

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.*

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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