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Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on December 27, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

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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 Federal railroad safety regulations. 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.

The Mid-Continent Railway Historical Society, Inc.

[Docket Number FRA-2006-26300]

The Mid-Continent Railway Historical Society, Inc. (MCRY), seeks a waiver of compliance from certain provisions of the Safety Glazing Standards of 49 CFR 223.9, and Railroad Safety Appliance Standards of 49 CFR Part 231, for one locomotive: MCRY 1256. The MCRY is located in Sauk County, Wisconsin. This is a rural area in which locomotives travel at a maximum speed of 15 miles per hour through an all-rural countryside.

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 this petition should identify the appropriate docket number (FRA-2006-26300) and may be submitted by one of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic site;

- Fax: 202-493-2251;
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001; or
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communication received within 45 days of the date of this notice will be considered by FRA prior to final action being taken. Comments received after that date will be considered to the extent 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://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the BMW of North America, LLC (BMW) petition for exemption of the X3 vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2007 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Vehicle, Fuel Economy and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366-0846. Her fax number is (202) 493-2290.

SUPPLEMENTARY INFORMATION: In a petition dated July 18, 2006, BMW requested exemption from the parts-making requirements of the theft prevention standard (49 CFR part 541) for the MY 2007 BMW X3 vehicle line. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line. BMW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the X3 Vehicle line. BMW will install its antitheft device, the Electronically-coded Vehicle Immobilizer (EWS), as standard equipment on the BMW X3 vehicle line beginning with MY 2007. Features of the antitheft device will include a key with a transponder, loop antenna (coil) around the steering lock cylinder, EWS control unit and passive immobilizer.

BMW stated that the EWS immobilizer device prevents the vehicle from being driven away under its own engine power. The EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. It queries key data from the

transponder and provides the coded release of the engine management for a valid key. The ignition and fuel supply are only released when a correct coded release signal has been sent by the EWS control unit, to allow the vehicle to start. The immobilizer device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. The frequency for the remote control constantly changes to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control. The vehicle is also equipped with a central-locking system that can be operated to lock and unlock all doors or to unlock only the driver's door, preventing forced entry into the vehicle through the passenger doors.

In addressing the specific content requirements of 543.6, BMW provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, BMW conducted tests based on its own specified standards. BMW also provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with this specified requirements for each test. BMW stated that because the EWS immobilizer device is incorporated into the ignition, fuel injection, and starter circuit of the vehicle and is activated passively, reliability and durability of the system have to be ensured because the vehicle will not start if the EWS system malfunctions. BMW also stated that, if a malfunction should occur, the EWS device incorporates a microprocessor that can be accessed by using BMW diagnostic equipment to diagnose and correct the cause of the problem.

BMW further stated that NHTSA's preliminary theft rate data (0.5955 thefts/thousand vehicles produced) for calendar year/model year 2004 shows the effectiveness of the antitheft system on the X3 line. The theft rate is below the rate of 1.83 thefts/thousand vehicles for the entire U.S. fleet, a ranking of 188 out of 231 lines.

For clarification purposes, the agency notes that it does not collect theft data. NHTSA publishes theft rates based on data provided by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. NHTSA uses NCIC data to calculate theft rates and publishes these rates annually in the **Federal Register**.

The effectiveness of BMW's EWS is compared with devices which NHTSA has previously determined to be as

effective in reducing and deterring motor vehicle theft as would compliance with the parts-making requirements of part 541. The antitheft device that BMW intends to install on its X3 vehicle line for MY 2007 is the same system that BMW installed on its BMW X5 line, BMW 6 line, BMW 7 line, the BMW Z4 line and the MINI vehicle line. BMW has concluded that the antitheft device proposed for its X3 line is no less effective than those devices for which NHTSA has already granted exemptions from the parts-marking requirements.

BMW stated that the proposed antitheft device does not provide any visible or audible indication of unauthorized entry. Theft data have indicated a decline in theft rates, as published by NHTSA, for vehicle lines that have been equipped with antitheft devices similar to that which BMW proposes to install on the X3 line. Citing the grant of exemptions for the Oldsmobile Aurora and the Buick Riviera, BMW notes that the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device for the X3 vehicle line will reduce and deter theft. The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency agrees that the device is substantially similar to devices for which the agency has previously approved exemptions, including the BMW X5 line, BMW 6 line, BMW 7 line, the BMW Z4 line and the MINI vehicle line. In addition, the X3 vehicle line, which has had the device as standard equipment since the 2004 model year, has a theft rate below the median theft rate. This conclusion is based on the information BMW provided about the device for the BMW X3 vehicle line.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for the X3 vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2007 model year. The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the

disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the lines's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 15, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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