

1508) 23 CFR 771.117; and 23 U.S.C. 139(1)(1).

Issued on: November 24, 2008.

James J. Steele,

Division Administrator, Lansing, Michigan.
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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

WCTU Railway Company

[Waiver Petition Docket Number FRA-2008-0106]

The WCTU Railway Company (WCTU), as a subsidiary of Railserve Inc. having its office located in Atlanta, Georgia, has petitioned FRA for a waiver of compliance from 49 CFR Part 223, Safety Glazing Standards for one locomotive, specifically locomotive number WCTU 1001. Locomotive WCTU 1001 is an EMD Switcher-Model SW1, built in 1946. The existing glazing is an ASI laminated safety glass, and is currently in good condition. WCTU, which is located in White City, Oregon, operates on approximately 20 miles of track and serves approximately 12 small rail shippers around White City, OR.

WCTU interchanges with the Central Oregon & Pacific Railroad Company. The records indicate that there have been no reported incidents of vandalism or any other incidents that involved WCTU 1001. WCTU operates over 20 miles of track at a speed not exceeding 10 miles per hour. To install FRA Type I or Type II safety glazing would impose an extreme financial burden to this railroad.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2008-0106) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC, on December 1, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.
[FR Doc. E8-28886 Filed 12-4-08; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0189]

Initial Decision That Certain BMW Mini Cooper S Vehicles Contain a Safety-Related Defect Regarding the Exhaust Pipe Tips; and Scheduling of a Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of initial decision and public meeting.

SUMMARY: NHTSA will hold a public meeting regarding its Initial Decision that model year (MY) 2007 and certain MY 2008 BMW Mini Cooper S vehicles (subject vehicles) contain a defect related to motor vehicle safety in the vehicle's exhaust pipe tips.

DATES: The public meeting will be held beginning at 10 a.m. on Wednesday, December 17, 2008.

FOR FURTHER INFORMATION CONTACT: AnnaLisa Nash, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-5263. NHTSA's Initial Decision, and the information on which it was based, is available at NHTSA's Technical Information Services (TIS), Room E12-100, 1201 New Jersey Avenue, SE., Washington, DC 20590; Telephone: (202) 366-2588. When visiting Technical Information Services or contacting it via telephone, refer to investigation EA08-020. In addition, the agency's initial decision is available on the agency's Web site at <http://www.nhtsa.gov>.

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10, on November 26, 2008, NHTSA's Associate Administrator for Enforcement made an Initial Decision that MY 2007 and certain 2008 BMW Mini Cooper S vehicles manufactured by BMW of North America, LLC (BMW) contain a defect related to motor vehicle safety. The exhaust pipe tips on these vehicles cause and contribute to burns on the legs of people.

A. The Agency's Investigation and Request That BMW Conduct a Recall

On April 28, 2008, NHTSA's Office of Defects Investigation (ODI) opened an investigation, Preliminary Evaluation (PE08-031), to investigate an alleged safety-related defect concerning burn injuries in MY 2007 Mini Cooper S (hardtop) vehicles. ODI requested information from BMW. After a review

of BMW's response, ODI upgraded PE08-031 to an Engineering Analysis (EA08-020) on August 29, 2008, and expanded the scope of the investigation to include MY 2008 Mini Cooper S vehicles.

ODI and BMW have received numerous complaints indicating that consumers' legs have been burned while they access the rear cargo area of the subject vehicles via the rear hatchback shortly after the vehicles have been driven. As reflected by the complaints, people accessing the cargo area naturally place their legs at the rear of the vehicle. People are burned as they inadvertently contact either of the two hot exhaust pipe tips while removing items from, or placing items in, the rear cargo area. Some of the burn injuries are significant second degree burns, causing blistered skin or scarring, often in a half-moon shape pattern matching the approximately 2¾-inch diameter of the exhaust tips.

Prior to the redesign of the subject vehicles for MY 2007, there were relatively few instances of burns from the exhaust pipe tips of Mini Cooper S vehicles. As redesigned for MY 2007, the Mini Cooper S vehicles have much larger exhaust pipe tips than under the previous design, and the tips extend beyond the rear bumper cover. After the redesign, reports of burn injuries from Mini Cooper S vehicles increased dramatically. BMW has acknowledged that the exhaust tips have caused burn injuries. BMW redesigned the tips so they do not extend as far back as originally designed for MY 2007 vehicles. This redesign was incorporated into mid-year production on approximately July 1, 2008, of the MY 2008 subject vehicles.

ODI advised BMW, by letter of October 10, 2008, of its belief that the subject vehicles contain a safety-related defect in the exhaust pipe tips of the subject vehicles within the meaning of the National Traffic and Motor Vehicle Safety Act, as amended. ODI requested BMW to initiate a safety recall, in accordance with 49 U.S.C. 30118-30120, to notify all owners, purchasers, and dealers of the defect and to provide a free remedy for each of the subject vehicles. In its October 27, 2008, response to ODI, BMW declined to conduct the safety recall stating it is not warranted and informed NHTSA that, in the interest of customer satisfaction, it had instituted a Service Campaign concerning this issue.

B. Initial Decision

Based on the available information, NHTSA's Associate Administrator for Enforcement has made an Initial

Decision, pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10, that MY 2007 and certain 2008 BMW Mini Cooper S vehicles manufactured by BMW of North America, LLC (BMW) contain a safety-related defect. The exhaust pipe tips, which are located at the center of the rear of the vehicle and protrude rearward beyond the bumper cover, are situated in such a way that persons conducting completely foreseeable tasks at the rear of the vehicle may experience significant and painful burns on their legs. An initial decision is not a final agency action.

This initial decision reflects the agency's rejection of BMW's proffer of a service campaign instead of a recall. The subject vehicles built prior to the production modification in 2008 pose a significant risk of burn injuries to persons accessing the rear cargo area via the hatchback. It is unreasonable for people, who engage in the routine activity of standing near or against the back of a vehicle with the hatch up to remove items from or place items in the rear cargo area, to be subject to a significant risk of painful burns. The National Traffic and Motor Vehicle Safety Act as amended provides for a safety recall when there is a safety-related defect. In that situation, the manufacturer has a duty to provide a defect notice to the agency and proper notice to the vehicle owner. The statute does not give the manufacturer the option of choosing a different course of action. A safety recall would assure that vehicle owners have the proper statutory notice of the safety risks along with a free remedy, thus presenting the greatest opportunity for preventing a significant risk of any further burn injuries. Unlike a manufacturer's service campaign, a notice to the vehicle owner pursuant to 49 CFR 577.5(f) must explain the risk to safety related to the defect and the type of injury that can result from the defect. Additionally, pursuant to 49 CFR 573.7, after initiating a recall BMW would be required to provide quarterly reporting to the agency to ensure that all vehicles have been remedied.

Pursuant to 49 U.S.C. 30118(b)(1) and 49 CFR 554.10(b), NHTSA will conduct a public meeting, beginning at 10 a.m., Wednesday, December 17, 2008, in Room W40-302, Department of Transportation Building, 1200 New Jersey Avenue, SE., Washington, DC, at which time the manufacturer and other interested parties will be afforded an opportunity to present information, views, and arguments on the issue of whether MY 2007 and certain 2008 BMW Mini Cooper S vehicles contain a

safety-related defect in the exhaust pipe tips.

Interested persons are invited to participate in this proceeding through written and/or oral presentations. Persons wishing to make oral presentations must notify Ethel Hayden, National Highway Traffic Safety Administration, W45-206, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone: (202) 366-3217, or by fax at (202) 366-3081, before the close of business on Friday, December 12, 2008. The notifications should specify the amount of time that the presentation is expected to last. The agency will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations, and the anticipated length of those presentations, the agency may add an additional day or days to the meeting/hearing and may limit the length of oral presentations. This will not be an adjudicatory proceeding. Although the agency may ask questions of those who make oral presentations, there is no cross examination of witnesses by other participants in the public meeting.

Persons who wish to file written comments should submit them to the same address, no later than Friday, December 12, 2008.

Authority: 49 U.S.C. 30118(a), (b); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: November 26, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35201]

Eastern Washington Gateway Railroad Company—Change in Operator Exemption—Rail Line of Spokane County, WA

Eastern Washington Gateway Railroad Company (EWG),¹ a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to change operators from Western Rail Switching, Inc. (WRS) to EWG over approximately 5.9 miles of rail line (the Geiger Spur)

¹ EWG is a wholly owned subsidiary of US Rail Partners, Ltd., a noncarrier holding company which also controls the Blackwell Northern Gateway Railroad Company, a Class III carrier, in Oklahoma. See *US Rail Partner, Ltd.—Continuance in Control Exemption—Eastern Washington Gateway Railroad Company*, STB Finance Docket No. 35030 (STB served May 25, 2007).