

provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and non-members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2010-039 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2010-039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2010-039 and should be submitted on or before January 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-01 Filed 1-6-11; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket No. FRA-2011-0003]

#### **Establishment of an Emergency Relief Docket for Calendar Year 2011**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of establishment of public docket.

**SUMMARY:** This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2011. The designated ERD for calendar year 2011 is docket number FRA-2011-0003.

**ADDRESSES:** See Supplementary Information section for further information regarding submitting petitions and/or comments to Docket No. FRA-2011-0003.

**SUPPLEMENTARY INFORMATION:** On May 19, 2009, FRA published a direct final rule addressing the establishment of ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to § 211.45 to the FRA's Rules of Practice published at 49 CFR Part 211. Paragraph (b) of § 211.45 provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available on the internet at <http://www.regulations.gov>). Paragraph (b) of § 211.45 further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. As noted in the rule, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces that the designated ERD for calendar year 2011 is docket number FRA-2011-0003.

As detailed § 211.45, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> See Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site <http://www.fra.dot.gov/>. Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

#### Privacy

Anyone is able to search 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 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on January 3, 2011.

#### Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0176; Notice 1]

#### Mitsubishi Motors North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Mitsubishi Motors North America, Inc. (Mitsubishi)<sup>1</sup> has determined that an unknown number of replacement seat belts that it imported do not include the installation, usage and maintenance instructions required by paragraphs S4.1(k) and S4.1(l) of

<sup>1</sup> Mitsubishi Motors North America, Inc. (Mitsubishi), is organized under the laws of the state of California. Mitsubishi manufactures and imports motor vehicles and replacement equipment.

Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. Mitsubishi filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* on October 25, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Mitsubishi 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.

This notice of receipt of Mitsubishi's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Mitsubishi explained that an unknown number of nonconforming seat belt assemblies were sold by Mitsubishi to its authorized dealers in the United States for resale and replacement purposes.

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.

Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 requires:

(k) *Installation instructions*. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, "Motor Vehicle Seat Belt Installations," November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., "front right"] in [insert specific vehicle make(s) and model(s)].

(l) *Usage and maintenance instructions*. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance [of] the assembly and periodic inspection of all components. The instructions shall show the

proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

Mitsubishi described the noncompliance as the failure to provide installation, use and maintenance instructions with the seat belt assemblies as required in FMVSS No. 209 S4.1(k) and S4.1(l).

Mitsubishi argues that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The service seat belt assemblies in question are only made available to Mitsubishi authorized dealerships for their use or subsequent resale. The Mitsubishi parts ordering system used by Mitsubishi dealers clearly identifies the correct service seat belt components for any given model/model year/seat position combination and the parts are unique to each seat belt and designed to assemble properly only in their intended application.

(2) When ordering Mitsubishi replacement seat belt parts, the dealer must refer to the Mitsubishi parts catalog to identify the ordering part number with the information on the specific vehicle model type, location and model year. Each replacement seat belt assembly is packaged individually with a specific part number label to ensure shipping the correct parts. Dealers routinely confirm that the part received matches their order to validate that the correct parts were received.

(3) Installation instructions for seat belts are readily available in the Mitsubishi workshop manuals. Technicians at Mitsubishi dealerships that replace seat belts have access to the installation instruction information in the workshop manual. Installers other than Mitsubishi dealership technicians also have seat belt installation information available in the workshop manuals and are available on the Mitsubishi Service Web site. As a result, the seat belt parts can be successfully installed with the information already available even though installation instructions were not accompanied in the replacement seat belt assemblies.

(4) Instructions for proper use and maintenance are described in the owner's manual which is installed in each vehicle. Therefore, incorrect usage