

**DEPARTMENT OF TRANSPORTATION**

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

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

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

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted by Ms. Claire M. Tieder to NHTSA's Office of Defects Investigation (ODI), dated January 11, 2004, under 49 U.S.C. § 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the automatic transmission performance of model year (MY) 2004 BMW 3-Series xi all-wheel drive sedans. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP04-001.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Steve Chan, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366-8537.

**SUPPLEMENTARY INFORMATION:**

By letter dated January 11, 2004, Ms. Claire M. Tieder of Reston, VA, submitted a petition requesting that the agency investigate the automatic transmission performance of MY 2004 BMW 3-Series xi all-wheel drive vehicles. The petitioner alleges that she

had experienced transmission delay engagement of one-half minute to two minutes after shifting from Reverse to Drive on her MY 2004 BMW 325xi vehicle.

ODI requested information from Bayerische Motoren Werke (BMW) pertaining to the issue of automatic transmission delayed engagement when shifting from Reverse to Drive or from Drive to Reverse (alleged defect) on all MY 2004 BMW 3-Series vehicles (subject vehicles) manufactured for sale or lease in the United States. According to BMW, two automatic transmission models - - GM5 and 5HP19 - - were used in the subject vehicles. The GM5 transmission was used in both the rear-wheel drive and the all-wheel drive vehicles, and the 5HP19 transmission was used for the rear-wheel drive vehicles only. The table below is a summary of BMW's response to certain requested information which relates, or may relate, to the alleged defect on the subject vehicles:

Transmission Model	Vehicle* Population	Consumer Complaints	Field Reports	Warranty Claims	TSB	Crash	Injury	Fatality
5HP19	6,942	2	0	12	0	0	0	0
GM5	49,706	139	256	1742	2	0	0	0

\* As of February 27, 2004.

BMW apparently was well aware of the alleged defect in the subject vehicle. In December 2003, BMW issued Technical Service Bulletin (TSB) SI B24 07 03, Subject: "GM5: Delayed P [Park] to D [Drive] Engagement on Cold Start." The TSB stated that "Customer may complain of delayed 'P' to 'D' engagement (2 to 30 seconds) during the first cold start in the morning," and that the cause was "Unfavorable tolerances of C1 clutch housing causing internal transmission pressure leak after extended (overnight) parking." The TSB applied to the subject vehicles and the BMW X5 3.0iA model with a GM5 transmission manufactured during certain time periods. The TSB indicated that if a customer complained about this problem, the affected transmission would be replaced

with an improved unit after the servicing dealer verified the aforementioned delayed 'P' to 'D' engagement. On February 2004, BMW issued an updated TSB to include the BMW X3 3.0iA model with GM5 transmission. No TSB was issued with respect to the 5HP19 transmission.

In its response to ODI, BMW stated that the transmission engagement delay after shifting from Park to Drive, or from Reverse to Drive, is caused by an internal transmission fluid leak of the main drive clutch (C1 clutch) between the molded piston outer seal and the main drive clutch housing. The C1 clutch provides input torque to the transmission's 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> gear. If the C1 clutch's torque-carrying capacity is interrupted, then forward drive gear engagement is delayed. The problem is more prevalent in colder weather, and usually occurs during a "cold start" such as after the vehicle has been parked with the engine off overnight.

In its response, BMW argued that the alleged defect does not pose an unreasonable risk to motor vehicle safety, for the following reasons:

(1) The delay can only occur at vehicle "cold start" after the vehicle has been at rest for more than eight hours, and typically lasts less than 15 seconds. At the time of a "cold start," the vehicle is stationary. It is not moving in traffic. Therefore, the driver is not traveling at some measurable speed. There have been no crashes, no property damage claims, no injuries and no fatalities associated with the alleged defect reported to BMW;

(2) The delay is "self-correcting." Coincident with the transmission engagement delay, a driver who has been sensitized to this occurrence may increase the engine speed in order to reduce the delay time. By increasing the engine speed, the transmission's

internal pressure increases more quickly toward its operating pressure, and enables the drive gear to engage sooner;

(3) The transition from delay occurrence to “normal” vehicle usage is benign. At the end of the delay, the transition to full engagement of the drive gear occurs in a “smooth” manner. There is no sudden/abrupt forward acceleration of the vehicle. Nothing in front of the vehicle is at an increased risk of being contacted, nor is there any risk of startling the driver;

(4) The drivers are sensitized to the delay and can take corrective actions once they have experienced the delay. They will know to expect it in future cold starts and can increase the engine speed to avoid the temporary effect of transmission engagement delay; and

(5) If a subject vehicle is prone to the condition of transmission engagement delay, the occurrence will arise early in the vehicle’s lifecycle when it is fully covered by warranty. BMW’s analysis of the warranty claims suggests that most of the potentially affected vehicles have already been repaired.

ODI has received a total of 13 consumer complaints (including one from the petitioner, who has a GM5 transmission) regarding this issue, of which 11 are unique to ODI. Like those reported to BMW, none of these complaints involved a crash, injury, or fatality. Information contained in the ODI consumer complaints and from telephone interviews with complainants is consistent with BMW’s assessment of the safety consequences of the alleged defect. The reported transmission delay period ranged from 4 seconds to 75 seconds, with an average of 20 seconds. The complainants indicated that the delay only occur during “cold start,” after the vehicle has been parked overnight. Drivers learned to shorten the delay by increasing the engine speed; when the engine

speed is increased, the vehicle creeps forward until the transmission is fully engaged. One complainant indicated that he shortens or eliminates the delay by shifting the transmission in Drive but keeping the vehicle stationary for 30 seconds with the brakes applied for pressure to build up in the transmission.

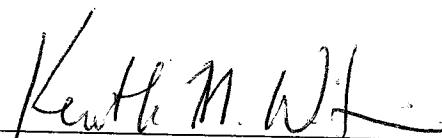
As the petitioner noted, it is possible for a driver to back a subject vehicle into the street from a driveway and then not to be able to move forward as normal. While this could theoretically create a safety problem, the risk is very small, and there are no reported crashes or injuries due to the alleged defect. As mentioned previously, once they are aware of the problem, the drivers appear to have learned to take precautionary and compensatory measures.

In view of the foregoing, it is unlikely that the NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize the NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on:

MAY - 5 2004

  
Kenneth N. Weinstein  
Associate Administrator  
for Enforcement

Billing Code 4910-59-P