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**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; BMW of North America, LLC

**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's (BMW) petition for exemption of the 8 series vehicle line in accordance with *Exemption from the Theft Prevention Standard*. This petition is granted because the Agency has determined that the antitheft device to be placed on the vehicle 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 *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard). BMW also requested confidential treatment for

specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

**DATES:** The exemption granted by this notice is effective beginning with the 2019 model year (MY).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, National Highway Traffic Safety Administration, West Building, Room W43-439, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's telephone number is 202-366-5222. Her fax number is 202-493-2990.

**SUPPLEMENTARY INFORMATION:** In a petition dated January 12, 2018, BMW requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the 8 series vehicle line beginning with MY 2019. The petition requested an 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 the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model 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 its 8 series vehicle line. BMW stated that its 8 series vehicle line will be installed with a passive, electronically-coded, vehicle immobilizer system (EWS) as standard equipment that will prevent the vehicle from being driven away under its own engine power. Key features of the antitheft device will include a remote-control w/mechanical key, ring antenna (transponder coil), low frequency antenna (LF), engine control unit (DME/DDE) with encoded start release input, a passive immobilizer, and an EWS (BDC) control unit. BMW also stated that it will not offer an audible or visible alarm feature on the proposed device.

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.

In addressing the specific content requirements of Part 543.6, BMW provided information on the reliability and durability of its device. To ensure reliability and durability of its device, BMW stated that it conducted tests on the antitheft device which complied with its own specific standards. BMW further stated that its antitheft device

fulfills the requirements of the January 1995 European vehicle insurance companies. In further addressing the reliability and durability of its device, BMW provided information on the uniqueness of its mechanical keys to be used on the 8 series vehicle line. Specifically, BMW stated that the vehicle's mechanical keys are unique because they require a special key blank, cutting machine and a unique vehicle code to allow for key duplication. BMW also stated that the mechanical keys cannot be used to deactivate the device but that activation must be done electronically. BMW further stated that the new keys will only be issued to authorized persons and will incorporate special guide-way millings, making the locks almost impossible to pick and the keys impossible to duplicate on the open market.

BMW stated that activation of its antitheft device occurs automatically when the engine is shut off and the vehicle key is removed from the ignition system. BMW stated that a transponder (transmitter/receiver) in the radio frequency remote control communicates with the EWS (BDC) control unit providing the interface to the loop antenna (coil), engine control unit and starter. After an initial starting value, the authentication uses the challenge response technique with symmetric secret key. BMW further stated that when the control unit identifies the correct release signal, the ignition signal and fuel supply are released allowing operation of the vehicle.

BMW also stated that the vehicle is 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. BMW further stated that the vehicle can be further secured by locking the doors and hood using either the key-lock cylinder on the driver's door or the remote frequency remote control. BMW stated that 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.

BMW further stated that all of its vehicles are currently equipped with antitheft devices as standard equipment, including its 8 series vehicle line. BMW compared the effectiveness of its antitheft device with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of part 541. Specifically, BMW has installed its antitheft device

on its X1 (MPV and passenger cars), X2, X3, X4 and X5 vehicle lines, as well as its Carline 1, 3, 4, 5, 6, 7, Z4, MINI and MINI Countryman vehicle lines, all which have been granted parts-marking exemptions by the Agency. BMW asserts that theft data have indicated a decline in theft rates for vehicle lines that have been equipped with anti-theft devices similar to that which it proposes to install on the 8 series vehicle line. BMW stated that for MY/CY 2014, the Agency's data show that the theft rates for its vehicle lines are: 0.47 (2-series), 0.91 (3-series), 0.80 (4-series), 0.90 (5-series), 1.83 (6-series) 2.85 (7-series), 0.30 (X1), 0.60 (X3), 0.00 (X5), 0.43 (Z4), 0.00 (i3), 0.00 (i8) and 0.41 (MINI Cooper). Using an average of 3 MYs data (2012–2014), NHTSA's theft rates for BMW's 2 series, 3 series, 4 series, 5 series, 6 series, 7 series, X1, X3, X5, Z4, i3, i8 and MINI Cooper vehicle lines are 0.7416, 0.7566, 0.8041, 1.0805, 2.5509, 2.0632, 0.2672, 0.6117, 0.0000, 0.8159, 0.0000, 0.0000 and 0.2379 respectively, all below the median theft rate of 3.5826.

Based on the supporting evidence submitted by BMW, the Agency believes that the anti-theft device for the BMW 8 series vehicle line 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). 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.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the Agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon supporting evidence, the standard equipment anti-theft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The Agency finds that BMW has provided adequate reasons for its belief that the anti-theft device for the 8 series vehicle line 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). This conclusion is based on the information BMW provided about its device.

For the foregoing reasons, the Agency hereby grants in full BMW's petition for exemption for the MY 2019 8 series

vehicle line from the parts-marking requirements of 49 CFR part 541. 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 MY. 49 CFR part 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 anti-theft 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. If such a decision is made, the line must be fully marked as required by 49 CFR parts 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.

Part 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 line'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 anti-theft device similar to but differing from the one specified in that exemption."

The Agency wishes to minimize the administrative burden that Part 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 anti-theft 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.

Issued in Washington, DC, under authority delegated in 49 CFR Part 1.95 and 501.8.

**Raymond R. Posten,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0052]

#### Denial of Motor Vehicle Defect Petition, DP17–002

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

**ACTION:** Denial of petition for a defect investigation.

**SUMMARY:** This document denies a January 11, 2017, petition, as submitted under Office of Defects Investigation (ODI) ID number 10944318, from Ms. Laura Nagel of Springfield, VA, requesting that the agency open an investigation into an alleged defect resulting in engine stall without warning after refueling in a model year (MY) 2007 Jeep Patriot. The petitioner's vehicle is a 2007 Jeep Patriot. The National Highway Traffic Safety Administration (NHTSA) evaluated the petition by analyzing consumer complaints submitted to the Agency, by reviewing two prior evaluations of the same apparent defect issue, and by reviewing technical and field information provided by FCA US, LLC (FCA) in response to an information request letter from the Agency. After completing this evaluation, NHTSA has concluded that further investigation of the alleged defect in the subject vehicles is unlikely to result in a determination that a safety related defect exists. The agency accordingly denies the petition.

**FOR FURTHER INFORMATION CONTACT:** Dr. Abhijit Sengupta, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–4293.

#### SUPPLEMENTARY INFORMATION:

##### Alleged Defect

The petitioner alleges that her MY 2007 Jeep Patriot vehicle experienced multiple incidents of engine stall without warning shortly after refueling. The petitioner discovered that the defective part is a valve that is integral to the fuel tank, requiring tank replacement to repair the problem. The petitioner alleged that stalling without warning is an unreasonable risk to motor vehicle safety and requests the agency take action by opening a Preliminary Evaluation to fully evaluate the defect.

##### Engine Stall Defects

The Safety Act, (Chapter 301 of Title 49 of the United States Code (49 U.S.C. 30101 et. seq.)) defines motor vehicle