

that are final within the meaning of 23 U.S.C. 139(l)(1). The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014 and executed by FHWA and TxDOT. The actions relate to a proposed highway project, I-35 Improvements from Rundberg Lane to US 290 East in Austin, Travis County, in the State of Texas. Those actions grant licenses, permits, and approvals for the project. Under MAP-21 section 1319, TxDOT has issued a Finding of No Significant Impact for this action.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 9, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Swonke, P.G., Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416-2734; email: carlos.swonke@txdot.gov. TxDOT's normal business hours are 8:00 a.m.-5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: I-35 Improvements from Rundberg Lane to US 290 East in Austin, Travis County. The project is approximately 1.6 miles in length on US 183 and approximately 2.35 miles in length on I-35, would require approximately 7 acres of additional right-of-way, and would provide direct connectors (flyovers) between I-35 southbound to US 183 southbound; US 183 northbound to I-35 northbound; and I-35 southbound to US 183 northbound. The project will also add lanes to the I-35 frontage road in both directions to bypass the St. Johns Avenue signalized intersection; replace the existing St. Johns Avenue bridge over I-35 to provide the required vertical clearance; provide frontage road U-turns for the northbound and southbound directions at St. Johns Avenue; modify the I-35 northbound to US 183 northbound flyover; and provide

bicycle and pedestrian facilities along the frontage roads.

The actions by TxDOT and the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) issued on August 1, 2016, and in other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the addresses provided above. The TxDOT EA and FONSI can be viewed and downloaded from the project Web site at www.My35.org/Capital or by visiting the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401-7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251-1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)-300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401-406; Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA-21 Wetlands

Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001-4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (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 program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 31, 2016.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0118; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT)
ACTION: Grant of petition.

SUMMARY: BMW of North America, LLC, (BMW) a subsidiary of BMW AG in Munich, Germany, has determined that certain Model year (MY) 2015 BMW model X5 xDrive35i and model X5 xDrive35d multipurpose passenger vehicles (MPV) do not fully comply with paragraph S4.3.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less*. BMW filed a report dated October 22, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. BMW then petitioned NHTSA under 49 CFR part 556 requesting a

decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Stu Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5287, facsimile (202) 366-7002.

SUPPLEMENTARY INFORMATION:

I. BMW's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of BMW's petition was published, with a 30-day public comment period, on April 3, 2015 in the **Federal Register** (80 FR 18294). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2014-0118."

II. Vehicles Involved: Affected are approximately 68 MY 2015 BMW model X5 xDrive35i and model X5 xDrive35d MPVs manufactured between October 3, 2014 through October 7, 2014.

III. Noncompliance: BMW explains that the vehicle certification labels required by 49 CFR part 567, and some of the tire information labels required by FMVSS No. 110, affixed to the subject vehicles show that the vehicles were originally equipped with 18-inch tires and rims. The vehicles were actually originally equipped with 19-inch tires and rims. BMW believes that the noncompliance is that the certification label required by 49 CFR part 567, and in some cases the tire information labels required by FMVSS No. 110, do not list rim information for the tires installed on the vehicles as original equipment as required by paragraph S4.3.3 of FMVSS No. 110.

Rule Text: Paragraph S4.3.3 of FMVSS No. 110 requires in pertinent part:

S4.3.3 *Additional labeling information for vehicles other than passenger cars.* Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter . . .

V. Summary of BMW's Analyses: BMW stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

In the case of the subject vehicles with an incorrect Part 567 certification label but a correct FMVSS No. 110 tire information label, BMW states that when a person checks or adjusts the inflation of a tire and uses this (correct) FMVSS No. 110 tire information label, the person will have the correct inflation pressure available from that label. If, however, the person only looks at the certification label, or both the certification and tire information labels, BMW states that the person may then become unsure of what tires have been installed on the vehicle. Should this occur, BMW states that a number of information sources and services are available which can be used to determine the correct tire size and recommended cold inflation pressure. BMW states that these information sources include the tires installed on the vehicle which have the tire size information contained on their sidewalls, the vehicle's Owner's Manual which contains information pertaining to the various tire sizes and tire pressure for use on the affected vehicles, and BMW's Roadside Assistance™ program which is available 24 hours/day and provides representatives who have information on all available tire sizes and specifications for a given model and model year of BMW. BMW states its belief that all of the above listed sources would lead the driver to obtaining the correct recommended cold inflation pressure when attempting to inflate the tires mounted on their vehicle.

For the subject vehicles containing both incorrect 49 CFR part 567 certification labels' and incorrect FMVSS No. 110 tire information labels BMW states that the driver can use the labeling on the sidewall of the installed tires, the vehicle's owner's manual, and BMW Roadside Assistance™ to determine the recommended cold inflation pressure for the tires installed on their vehicle.

BMW also maintains that if a driver were to use the cold inflation pressure shown on the incorrect labels for the 18-inch tires when inflating the 19-inch tires, that pressure would be sufficient to support vehicle loading. Their calculations using the MY 2015 X5 xDrive35i for example show that the determined load rating for two 19-inch tires inflated to the pressure meant for 18-inch tires is 1,572 kg. Because the front gross axle weight rating (GAWR) is 1,279 kg, BMW concludes that the 19-inch tires would be adequately inflated.

BMW also included calculations to demonstrate that the information on the certification labels is correct for the 18-inch tires mounted on the subject vehicles.

BMW states that BMW Customer Relations have not received any contact from vehicle owners regarding this issue and, therefore, are unaware that any vehicle owner has encountered this issue in the field. They state that they are also unaware of any accident or injuries that have occurred as a result of this noncompliance.

BMW has additionally informed NHTSA that it has corrected the subject noncompliance.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt BMW from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: The 68 affected vehicles were all originally equipped with 19 inch tires but the Part 567 certification label on these vehicles incorrectly only lists rim type and size information for an 18 inch tire violating the requirements of FMVSS No. 110 section S4.3.3., which effectively requires that the rim size on the label be appropriate for the tire size installed on the vehicle as original equipment. Additionally, for some of the 68 vehicles, the FMVSS No.110 required vehicle placard lists information for an 18 inch tire, including tire size and recommended inflation pressure, when a 19 inch tire was originally installed on the vehicle violating FMVSS No.110 sections S4.3(c) and (d). Section S4.3(c) requires that the placard identify the manufacturer recommended cold tire inflation pressure for the fitted tires, and section S4.3(d) requires the tire size designation for the tires installed at the time of the first purchase.

For all 68 vehicles where the rim type and size is not provided for the originally installed 19 inch tire, the agency believes the vehicle owners will not encounter any safety problems if their rims need to be replaced. First, in addition to the rim size information that was inadvertently not included on the certification label required by 49 CFR part 567, FMVSS No. 110 requires that the rim size, along with other information, be stamped on the rim itself. Also, the tire size stamped on the sidewall of the tire indicates the corresponding rim diameter.

Furthermore, BMW mentioned that their owner's manual contains tire information and that vehicle owners can contact BMW Roadside Assistance, BMW Assist, and BMW Customer Relations for additional assistance.

For the vehicles where the FMVSS No. 110 required vehicle placard lists information for an 18 inch tire, including tire size and recommended inflation pressure, when a 19 inch tire was originally installed on the vehicle, a different analysis needs to be considered. FMVSS No. 110 requires that the original tires installed on a vehicle and the tires listed on the vehicle placard be the same size, and that the tires at the manufacturer recommended inflation pressure be appropriate for the designed vehicle maximum load conditions. If a customer were to look at the vehicle placard to determine recommended inflation pressure values they would see values intended for the 18 inch tire and not the 19 inch tire. If that customer did not notice that their vehicle had 19 inch wheels installed they may use the 18 inch tire inflation values which are less than required for the 19 inch tires. If this were the case, calculations show that the 19 inch tire load carrying capacities at the 18 inch tire delineated pressures (with tire load capacity reduced/divided by a 1.1 reduction factor as required in FMVSS No. 110 for passenger car tires used on multi-purpose passenger vehicles) is appropriate for the front and rear specified GAWR's in all affected vehicle models except for the "worst case" model with the heaviest GAWR which is the axle rating assigned by BMW to the X5xDrive35i 7-seater rear axle. For a 19 inch tire at an 18 inch recommended inflation pressure of 33 PSI and 41 PSI front and rear axles respectively, a front tire load rating is 810 kg, then, with a 10% reduction factor results in a value of 736 kg or a total of 1,472 kg front axle load carrying capacity. This value exceeds all four front GAWR values provided by BMW for the four models of vehicles with the largest axle rating value of 1334 kg. At 41 psi, the per tire load rating equates to 950 kg, then with a 10% reduction factor becomes 864 kg per tire or 1727 kg rear axle load carrying capacity. The 1727 kg value is larger than rear axle GAWR values provided by BMW on three models, but not on the fourth model, the 7-seat X5 vehicle which has a rear GAWR of 1742 kg. For this model at full load capacity, the tires technically, are undersized for the rear axle by 15 kg (1742kg–1727 kg) or approximately 33 pounds divided by

the two tires resulting in approximately 15 pounds per tire. In follow-up discussions with BMW, they indicated that only five of the 68 non-compliant vehicles are the 7-seat model, and agreed that for those five vehicles new corrected FMVSS No. 110 vehicle placard labels will be sent to the owners. On 08/16/2016, BMW confirmed that the respective five owners were contacted and new vehicle placards were mailed out.

NHTSA's Decision: Considering the above analysis, the fact that BMW stated they have no reports of accidents or injuries due to this noncompliance, and that BMW is providing corrected replacement labels to the five owners of the 7-seat model X5 which has tire overload potential, NHTSA finds that BMW has met its burden of persuasion that the subject FMVSS No. 110 rim and tire size labeling noncompliances on the subject vehicles are inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted and BMW is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,
Director, Office of Vehicle Safety Compliance.
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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0064, Notice No. 2016–8]

Hazardous Materials: International Regulations for the Safe Transport of Radioactive Material (SSR–6); Draft Revision Available for Comment

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; document availability and request for comments.

SUMMARY: PHMSA seeks public comment on a draft revision of the International Atomic Energy Agency's (IAEA) "Regulations for the Safe Transport of Radioactive Material" (SSR–6), which is scheduled for publication in 2018. PHMSA and the U.S. Nuclear Regulatory Commission (NRC) will submit comments jointly to the IAEA regarding the draft document. PHMSA thereby requests public input to assist in U.S. comment development.

DATES: Comments must be received on or before October 28, 2016. Comments received after this date will be considered if it is practical to do so; however, we are only able to assure consideration for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2016–0064 for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.