

exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: April 23, 2004.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 04-10584 Filed 5-10-04; 8:45 am]

**BILLING CODE 4910-EX-P**

**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 <sup>1</sup> 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

<sup>1</sup> 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 1st, 2nd, 3rd, and 4th 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.*  
[FR Doc. 04-10644 Filed 5-10-04; 8:45 am]  
**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 172X)]

#### Union Pacific Railroad Company— Abandonment Exemption—in Marshall County, KS

On April 21, 2004, the Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 5.30-mile line of railroad known as the Vliets Industrial Lead, extending from milepost 409.10, near Frankfort, to milepost 403.80, near Vliets, in Marshall County, KS. The line traverses United States Postal Service Zip Codes 66427 and 66544, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 9, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,100 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 1, 2004. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-33 (Sub-No. 172X) and must be sent to: (1) Surface Transportation Board, 1925 K

Street, NW., Washington, DC 20423-0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before June 1, 2004.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

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

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

Decided: May 4, 2004.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 04-10539 Filed 5-10-04; 8:45 am]  
**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Registration of Money Services Business— Accompanied by FinCEN Form 107, Registration of Money Services Business

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Registration of Money Services Business, FinCEN Form 107 (formerly Form TD F 90-