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Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0180; Notice 2]

BMW of North America, LLC, Grant of

Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of Petition Grant

SUMMARY: BMW of North America, LLC (BMW)¹ a subsidiary of BMW AG, Munich, Germany, has determined that certain BMW vehicles equipped with "run-flat" tires do not fully comply with paragraphs S4.3(c) and S4.3(d) of 49 CFR 571.110, 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 an appropriate report, dated November 2, 2010, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, BMW has petitioned for an exemption from the notification and remedy

¹ BMW of North America, LLC (BMW) is a vehicle manufacturer incorporated under the laws of the state of New Jersey.

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 March 7, 2011, in the Federal Register (76 FR 12410). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2010-0180."

CONTACT INFORMATION: For further information on this decision contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-0645, facsimile (202) 366-5930.

SUMMARY OF BMW'S PETITION: BMW estimates that approximately 54,200 vehicles equipped with "run flat" tires are affected. The affected vehicle models are certain: Model Year 2008-2011 BMW X5 SAV multipurpose passenger vehicles, manufactured from February 2, 2008 through October 26, 2010; Model Year 2008-2011 BMW X6 SAC multipurpose passenger vehicles, manufactured from September 19, 2008 through October 26, 2010; and 2011 BMW 5-Series, BMW 5-Series Gran Turismo, and BMW 7-Series passenger cars, manufactured from September 1, 2010 through October 26, 2010.

BMW explains that the noncompliance is that the tire and loading information placards on the affected vehicles incorrectly include a recommended cold tire inflation pressure and size designation for a spare tire. Because the vehicles are equipped with "run-flat" tires and have no spare tire, the word "none," as required by paragraphs S4.3(c) and S4.3 (d) is required in place of the spare tire size and the associated recommended cold tire inflation pressure.

BMW argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. Vehicle owner's are informed via the vehicle Owner's Manual that if "RSC" is stamped on the sidewall of the tire, then the tire is a "run-flat" tire.
2. BMW vehicle owners can contact BMW Roadside Assistance™ representatives by telephone 24 hours/day. These representatives can provide vehicle owners, on a vehicle model and model year basis, with all available tire sizes and specifications for the tires originally mounted on their vehicle, including the installation of "run-flat" tires.

3. For vehicles equipped with BMW Assist™, passengers can contact BMW Roadside Assistance™ representatives directly from within the vehicle².

BMW reported that the noncompliance was brought to their attention during inspections of vehicles equipped with "run-flat" tires. On October 26, 2010, BMW realized that the affected vehicles do not conform to FMVSS No. 110.

BMW has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will have compliant labels.

In summation, BMW believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 110 is inconsequential to motor vehicle safety, and that its petition, to exempt 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, and should be granted.

NHTSA DECISION: The agency agrees with BMW that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of the subject vehicles in which the vehicle tire and loading information

² Refer to the BMW petition for specific details on the availability of BMW Assist™.

placards erroneously indicated that a spare tire was available when, in fact, "run flat" tires were installed in lieu of the spare tire.

In the agency's judgment, this noncompliance to FMVSS No. 110 will have an inconsequential effect on motor vehicle safety because:

In the event of a flat with a "run flat" tire, the vehicle operator can continue to operate the vehicle. Instructions concerning the safe operation of a vehicle with a flat "run flat" tire are available from the vehicle owner's manual as well as BMW Roadside AssistanceTM.

Additionally, all information required for maintaining and/or replacing the front and rear tires (i.e., tire size designations and their respective cold tire inflation pressures), as well as the seating capacity and vehicle capacity weight are correct on the tire and loading information placard on the subject vehicles.

In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion that the subject FMVSS No. 110 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject 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, these provisions only apply to the 54,200³ vehicles that have already passed from the manufacturer to an owner, purchaser, or dealer.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: March 16, 2012

Claude H. Harris, Director
Office of Vehicle Safety Compliance

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³ BMW's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt BMW as a manufacturer from the notification and recall responsibilities of 49 CFR 573 for 54,200 of the affected vehicles. However, granting this petition does relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after BMW notified them that the subject noncompliance existed.