

clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 21, 2013.

**Christopher J. Bonanti**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0116; Notice 2]

#### BMW of North America, LLC, a Subsidiary of BMW AG, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of Petition.

**SUMMARY:** BMW of North America, LLC (BMW)<sup>1</sup>, a subsidiary of BMW AG<sup>2</sup>, Munich, Germany, has determined that certain model year (MY) 2012 MINI Cooper Countryman passenger cars with optional three passenger rear seating and manufactured between August 1, 2011 and May 23, 2012, do not fully comply with paragraph S4.3 (b) 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 has filed an appropriate report dated June 1, 2012, 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 requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on September 13, 2012 in the **Federal Register** (77 FR 56700). 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-2012-0116."

**FOR FURTHER INFORMATION CONTACT:** For further information on this decision contact Ms. Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5307.

**Vehicles Involved:** Affected are approximately 5,700 MY 2012 MINI Cooper Countryman passenger vehicles with optional three passenger rear seating manufactured between August 1, 2011 and May 23, 2012.

**Summary of BMW'S Analyses:** BMW explains that the noncompliance is that the vehicle placard on the affected vehicles incorrectly identifies the rear designated seating capacity as "2" when in fact it should be "3," and the total designated seating capacity as "4" when in fact it should be "5."

BMW states that while the vehicle placard incorrectly identifies the vehicle seating capacity, this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. It would become clear to a vehicle owner that the rear seat of an affected vehicle contains three sets of seat belts, provides adequate space for three people to occupy the rear seat and that the vehicle in fact does accommodate five passengers not four as labeled.

2. The tire pressure value on the vehicle placard is correct. In fact, the recommended tire inflation pressure for both the five passenger and the four passenger vehicles is the same. Therefore, there is no risk of under-inflation.

3. The vehicle capacity weight listed on the vehicle placard is correct, and is the same for Countryman model vehicles built for four or five occupants. Therefore, there is no risk of overloading.

4. The vehicle's Monroney label<sup>3</sup> contains a listing of all options that have been equipped on the affected vehicles. The option regarding the rear seat for three occupants is noted on the Monroney label; therefore, an owner would have been notified at time of purchase of the vehicle that the rear seat is equipped to accommodate three occupants.

5. The vehicle Owner's Manual contains information pertaining to the vehicle's tires, tire pressure and the vehicle capacity weight. Therefore, if

owners check the Owner's Manual, correct information is available for their use.

6. BMW also provides vehicle drivers with help determining the correct tire, tire pressure and loading information by way of toll-free telephone numbers for MINI Roadside Assistance™ (available 24 hours/day) and MINI Customer Relations.

7. BMW has received no customer complaints and is unaware of any accidents or injuries regarding this noncompliance of the affected vehicles.

BMW has additionally informed NHTSA that it has corrected future production and that all other required markings are present and correct.

In summation, BMW believes that the described noncompliance of the subject vehicles 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 should be granted.

**Background Requirement:** Section § 4.3 (b) of FMVSS No. 110 specifically states:

§ 4.3 *Placard.* Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in § 4.3 (a) through (g), . . . , on a placard permanently affixed to the driver's side B-pillar . . .

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location); . . .

**NHTSA Decision:** NHTSA has reviewed BMW's analyses that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees that understating the number of rear seat occupants poses little safety risk, and vehicle owners will observe three seat belts and correctly identify three seating positions. BMW has provided sufficient documentation that the vehicle placard does comply with all other safety performance requirements. Since the vehicle placard clearly states the correct vehicle capacity weight and tire inflation pressure and NHTSA has verified both are compatible with five occupants, there is little risk of vehicle overloading.

In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion and that the subject FMVSS No. 110 noncompliance is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted, and BMW is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

<sup>1</sup> BMW of North America, LLC is a U.S. company that manufactures and imports motor vehicles.

<sup>2</sup> BMW AG is a German company that manufactures motor vehicles.

<sup>3</sup> *Automobile Information Disclosure Act (AIDA)*, 15 U.S.C. 1231-1233.

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 approximately 5,700 vehicles that BMW no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. 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)

Issued On: June 19, 2013.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0166; Notice 2]

#### Panda Power LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of Petition.

**SUMMARY:** Panda Power LLC (Panda Power)<sup>1</sup>, has determined that High Intensity Discharge (HID) lighting kits<sup>2</sup> that it imported and sold during 2007, 2008 and 2009 failed to meet the requirements of paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Panda Power has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance*

<sup>1</sup> Panda Power, LLC (Panda Power) is organized under the laws of the State of Arizona and is the importer of the subject nonconforming replacement equipment. Panda Power sold the nonconforming replacement equipment while doing business under the name Mobile HID.

<sup>2</sup> Panda Power's high-intensity lighting (HID) kits each contained 2 light sources, 2 ballasts and a wiring harness with relay and fuse.

*Responsibility and Reports*, dated February 10, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Panda Power has petitioned 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 the petition was published, with a 30-day public comment period, on December 21, 2010 in the **Federal Register** (75 FR 80110). Comments were received from Daniel Stern Lighting Consultancy and Michael F. Turpen. To view the petition, all supporting documents, and the comments, 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-2010-0166."

**FOR FURTHER INFORMATION CONTACT:** For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-7002.

**Lighting Kits Involved:** Affected are approximately 1,851 headlamp kits that Panda Power sold during 2007, 2008 and 2009. All of the affected HID headlamp kits were manufactured by Guangzhou Kingwoodcar Company, LTD, Guangzhou City, China.

**Summary of Panda Power's Analyses:** Panda Power did not describe the noncompliances in detail, instead it deferred to the agency's concern that the subject HID headlamp kits may not comply with one or more of the regulations enforced by the agency. This concern was described as an apparent noncompliance in a letter NHTSA sent to Panda Power dated September 2, 2009. The letter was sent to Panda Power as part of a National Highway Traffic Safety Administration (NHTSA) Office of Vehicle Safety Compliance Office Activity.<sup>3</sup>

In their petition, Panda Power argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons: (1) The HID headlamp kits were originally intended for sale to the agricultural community to be placed on tractors and combines, for off-road vehicles, and for exhibition purposes; (2) the HID bulbs that were sold with the kits in 2007 and 2008 are likely burned out by now and no longer functioning; and (3) Panda Power no longer sells the HID headlamp kits.

<sup>3</sup> Office Activity Number: OA-108-090606G.

Supported by the above stated reasons, Panda Power believes that although the HID headlamp kits do not meet the required dimensional and electrical specifications of FMVSS No. 108, the noncompliance is inconsequential to motor vehicle safety and that its petition, to exempt it 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.

#### Discussion

##### Requirement Background

Paragraph S7.7 of FMVSS No. 108 requires in pertinent part:

*S7.7 Replaceable light sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements: (See a,b,c,d,e, and f)

A new motor vehicle must have a headlighting system that includes upper beams and lower beams. Among other things, the headlamps must provide light within a specified range of intensity in certain areas, and not provide light above specified levels in other areas. In general, vehicle manufacturers use one of a number of standard replaceable light sources to achieve the regulatory requirements, although alternatively they may devise or arrange for development of a new light source for a new vehicle. For each of these types of light sources, the dimensions and electrical specifications are furnished to NHTSA under 49 CFR Part 564. The vehicle manufacturer certifies that the vehicle with a particular light source meets FMVSSs, including FMVSS No. 108.

Each headlamp and item of associated equipment (such as a light source commonly referred to as a headlamp bulb) manufactured to replace any lamp or item of associated equipment must be designed to conform to FMVSS No. 108. Each replaceable light source must be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to 49 CFR Part 564. In addition, NHTSA's regulations require that the base of the replaceable light source be marked with the bulb marking designation, that the replaceable light source meet lighting performance requirements and, if a ballast is required, additional requirements must be met.

Headlamp replaceable light sources have standard designations. NHTSA's regulations use terms for the various types of headlamp bulbs, such as HB1