



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

NOV 26 2008

Mr. Thomas C. Baloga, Vice President
Engineering, US
BMW of North America, LLC
P.O. Box 1227
Westwood, NJ 07675-1227

NVS-212jfa
EA08-020

Dear Mr. Baloga:

As you are aware, the National Highway Traffic Safety Administration (NHTSA) has been conducting an investigation pertaining to leg burns from the exhaust pipe tips in model year (MY) 2007 and certain MY 2008 Mini Cooper "S" vehicles (subject vehicles) manufactured by BMW of North America, LLC (BMW).

Based on an assessment of consumer complaint reports received by the agency, NHTSA's Office of Defects Investigation (ODI) opened a Preliminary Evaluation (PE08-031) on April 28, 2008, and requested information from you. After reviewing your response, ODI upgraded PE08-031 to an Engineering Analysis (EA08-020) on August 29, 2008. After a review of that response, ODI advised you, by letter of October 10, 2008, of its belief that the subject vehicles contain a defect in the exhaust pipe tips of the subject vehicles within the meaning of the National Traffic and Motor Vehicle Safety Act, as amended. ODI requested that BMW initiate a safety recall, in accordance with 49 U.S.C. § 30118-30120, to notify all owners, purchasers, and dealers of the problem and to provide a free remedy for each of the subject vehicles. However, BMW has refused to conduct a safety recall.

Based on the information gathered in this investigation, and after considering the arguments and assertions you have made during this investigation, I have made an Initial Decision, pursuant to 49 U.S.C. § 30118(a) and 49 CFR Part 554.10, that MY 2007 and MY 2008 (produced prior to the redesign of the exhaust pipe tips) Mini Cooper S vehicles contain a defect related to motor vehicle safety. The defect is in the exhaust pipe tips of the subject vehicles which, as designed, protrude beyond the rear bumper cover to such an extent and are so situated that they burn people who are performing completely foreseeable tasks at the rear of the vehicle.

In accordance with 49 U.S.C. § 30118(a) and 49 CFR Part 554.10(b), I am enclosing a copy of the Initial Decision Report on which my Initial Decision is based and which is incorporated by reference. The information also is available for examination by any member of the public from NHTSA's Technical Information Services (TIS), Room E12-100, 1201 New Jersey Avenue, S.E., Washington, D.C. 20590; telephone: (202) 366-2588. Visitors should call TIS from the Security Desk at 1200 New Jersey Avenue on ext. 62588, or call ext. 64947 or ext. 65649, for escort to the reading room.



As noted in the enclosed Federal Register notice, pursuant to 49 U.S.C. § 30118(b) and 49 CFR Part 554.10, a public meeting will be held on December 17, 2008, at 10:00 a.m., in Room W40-302, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, at which time you and interested members of the public may present information, views, and arguments on whether the subject vehicles contain a safety defect. Procedures for participation at that meeting and provisions for submission of written comments are set out in the Federal Register notice.

You should seriously consider participating in this process. Among other possible outcomes, this process may result in a Final Decision under 49 U.S.C. § 30118 that the subject vehicles contain a defect related to motor vehicle safety, and an order compelling BMW to provide notification of the safety defect to owners, purchasers, and dealers, and a free remedy for the safety defect.

Please note that the failure to submit a timely defect and noncompliance information report pursuant to 49 CFR Part 573 is a violation of 49 U.S.C. § 30118(c) and 30119(c). Among other things, violations of any of these provisions can subject BMW to substantial civil penalties.

If you have any question regarding this letter, please contact Ms. AnnaLisa Nash of NHTSA's Office of Chief Counsel, who may be reached, at 202-366-2289.

Sincerely



Daniel C. Smith
Associate Administrator
for Enforcement

Enclosures