been installed as original equipment. It claims that the lighting system as a whole on these vehicles provides functionally equivalent lighting to FMVSS 108 requirements.

We have reviewed the application and disagree with Utilimaster that the noncompliance is inconsequential to motor vehicle safety. Utilimaster replaced an incandescent lamp assembly with one that uses LEDs. LEDs emit a very distinct beam of light along their longitudinal axis with almost no light being emitted laterally. This is very different from incandescent light sources, which usually produce light in a much wider pattern. The 30 degree off-vertical set-back position of the lamps tilts the top of the LED-equipped lamps too far back for them to meet the intensity requirements at 10 degrees down and 45 degrees to the right and left. With the increasing prevalence of LEDs in signal lamp assemblies, we believe it is important to stress to lamp and vehicle manufacturers that LED lamp assemblies' different characteristics must be taken into account. Simply replacing lamps that use incandescent bulbs with similarly-sized LED-equipped lamps could have adverse effects on the performance of the lighting system. In this case, the subject lamps have photometric failures that are as high as 69 percent below the required performance.

To support its application, Utilimaster states that, for the areas in which the clearance and identification lamps are possibly noncompliant, the parking and side marker lamps provide additional light to account for these deficiencies. It states that ''on a system basis, the lighting array and coverage of the clearance, identification, side marker, and parking lamps on the subject vehicles provide—and even exceed—the requisite outboard visibility under FMVSS 108.'' We disagree that the parking and side marker lamps serve as adequate substitutes for the deficient areas in the clearance and identification lamps.

Regarding the clearance lamps, their intended purpose is to show the overall width and height of a vehicle. The front parking lamps do not accomplish this because they are not near enough to the edge of the vehicle nor as high as practicable. We call attention to a September 4, 1996, agency interpretation that was requested by Pace American, Inc. We stated that ''locating a clearance lamp within six to eight inches of the outermost edges of a trailer that is 80 or more inches in overall width does not indicate 'overall width' within the meaning of Standard No. 108.'' The center of the front parking lamps on the subject vehicles is more than 12 inches from the edge of the vehicle. Thus, they do not accurately reflect the width of the vehicle due to their inboard mounting. It is also readily apparent that, because the parking lamps are mounted next to the headlamps, they do not help to indicate the height of the subject vehicles.

Regarding the identification lamps, their intended purpose is to identify vehicles with a width of greater than 80 inches (2032 millimeters). Utilimaster's argument that the intent of the standard is met because the front parking lamps provide light in the areas in which the subject identification lamps are deficient is not convincing. The grouping of the three identification lamps is unique to vehicles wider than 80 inches (2032 millimeters). If these lamps are not visible, the front parking lamps are not sufficient to give the same recognition, as they do not provide the universal message that a grouping of three identification lamps at the top front of the vehicle does.

To support its position, Utilimaster cites four inconsequential noncompliance applications which the agency granted. It believes that they all support its position that the lamps on a vehicle should be viewed as a system, where deficient areas in some lamps can be accounted for with light provided by other lamps. It did not elaborate further on the similar characteristics of their applications.

First, Utilimaster cites a General Motors application in which vehicles had turn signals that failed by 10 percent in a particular zone (group of test points). The agency granted the application based on the fact that the other zones in the turn signal lamp exceed the required light output by 20 percent (61 FR 1663). While Utilimaster's vehicles do have other sources of light to account for some of the deficiencies in the subject lamps, its noncompliances are as much as 69 percent below the required minimum level. This is far below the level of noncompliance exhibited by the vehicles covered by the GM application. Further, the additional light in the noncompliant GM turn signals is provided from other zones in the same lamp, not by some other auxiliary lamp.

The second application Utilimaster cites also resulted in a grant to GM (63 FR 70179). GM produced vehicles in which the center high-mounted stop lamp (CHMSL) is partially obscured by blackout paint on the rear window. One of the reasons the agency gave to support granting the application was that the stop lamps on the vehicles ''far exceed the minimum photometric performance levels.'' The CHMSL and stop lamps are designed to notify other drivers of the same event. The lamps that Utilimaster is trying to supplement with additional light from the parking lamps have a very specific meaning, which will not be conveyed by the front parking lamps.

Utilimaster cites a third application from GM which involves daytime running lamps (DRLs) that were too close to the turn signals. In this case, a factor the agency gave in granting the application (64 FR 28864) was that the turn signal was of greater than usual intensity and would not be masked by the DRL. We don't understand how this reasoning is relevant to Utilimaster's situation.

Finally, Utilimaster cites the grant of an application from the American Transportation Corporation (ATC) regarding noncompliant air brakes (65 FR 1946). The air brake systems did not meet the volumetric requirements for the brake chambers. The vehicles' stopping capability was not compromised by the noncompliance and the agency granted ATC's application based on this. We again don't understand how this reasoning is relevant to Utilimaster's situation.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Its application is hereby denied, and it must notify and remedy the noncompliance as required by the statute.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–15699 Filed 6–21–01; 8:45 am]

BILLING CODE 4910–59–P

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 petition of BMW of North America, Inc., (BMW) for an exemption of a high-

theft line, the BMW MINI, from the parts-marking requirements of the Federal Motor Vehicle 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.

DATES: The exemption granted by this notice is effective beginning with the 2002 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated April 4, 2001, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW MINI vehicle line, beginning with MY 2002. The petition has been filed 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. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW MINI 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).

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts marking requirements for not more than one additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to section 33103(d)(3).

BMW's submittal 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 its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2002 BMW MINI vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The 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. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that in the key is a transponder, a special transmitter/receiver that communicates with the EWS control through the transceiver module. The transponder chip which is integrated in the key consists of a transmitter/receiver, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central locking system which locks all doors, the hood, the trunk and fuel filler lid. The central locking system also allows the driver to unlock the driver's door while the passenger doors remain locked. This feature offers additional security by preventing unauthorized entry of the vehicle through the passenger doors. BMW also states that it is also possible to unlock all doors via the central locking system. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key or by use of the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW discussed the uniqueness of its locks and its ignition key. The keys have guide-ways milled in the middle of both sides of the key bit. The same key operates the door locks and the ignition/steering lock and it can be inserted in a keyhole in either direction. However, BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market.

BMW also stated that a special key blank, key-cutting machine and owner's individual key code are needed to cut a new key, and that its key blanks, machines and codes will be closely controlled. Additionally, new keys will only be issued to authorized persons and spare keys can only be obtained through the dealership because they are not copies of lost originals, but new keys with their original electronic identification. As an additional security measure, lost keys can be disabled at the vehicle and enabled again. BMW also stated that every key request is documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

BMW states that the steering/ignition lock is hardened against the grip of a screw and the housing is reinforced to prevent removal of the lock. When the key is removed, a mechanism causes the lock to engage, thereby preventing steering wheel movement without any additional action. Additionally, vehicles equipped with automatic transmission have an ignition/transmission interlock that prevents ignition key removal

unless the shift lever is in the ''Park'' position preventing movement of the shift lever until the key is turned in the lock.

The battery for BMW's MINI vehicle line will be covered and inaccessibly located. Therefore, if a thief does manage to penetrate and disconnect the battery, it will not unlock the doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line 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, and has concluded that the antitheft device proposed for this line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its MINI vehicle line for MY 2002 is exactly the same system that is currently installed on its Carline 3, Carline 5, Carline 7 and X5 vehicle lines. The agency granted BMW's petition for modification of its Carline 7 beginning with MY 1995 (See 59 FR 47973, September 19, 1994); and its petitions for exemptions granted in full for Carline 5 beginning with MY 1997, Carline 3 beginning with MY 1999 and its X5 vehicle line beginning with MY 2000. (See 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997 and 64 FR 33947, June 24, 1999, respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and allow deactivation of the vehicle by electronic means and not by use of the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the MINI 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 believes that the device will provide four of the five types of performance listed in 49 CFR 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 device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device. For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2002 MINI vehicle line from the parts-marking requirements of 49 CFR part 541. 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 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 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 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: June 18, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34053]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 885.2 near Bakersfield, CA, and BNSF milepost 1120.54 near Stockton, CA, a distance of approximately 235 miles.[1]

The transaction is scheduled to be consummated on June 17, 2001.

The purpose of the trackage rights is to permit UP to use the BNSF trackage when UP's trackage is out of service for scheduled maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the

[1] On June 8, 2001, UP and BNSF filed a petition for exemption in STB Finance Docket No. 34053 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on November 30, 2001. That petition will be addressed by the Board in a separate decision.