

to each occupant rather than the occupants wearing a life preserver and to not have helicopter floats.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; smart USA Distributor 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 petition of smart USA Distributor LLC (smart USA) in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the smart fortwo vehicle line beginning with model year (MY) 2009. 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. smart USA is an authorized importer of smart brand vehicles manufactured by Daimler AG. smart USA requested confidential treatment for the information and attachments submitted in support of its petition. The agency will address smart USA's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION: In a petition dated January 22, 2008, smart USA requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the smart USA fortwo vehicle line beginning with MY 2009. 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 an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one of its vehicle lines per year. smart USA'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.

smart USA's petition provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the fortwo vehicle line. Although smart USA has requested confidential treatment of specific details of the system's operation, design, effectiveness and durability, NHTSA is, for the purposes of this petition, disclosing the following general information. smart USA will install its passive antitheft device as standard equipment on the vehicle line beginning with MY 2009. The antitheft device to be installed on the MY 2009 fortwo is equipped with an access code protected locking system and a transponder-based electronic immobilizer system. Features of the antitheft device will include an immobilizer consisting of an operational controller (SAM), transponder ignition keys and an engine control transponder reader unit as standard equipment. smart USA states that the vehicle key, SAM, engine control unit, fuel injection system and starter must all independently verify the presence of a code unique only to that vehicle. The smart USA fortwo will be installed with a malfunction warning symbol indicator on the instrument cluster. Additionally, the fortwo vehicle line will have an optional alarm system which will monitor all the doors and tailgate of the vehicle. The audible and visual alarms are activated when an unauthorized person attempts to enter or move the vehicle by unauthorized means.

smart USA stated that the immobilizer device prevents the engine from running unless a valid key is put into the ignition. Turning the valid key in the ignition is required to activate or deactivate the immobilizer. smart USA further stated that the immobilizer is armed immediately after the ignition is turned off regardless of whether the doors are opened or are locked.

There is currently no available theft rate data for the fortwo vehicle line as it is a new vehicle line beginning with MY 2008. smart USA provided Mercedes-Benz C-Line Chassis vehicle line as an example of a vehicle line subject to the parts-marking requirements (49 CFR part 541) that are equipped with ignition immobilizer systems as standard equipment. smart USA reported that NHTSA's theft rate

for the C-Line Chassis vehicle for model years prior to 1998 (1994 through 1997) when an immobilizer was not installed as standard equipment resulted in an average theft rate of 1.6437. smart USA reported that, since the introduction of immobilizer systems as standard equipment on the C-Line Chassis vehicles, the average theft rate for MY's 1998 through 2004 is 1.4167, which is below the 1990/1991 median theft rate of 3.5826. smart USA stated that it believes the data indicate that the immobilizer system was effective in contributing to a reduction in theft rates for the C-Line Chassis at an average of 13.8 percent.

On the basis of this comparison, smart USA stated that the immobilizer in the fortwo vehicle line is functionally equivalent to the systems used in the Mercedes-Benz S-Line, E-Line and C-Line Chassis vehicles beginning with MY 2006, 2007 and 2008, respectively. smart USA has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

In addressing the specific content requirements of 543.6, smart USA provided information on the reliability and durability of its proposed device. Daimler AG has conducted tests based on its own specified standards for reliability and durability. smart USA provided a detailed list of the tests conducted, and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Additionally, smart USA stated that it has obtained test approval according to regulatory requirements that are based on the testing parameters of the International Standards Organization regulations.

Based on the confidential material submitted by smart USA, the agency believes that the antitheft device for the fortwo 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). Based on the information smart USA provided about the device, 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.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that smart USA has

provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information smart USA provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full smart USA's petition for exemption for the fortwo 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 model year. 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 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 smart USA 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 according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if smart USA 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, part 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 part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting 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: May 12, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-10983 Filed 5-15-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35138]

Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Control Exemption—The Louisiana and North West Railroad Company LLC

Patriot Rail, LLC (PRL) and its subsidiaries, Patriot Rail Holdings LLC (PRH) and Patriot Rail Corp. (Patriot) (collectively, applicants), jointly have filed a verified notice of exemption to permit PRL, PRH, and Patriot to acquire control of The Louisiana and North West Railroad Company LLC (L&NW) through Patriot's acquisition of 100% of the membership interests and/or substantially all of the assets of L&NW, pursuant to a Letter of Intent dated April 8, 2008.¹ Applicants state that a Purchase and Sale Agreement, as required by 49 CFR 1180.6(a)(7)(ii), will be entered prior to closing.

PRL is a noncarrier limited liability company that owns 51% of the equity interests in PRH, which, in turn, owns 100% of the stock of Patriot. Patriot is a noncarrier holding company that controls the following Class III railroads: (1) The Tennessee Southern Railroad Company, operating in Tennessee and Alabama; (2) Rarus Railway Company, operating in Montana; (3) Utah Central Railway Company, operating in Utah; and (4) Sacramento Valley Railroad, Inc., operating in California. L&NW, a Class III rail carrier, owns and operates an approximately 62.6-mile line of railroad between McNeil, AR, and Gibsland, LA, and leases a 6.5-mile line of railroad between McNeil and Magnolia, AR, from the Union Pacific Railroad Company. Pursuant to the transaction, Patriot will acquire direct control of L&NW. PRL and PRH, through their control of Patriot, will acquire indirect control of L&NW.

The transaction is scheduled to be consummated on or after the date that this notice becomes effective (which will occur on May 30, 2008).

¹ A redacted version of the Letter of Intent was included with the notice. The full version of the Letter of Intent was concurrently filed under seal along with a motion for protective order. The motion for protective order is being addressed in a separate decision.

Applicants state that: (i) The rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by PRL, PRH, or Patriot; (ii) the acquisition of control of L&NW by PRL, PRH, and Patriot is not part of a series of anticipated transactions that would connect any of these railroads with each other or any railroad in their corporate family; and (iii) this transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 23, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35138, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: May 8, 2008.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

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