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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0115; Notice 1]

BMW Group of America, LLC, Incorporated, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: BMW of North America, LLC (BMW), has determined that certain model year (MY) 2016-2017 BMW, Mini, and Rolls-Royce vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. BMW filed a report dated October 13, 2016. BMW also petitioned NHTSA on November 4, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to U.S.

Department of Transportation, Docket Operations, M-30,

West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: BMW of North America, LLC (BMW), has determined that certain model year (MY) 2016-2017 BMW, Mini, and Rolls-Royce vehicles do not fully comply with paragraph 4.3(j)(2)(ii) of Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. BMW filed a report dated October 13, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance*

Responsibility and Reports. BMW also petitioned NHTSA on November 4, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of BMW's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 15,630 of the following MY 2016-2017 BMW, Mini, and Rolls-Royce vehicles manufactured between June 29, 2016 and October 10, 2016 are potentially involved:

- 2017 BMW X1 SAV (X1 sDrive28i, X1 xDrive28i)
- 2017 BMW 5 Series Gran Turismo (535i Gran Turismo, 535i xDrive Gran Turismo, 550i xDrive Gran Turismo)
- 2016 BMW 5 Series (528i, 528i xDrive, 535i, 535i xDrive, 550i, 550i xDrive, M5)
- 2016 BMW 5 Series (535d, 535d xDrive)
- 2016 Mini Cooper Clubman and Mini Cooper S Clubman
- Mini Hardtop 4-door Cooper and Mini Hardtop 4-door Cooper

- 2017 Rolls-Royce Ghost

III. Noncompliance: BMW explains that the noncompliance involves the Emergency Locking Retractor (ELR) in the safety belt assembly of the vehicle's front left seat. These ELRs are equipped with a vehicle-sensitive locking mechanism and a webbing-sensitive locking mechanism. The noncompliance specifically involves the vehicle-sensitive locking mechanism, which does not lock as designed when subjected to the requirements of paragraph S4.3(j)(2)(ii) of FMVSS No. 209.

IV. Rule Text: Paragraph S4.3 of FMVSS No. 209 states in pertinent part:

S4.3 Requirements for hardware...

(j) Emergency-locking retractor...

(2) For seat belt assemblies manufactured on or after February 22, 2007 and for manufacturers opting for early compliance. An emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)(2)...

(ii) Shall lock before the webbing payout exceeds the maximum limit of 25 mm when the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(2)(iii)(A) or (B). The retractor is determined to be locked when the webbing belt load tension is at least 35 N.

V. Summary of BMW's Petition: BMW described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, BMW submitted the following reasoning:

- a) The vehicle-sensitive locking mechanism functions, but the non-compliance involves a slight exceedance of the FMVSS No. 209 Section S4.3(j) (2) (ii) requirement.
- b) The slight exceedance is such that, based upon testing of non-compliant units, the vehicle-sensitive locking mechanism locks at approximately 1.0g within 25mm, or at 0.7 g within 90mm.
- c) The tilt-lock function of the ELR is compliant, and locks at angles greater than 15-deg up to 41-deg when subjected to the FMVSS No. 209 Section S4.3(j) (2) rollover requirements.
- d) The ELR also contains a voluntary webbing-sensitive locking mechanism which provides crash and rollover restraint performance comparable to the performance provided by an FMVSS No. 209 compliant vehicle-sensitive locking mechanism.
- e) Crash test results comparing FMVSS No. 209 S4.3(j) (2) (ii) compliant ELRs and ELRs in which the vehicle-sensitive locking mechanism has been disabled (to demonstrate a "worst-case scenario", even though in affected vehicles the vehicle-sensitive mechanism remains functional)

demonstrate comparable results according to FMVSS No. 208 assessments.

Test results indicate that any performance differences are with normal "data scatter" and are attributed to test tolerances.

- f) Affected safety belt assemblies comply with all other applicable provisions of FMVSS No. 209.
- g) NHTSA previously granted a petition from General Motors in which the ELR's vehicle-sensitive locking mechanism was completely non-functional, whereas the ELR's vehicle-sensitive locking mechanism in the affected BMW vehicles is functional, but may experience a slight exceedance of the FMVSS no. 209 S4.3(j)(2)(ii) requirement.
- h) BMW has not received any customer complaints related to this issue.
- i) BMW is not aware of any accidents or injuries related to this issue.
- j) Vehicle production has been corrected.

BMW concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view BMW's petition, test data and analyses in its entirety you can visit <https://www.regulations.gov> by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

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, any decision on this petition only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, any decision on 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)

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Office of Vehicle Safety Compliance

Billing Code 4910-59-P

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