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Issued in Washington, DC, on October 30, 2015.

**Lirio Liu,**

*Designated Federal Officer, Aviation Rulemaking Advisory Committee.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0053; Notice 2]

#### BMW of North America, Inc., 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, Inc. (BMW) has determined that certain model year (MY) 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars do not fully comply with paragraph S4.2.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 226, *Ejection Mitigation*. BMW has filed an appropriate report dated May 20, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Karen Nuschler, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5829, facsimile (202) 366-3081.

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* 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 the petition was published, with a 30-day public comment period, on September 1, 2015 in the **Federal Register** (80 FR 52845). 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-2015-0053.”

*II. Vehicles Involved:* Affected are approximately 4,208 MY 2015 MINI Cooper, Cooper S hardtop 2 door, and Cooper S hardtop 4 door passenger cars manufactured from February 25, 2015 to April 24, 2015.

*III. Noncompliance:* BMW explains that written information describing the ejection mitigation countermeasure installed in the vehicles was not provided to the vehicle consumers as required by paragraph S4.2.3(a) of FMVSS No. 226.

*IV. Rule Text:* Paragraph S4.2.3 of FMVSS No. 226 requires in pertinent part:

S4.2.3 *Written information.*

(a) Vehicles with an ejection mitigation countermeasure that deploys in the event of a rollover must be described as such in the vehicle's owner manual or in other written information provided by the vehicle manufacturer to the consumer. . . .

*V. Summary of BMW's Arguments:* BMW stated its belief that the subject noncompliance in the affected vehicles is inconsequential to motor vehicle safety. A summary of its reasoning is provided as follows. Detailed explanations of its reasoning are included in its petition:

1. The vehicles are equipped with a countermeasure that meets the performance requirements of FMVSS No. 226.

2. The owner's manuals contain a description of the ejection mitigation countermeasure in the context of side impact.

3. The owner's manuals contain precautions related to the [ejection mitigation] system even though not required by FMVSS No. 226.

4. The [ejection mitigation] system uses the FMVSS No. 208 required readiness indicator, as allowed by FMVSS No. 226.

5. BMW has not received any customer complaints due to this issue.

6. BMW is not aware of any accidents or injuries due to this issue.

7. NHTSA may have granted similar manufacturer petitions re owner's manuals.

8. BMW has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 226.

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

remediating the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

#### NHTSA's Decision

*NHTSA's Analysis:* NHTSA believes that while written information was not provided to vehicle owners describing the installed head air bags (side curtain) as vehicle occupant ejection mitigation countermeasures that deploy in the event of a rollover, the owner's manuals for the affected vehicles otherwise effectively describe, and illustrate the location of, the head air bags. NHTSA also believes that the status of the head air bags is monitored by the vehicle's air bag readiness indicator intended to show operational readiness of the entire airbag system. Therefore, drivers should be alerted to a malfunction of the head air bags that are intended to provide ejection countermeasures in the event of a rollover event, and occupant protection in the event of a significant side impact event.

BMW has also reported that they have not received any complaints from vehicle owners regarding the subject noncompliance and that vehicle production was corrected so that the noncompliance did not occur in subsequent vehicles. *NHTSA's Decision:* In consideration of the foregoing, NHTSA has decided that BMW has met its burden of persuasion that the subject FMVSS No. 226 noncompliance in the affected vehicles 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.

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

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0016; Notice 1]

#### Notice of Receipt of Petition for Decision That Nonconforming Model Year 2009 Ford F-150 Trucks Are Eligible for Importation

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

**ACTION:** Receipt of petition.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming model year (MY) 2009 Ford F-150 trucks that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the MY 2009 Ford F-150 truck) and they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is December 7, 2015.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

*Instructions:* 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 your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* 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, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*How To Read Comments Submitted to the Docket:* You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

**FOR FURTHER INFORMATION CONTACT:** George Stevens, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As

specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), Inc. of Houston, Texas (Registered Importer R-90-005) has petitioned NHTSA to decide whether nonconforming MY 2009 Ford F-150 trucks are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are MY 2009 Ford F-150 trucks that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2009 Ford F-150 truck to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified MY 2009 Ford F-150 trucks, as originally manufactured, conform to many FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified MY 2009 Ford F-150 trucks are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices, and Associated Equipment*, 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*, 111 *Rearview Mirrors*, 113 *Hood Latch System*, 114 *Theft Protection*, 116 *Motor Vehicle Brake Fluids*, 118 *Power-Operated Window, Partition, and Roof panel System*, 119 *New Pneumatic Tires*, 124 *Accelerator Control Systems*, 135 *Light Vehicle Brake Systems*, 138 *Tire Pressure Monitoring Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing*