initially, Fisker will use the proceeds of the loan for qualifying engineering integration costs as it works with primarily U.S. suppliers to incorporate components into the Karma's design. The engineering integration work will be conducted in Irvine, California, where engineers will design tools and equipment and develop manufacturing processes. The Karma is scheduled to appear in showrooms in late 2010. The second stage will involve the purchase and retooling of the former GM plant to manufacture the Project NINA line of PHEVs, which is expected to begin rolling off the assembly line in late 2012.

- Fisker automobiles are driven by electric motors that get their power from a rechargeable Lithium-ion battery, or, when that is depleted, by a generator driven by an efficient gas-powered engine. The Karma and Project NINA models will have an all-electric, tailpipe-emission-free range of 40 to 50 miles on a full charge, more than most Americans drive each day. The battery can be charged at home overnight. Using gas and electric power, Fisker plug-in hybrids are expected to have a cruising range of up to 300 miles.

While some of the items discussed in the DOE press release are longer-term, the granting of Fisker's petition will

enable it to begin the manufacture and sale of the Karma earlier than it could otherwise. This will provide additional consumer choice in selecting a motor vehicle, encourage the development of fuel-efficient and alternative-energy vehicles, and provide additional employment opportunities. It will also enable Fisker to generate funds through the sale of vehicles, which will help it sustain vehicle development plans, including meeting the advanced air bag requirements.

We have also considered safety issues related to the exemption requested by Fisker. With respect to transporting children, Fisker noted that the Karma is equipped with two rear seats. Each rear seat is equipped with a child seat LATCH system.⁷ Fisker stated that child seats may be safely placed in these rear seat positions. The Karma will also have the permanently affixed "sun visor air bag warning label" and a removable "warning label on the dashboard" that NHTSA developed/requires for vehicles without advanced air bags. Thus, parents and others will be able to transport children in the rear seats of the Karma without exposing them to the risks of air bags, and the vehicles will have warning labels concerning the risks of air bags. This helps minimize any safety disbenefits of the vehicle not meeting requirements for advanced air bags.

We also note again that the coupe version of the Karma will be equipped with eight functional air bags (front, side, knee and curtain air bags). The convertible version will be equipped with six functional air bags (front, side and knee air bags). Both versions will include seat belts with pretensioners and load limiters.

Given the relatively small number of vehicles that will be produced during the one-year exemption and the above discussion, we believe that the requested exemption would have a negligible effect on motor vehicle safety.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted

pursuant to NHTSA Exemption No. _____." This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208. We believe it is reasonable to interpret § 555.9 as requiring this language.

e. Decision

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Fisker is granted NHTSA Temporary Exemption No. EX 10-01, from S14 (apart from S14.5.1(b)), S15, S17, S19, S21, S23, and S25 of FMVSS No. 208. In addition to certifying compliance with the belted 50th percentile adult male dummy barrier impact requirements in S14.5.1(b), Fisker must certify to the unbelted 50th percentile adult male dummy barrier impact test requirement that applied prior to September 1, 2006 (S5.1.2(a)). For purposes of this exemption, the unbelted sled test in S13 is an acceptable option for that requirement.

The exemption is for the Karma and shall remain in effect for one year as indicated in the **DATES** section of this document.

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

Issued on: September 15, 2010.

David L. Strickland,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. CU 159]

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2009. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the affects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE

| Year | Index | Deflator |
|------------|--------|----------|
| 1991 | 409.50 | 100.00 |
| 1992 | 411.80 | 99.45 |
| 1993 | 415.50 | 98.55 |
| 1994 | 418.80 | 97.70 |
| 1995 | 418.17 | 97.85 |
| 1996 | 417.46 | 98.02 |
| 1997 | 419.67 | 97.50 |
| 1998 | 424.54 | 96.38 |
| 1999 | 423.01 | 96.72 |

¹ *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR Part 1201*, 8 I.C.C. 2d 625 (1992) raised the revenue classification level for Class I railroads from \$50 million (1978 dollars) to \$250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from \$10 million (1978 dollars) to \$20 million (1991 dollars).

⁷ Lower Anchors and Tethers for Children (LATCH) Restraint System.