

regulatory action, after public notice and comment, to address those risks.

Nevertheless, non-placarded shipments of explosives continue to be subject to general HMR requirements governing packaging and hazard communication. These risk-based safety requirements also enhance overall transportation security. For example, for high hazard shipments, such as Class 1 materials, the stringent packaging required by the HMR to enhance the safety of the shipment in transportation makes it difficult for someone to tamper with the shipment for a criminal or terrorist purpose. Similarly, shipping documents help shippers, carriers, and consignees account for specific shipments and identify discrepancies or missing packages. In addition, under the HM-232 final rule, hazardous materials employers must ensure that all hazardous materials employees receive security awareness training. Such training must include an awareness of the security risks associated with hazardous materials transportation and a component covering how to recognize and respond to possible security threats.

A joint decision by DOT and TSA as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to warrant background check or other security requirements is determinative. As noted above, DOT and TSA previously determined that the transportation of non-placarded shipments by persons described under section 842(i) does not present a sufficient security risk to warrant further regulation at this time. That determination also applies to the transportation in commerce of non-placarded explosives via rail.

For the transportation of explosives by rail in amounts that require placarding, RSPA and FRA regulations, the protections inherent in railroad operations against improper use of explosives by railroad employees, and security safeguards imposed by the railroads themselves adequately address, at the current time, security risks associated with rail employees who are involved in such transportation. DOT regulations ensure that explosives shipments are properly loaded, labeled, and documented, and that the shipments are very difficult to tamper with. In addition, the HM-232 final rule requires persons who transport certain hazardous materials to develop and implement security plans. Thus, railroads that carry hazardous materials, including explosives, in amounts that require placarding must have a security plan that conforms to HM-232 requirements. The plan must

include an assessment of possible transportation security risks for covered shipments and appropriate measures to address the risks. Specific measures put into place under the plan must address personnel security. To the extent that a railroad identifies security vulnerabilities related to its personnel, its security plan must address those vulnerabilities. Further, major railroads have their own authorized law enforcement officers, and the nature of railroad operations makes it difficult for an employee to have any realistic opportunity to gain access to, improperly use, or redirect the movement of the shipments. Major railroads screen potential employees in a way that is designed to reveal those who are under indictment or have been convicted of serious felonies, are fugitives from justice, are in the country illegally, have renounced their citizenship, or have been dishonorably discharged from the armed forces. Serious felonies involve those offenses that generally pose a substantial threat to public safety and security.

Periodic operational testing and the nature of railroad work create an environment in which mental disorders that give rise to safety or security concerns are likely to be noticed and addressed. FRA's alcohol and drug regulations effectively prevent substance abusers from serving in security-sensitive positions. Recent security enhancements undertaken by the major railroads have also helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession. Small railroads rarely handle any explosives shipments, and many of the safeguards against misuse of those materials that exist on larger railroads are also present on small ones.

For all of these reasons, DOT and TSA have determined that the transportation of explosives via rail by persons described under section 842(i) does not pose a sufficient security risk warranting further regulation at this time. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons while they are engaged in the transportation of explosives in commerce via rail.

It is important to note that this determination may be reassessed as DOT and TSA continue to identify and address security risks associated with the transportation of explosives. For example, in a rulemaking to be developed under Docket HM-232A, RSPA is evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks

in transportation. Likewise, TSA is considering transportation worker identification rules that would likely include certain railroad workers and entail background checks. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements will be developed through normal notice and comment procedures, unless security threats justify expedited or emergency rulemaking.

Issued in Washington, DC, and Arlington, Virginia, on June 4, 2003.

**Samuel G. Bonasso,**

*Acting Administrator, Research and Special Programs Administration.*

**Allan Rutter,**

*Administrator, Federal Railroad Administration.*

**James M. Loy,**

*Administrator, Transportation Security Administration.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2003-15353]

#### Notice of Receipt of Petition for Decision That Nonconforming 2002 BMW Z8 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2002 BMW Z8 passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is July 9, 2003.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. 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 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether nonconforming 2002 BMW Z8 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2002 BMW Z8 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren

Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 BMW Z8 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2002 BMW Z8 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 BMW Z8 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 2002 BMW Z8 passenger car models comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) replacement of the speedometer and tachometer with U.S.-model components; (b) reprogramming the dash to add all required warning and theft protection functions.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model rear sidemarker lights.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection*: reprogramming the vehicle to actuate the ignition key and safety belt warning systems.

Standard No. 118 *Power Window Systems*: reprogramming the vehicle so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*:

(a) reprogramming the dash to add the required seat belt warning functions; (b) replacement of the passenger's seat belt with a U.S.-model component. The petitioner states that the vehicle is equipped with a U.S.-model driver's seat belt and with U.S.-model air bags, control units, and related interior parts.

The petitioner states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 4, 2003.

**Kathleen DeMeter,**

*Acting Associate Administrator for Enforcement.*

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