

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:

AQ15-004

BMW of North America, LLC

SPECIAL ORDER DIRECTED TO BMW OF NORTH AMERICA, LLC

To: Mr. Samuel Campbell
Department Head-Safety Engineering
BMW of North America, LLC
PO Box 1227
200 Chestnut Ridge Road
Westwood, NJ 07675-1227

This Special Order is issued by the Secretary of Transportation pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7 and 510.8, and pursuant to a delegation of authority to the Chief Counsel of the National Highway Traffic Safety Administration (“NHTSA”), an Operating Administration of the United States Department of Transportation, 49 C.F.R. §§ 1.95, 501.8(d).

As you are aware, on May 29, 2014, the New Car Assessment Program (“NCAP”) had MGA Research perform a side impact moving deformable barrier (“MDB”) test on a model year (“MY”) 2014 Mini Hardtop 2 Door Cooper. This test was performed using the test procedures for FMVSS No. 214 but, in accordance with NCAP practice, at a higher speed than that specified in the Standard. MGA found that the impact resulted in a spine acceleration of 87g in the 5th percentile female dummy employed in the test. On June 23, 2014, NCAP had MGA Research perform another NCAP side impact moving deformable barrier test on a MY 2014 Mini Hardtop 2 Door Cooper. The spine acceleration measured in the 5th percentile female dummy used in that

test was 89g. These test results, which were indicative of poor performance in side impacts, provided cause for concern.

In October 2014, NHTSA's Office of Vehicle Safety Compliance ("OVSC") had a FMVSS No. 214 MDB compliance test performed on a MY 2014 Mini 2 Door Hardtop Cooper to determine if the spine acceleration met the FMVSS No. 214 requirements at the speed specified in the standard. The spine acceleration value in the test exceeded the maximum allowable in the standard for the 5th percentile female dummy. After being advised of the test failure, BMW of North America, LLC ("BMW") stated that the certification for the MY 2014 Mini 2 Door Hardtop Cooper was based on the certification testing of the MY 2014 Mini 2 Door Hardtop Cooper S, which is a heavier vehicle. BMW further claimed that the Cooper model, as designed, could have the same weight rating as the Cooper S and would comply with the standard if tested at the higher vehicle test weight based on that weight rating. In December 2014, BMW filed a report pursuant to 49 C.F.R. Part 573 for a noncompliance with FMVSS No. 214 for a portion of MY 2014 Mini Hardtop 2 Door Cooper model vehicles. *See* NHTSA Recall No. 14V-815. The remedy for this noncompliance involves installing a small foam patch in the rear door panels.

In late January 2015, BMW also filed a report pursuant to 49 C.F.R. Part 573 recalling MY 2014-2015 Mini 2 Door Hardtop Cooper models to raise the gross vehicle weight rating on the certification label and the vehicle capacity weight on the tire placard. *See* NHTSA Recall No. 15V-034.¹ In addition to NHTSA Recall No. 15V-034, BMW verbally agreed on or about January 26, 2015 that it would conduct a service campaign to add padding to the rear side panels of MY 2015 Mini 2 Door Hardtop Cooper models to improve these vehicles' side impact

¹ NHTSA has information that a dealership sold and delivered at least one new model year ("MY") 2015 Mini Cooper 2 door hardtop vehicle to a customer without having the remedy required under safety recall number 15V-034. NHTSA has opened an Audit Query ("AQ") 15-003 to investigate this issue.

protection. BMW also agreed to provide quarterly reports on this service campaign. However, BMW did not initiate the service campaign and failed to inform OVSC of its failure to do so.

In early July 2015, OVSC had a FMVSS No. 214 MDB test performed on a MY 2015 Mini 2 Door Hardtop Cooper. BMW technicians installed a foam pad in the rear side panels of the Cooper model vehicle prior to the test, which was the vehicle modification contemplated in the service campaign. BMW technicians also installed a FMVSS No. 110 label from Recall No. 15V-034. The test of the Mini 2 Door Hardtop Cooper with the additional padding and at the higher test weight did not exceed the maximum allowable spine acceleration in the standard for the 5th percentile female dummy. However, this was the only vehicle on which the promised service campaign was performed and thus did not represent the vehicles BMW was selling or had sold.

In July 2015, OVSC also had a MY 2015 Cooper S tested. The FMVSS 214 MDB test of the Cooper S, which has never received the additional padding that was purportedly installed in the Cooper, was tested by OVSC at the higher test weight specified by BMW and allegedly provided the basis for BMW's certification of the Cooper, revealed that the Cooper S did not meet the requirements for 5th percentile female dummy spine acceleration. On July 15, 2015, BMW filed a report pursuant to 49 C.F.R. Part 573 for the Mini 2 Door Hardtop Cooper, Cooper S, and John Cooper Works models regarding a noncompliance with FMVSS 214. *See* NHTSA Recall No. 15V-450.

NHTSA is therefore justifiably concerned about BMW's certification of these vehicles and, in particular, has questions about the timeliness of the various BMW recalls of the Cooper and the Cooper S. It also appears from a review of NHTSA's databases that BMW may have failed to submit recall communications to NHTSA in a timely manner. Therefore, NHTSA is

investigating the timeliness of BMW's recalls as well as the company's compliance with recall reporting requirements.

To further the investigation into these apparent violations, this Special Order demands certain information from BMW. BMW's response to this Special Order must be provided by **October 28, 2015**. BMW's response must be signed under oath, i.e., accompanied by an affidavit, signed by a responsible officer of BMW, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of BMW to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject BMW to civil penalties of up to \$7,000 per day, up to a maximum penalty of \$35,000,000 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). Falsifying or withholding information in response to this Special Order may also lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

To the extent used in this Special Order, the following definitions apply:

1. **"Affiliates"** means a corporation that is related to another corporation (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.
2. **"Agent"** means an individual, such as a representative, who is authorized to act for or in place of another.

3. **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.

4. **“Employee”** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

5. **“Identify,” “identity” or “identification,”** with respect to a person, means to provide that person’s name, title or position, employer, and last known business address and telephone number. With respect to a document, means the date (or time period covered if not dated), nature of document, author, and recipient(s). With respect to a business, means to provide the corporate address, name of its principals, telephone number, and name and address of the agent for service. With respect to a website, means the url of the site, the name and address of the owner of the site and the name and address of administrator of the website.

6. **“Officer”** means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.

7. **“Subject Vehicles”** means MY 2014 and MY 2015 Mini Cooper, MY 2014 and 2015 MY Mini Cooper S, and MY 2015 Mini John Cooper Works vehicles.

8. **“BMW”** means BMW AG, BMW of North America LLC, including all divisions, subsidiaries and affiliated enterprises and employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of BMW (including all business units and persons previously referred to).

9. **“214 Service campaign”** means any BMW campaign or program relating to installation of additional energy absorption material between the rear interior side panels and the exterior vehicle body in any MY 2015 Mini Cooper that was not part of a recall.

10. **“NHTSA Recall Number”** refers to the identification number assigned by NHTSA to a recall by BMW.

11. **“573.6(c)(10) communication”** refers to 49 C.F.R. § 573.6(c)(10) and means each notice, bulletin, or other communication that relates directly to the defect or noncompliance and which was sent to more than one manufacturer, distributor, dealer, or purchaser required under that section.

12. **“First calendar quarterly report”** means the quarterly report under 49 C.F.R. § 573.7 for the period January 1 through March 31.

13. **“Second calendar quarterly report”** means the quarterly report under 49 C.F.R. § 573.7 for the period April 1 through June 30.

14. **“You” or “Your”** means BMW or BMW’s.

15. **Other terms.** To the extent that they are used in these requests, the terms “claim,” “consumer complaint,” “dealer field report,” “field report,” “fleet,” “good will,” “make,” “model,” “model year,” “notice,” “type,” “warranty,” “warranty adjustment,” and “warranty claim,” whether used in singular or in plural form, have the same meaning as found in 49 C.F.R. § 579.4.

INSTRUCTIONS

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590.

2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. If, on the basis of attorney-client, attorney work product, or other privilege, you do not submit one or more requested documents or items of

information in response to this Special Order, you must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

5. The response to this Special Order, including any documents produced, must be submitted in duplicate, together with a copy of any confidentiality request, to this office by the deadline stated above.

6. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R. Part 512 will result in a rejection of your request for confidential treatment.

7. All documents shall be produced electronically, as described below, and accompanied by a Concordance-format load file.

- a. Hard copy documents shall be imaged in TIFF format. They shall be provided as multi-page TIFFs with document level OCR. The following metadata fields shall be provided for each document:
 - i. Custodian-Name of person or division (if the document is from a file shared by multiple employees) from which the file is being produced;

- ii. Bates Begin-Beginning Production Number;
 - iii. Bates End-Ending Production Number;
 - iv. Attach Begin-Beginning Attachment Range Number;
 - v. Attach End-Ending Attachment Range Number (i.e. parentage is maintained); and
 - vi. Page Count.
- b. Electronically Stored Information (“ESI”) shall be converted to multi-page TIFF images and produced along with document level OCR/extracted text.

The following metadata fields will be provided for non-email ESI:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file);
- iii. Doc Title (title of file from properties);
- iv. Doc Subject (subject of file from properties);
- v. Created Date (date the file was created);
- vi. Created Time (time the file was created);
- vii. Last Modified Date (date the file was last modified);
- viii. Last Modified Time (time the file was last modified);
- ix. Last Saved By (name of user who last saved the file);
- x. Doc Type (attachment or loose file);
- xi. File Type (Microsoft Word, Microsoft Excel, etc.);
- xii. File Name (names of the file);
- xiii. Full Path (full path location to where the file resided);
- xiv. File Ext (extension for the file);
- xv. MD5 Hash (or equivalent);
- xvi. Bates Begin (beginning production number);
- xvii. Bates End (ending production number);
- xviii. Attach Begin (beginning attachment range number);
- xix. Attach End-Ending Attachment Range Number (i.e. parentage is maintained);
- xx. Page Count; and
- xxi. Native link (path to the native file as included in the production, e.g., d:\PROD001\Natives\ABC00015.xls).

The following metadata fields will be provided for electronic mail:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file prior to de-duplication);
- iii. Author (FROM field);
- iv. CC;
- v. BCC;
- vi. Recipient (TO field);
- vii. MD5 Hash Value (or equivalent);

- viii. Date Sent (date the email was sent);
- ix. Date Received (date the email was received);
- x. Time Sent (time the email was sent);
- xi. Time Received (time the email was received);
- xii. File Ext (extension for the file);
- xiii. Email Folder (the folder within the mailbox where the message resided);
- xiv. Body Text (extracted text);
- xv. Bates Begin (beginning production number);
- xvi. Bates End (ending production number);
- xvii. Attach Begin (beginning attachment range number);
- xviii. Attach End-Ending Attachment Range Number (i.e. parentage is maintained);
- xix. Page Count;
- xx. Subject; and
- xxi. Native link (path to the native file as included in the production, e.g., d:\PROD001\Natives\ABC00015.xls).

For all date fields, please produce them in either YYYYMMDD or MM/DD/YYYY format. Do not include the time in any date fields. Electronic mail shall be produced along with attachments to the extent the message or any attachment is responsive, relevant, and not privileged. As a general matter, subject to specific review, a message and its attachments shall not be withheld from production based on the fact that one or more attachments are privileged; irrelevant, or non-responsive.

- c. Excel spreadsheets, PowerPoint files (or like presentations), photographs, and brochures shall be produced both in native and TIFF formats. For Excel documents or any documents with embedded links to other files or documents, any linked files should be sequentially numbered and produced after the source file and the Attach Beg/Attach End fields be used to denote the parent/child relationship.
 - d. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission.
8. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. “And” as well as “or” shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise

be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.

9. BMW's response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of BMW, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of BMW to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

REQUESTS

1. Produce copies of all test reports and analyses that BMW performed on any of the subject vehicles after the May 29, 2014 NCAP Mini Cooper side impact MDB test.

2. Provide a detailed explanation for why BMW did not recall the subject vehicles for noncompliance with FMVSS No. 214 on or before December 23, 2014. Your explanation must identify all BMW employees involved in any discussion relating to BMW not recalling the subject vehicles for noncompliance with FMVSS No. 214 on or before December 23, 2014.

3. Provide a detailed explanation for why BMW did not recall the subject vehicles for noncompliance with FMVSS No. 214 prior to July 15, 2015. Your explanation must identify all BMW employees involved in any discussion relating to BMW not recalling the subject vehicles for noncompliance with FMVSS No. 214 prior to July 15, 2015.

4. Produce all documents that refer or relate in any way to a potential noncompliance of the subject vehicles with FMVSS No. 214 dated from January 1, 2014 through July 15, 2015. Your answer must include all documents referring or relating to ordering or manufacturing potential remedies or product improvements.

5. Provide a full and complete description of the 214 Service campaign, including a description of all steps taken by BMW to implement the campaign, when those steps were taken, and what those steps involved.

6. Produce all documents relating to the 214 Service campaign, including but not limited to all communications required by 49 C.F.R. § 579.5 and any communications on timing, remedy/improvement availability, remedy/improvement application, remedy/improvement parts ordering and remedy/improvement parts restrictions.

7. Provide a full and complete explanation for BMW technicians installing a foam pad in the rear side panels of the Cooper model vehicle prior to the compliance test performed for OVSC in July 2015.

8. State whether anyone at BMW had canceled or postponed the 214 Service campaign. If the 214 Service campaign was not canceled or postponed, provide a full and complete explanation why BMW had not begun the 214 Service campaign prior to filing its report pursuant to 49 C.F.R. Part 573 for NHTSA Recall 15V-450.

9. If anyone at BMW had canceled or postponed the 214 Service campaign, provide your response to the following questions:

- a. Identify all BMW representatives who were involved in the canceling or postponement of the 214 Service campaign.
- b. Provide the date that the 214 Service campaign was canceled or postponed.

- c. Provide a full and complete explanation for BMW's canceling or postponing the 214 Service campaign.
- d. Provide a full and complete explanation for BMW's failure to inform NHTSA that the 214 Service campaign was canceled or postponed.

10. For the period of January 1, 2013 to present, identify (by date and title) and describe in detail any and all BMW policies or procedures governing BMW's decision making process on whether to conduct a recall or service campaign. Also summarize any and all "unwritten" rules or policies that were in place or followed during the period of January 1, 2013 to present pertaining to BMW's decision making process on whether to conduct a recall or service campaign. If any of the described policies or procedures changed in any respect during the January 1, 2013 to present time period, describe the changes made and when each change was made.

11. Produce a copy of any and all documents, including drafts, describing or otherwise mentioning the recall policies and procedures in the immediately above request.

12. Provide an organizational chart of BMW employees involved in BMW's decision making process on whether to conduct a recall or service campaign since January 2013. If there have been changes to the organizational structure or to the employees holding those position, provide a chart or summary reflecting the changes.

13. Provide an organizational chart of BMW employees involved in recall or service campaign administration since January 2013. If there have been changes to the organizational structure or to the employees holding those position, provide a chart or summary reflecting the changes.

14. Describe in detail BMW's process for submitting 573.6(c)(10) communications to NHTSA. State whether BMW has made any changes to that process during the prior five years and, if yes, describe the changes.

15. Describe in detail any changes BMW anticipates making to its processes for providing 573.6(c)(10) communications to NHTSA. Your response must include an anticipated timeline for implementing any such changes.

16. Describe in detail BMW's process for submitting quarterly reports required under 49 C.F.R. § 573.7 to NHTSA. State whether BMW has made any changes to that process during the prior five years and, if yes, describe the changes.

17. Describe in detail any changes BMW anticipates making to its process for submitting quarterly reports described in 49 C.F.R. § 573.7 to NHTSA. Your response must include an anticipated timeline for implementing any such changes.

18. Explain in detail BMW's reasoning and rationale for limiting the scope of NHTSA Recall Number 14V-815 to certain model year 2014 Mini Cooper Hardtop 2 door vehicles manufactured December 1, 2013 to May 14, 2014.

19. With respect to NHTSA Recall Number 14V-815, separately provide the following information for each 573.6(c)(10) communication:

- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
- b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.

- c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. § 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
- d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.

20. With respect to NHTSA Recall Number 14V-815, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.

21. With respect to NHTSA Recall Number 14V-815, state the date that each type of notification pursuant to 49 C.F.R. Part 577 began (e.g. owner, dealer) and when each type was completed. To the extent that BMW has not sent a final owner notification for NHTSA Recall Number 14V-815 by the date of this Special Order, provide an estimated date on which it will begin sending final owner notifications and a detailed explanation as to why the final owner notification letter was not sent.

22. With respect to NHTSA Recall Number 14V-815, state whether BMW became aware after filing its report under 49 C.F.R. Part 573 that either the beginning or the completion dates reported to the agency for any of the notifications would be delayed by more than two weeks. If the answer is yes, state the following:

- a. the date when BMW became aware that notifications would be delayed by more than two weeks,
- b. the date when BMW advised the agency of the delay,
- c. the reasons for the delay,
- d. the date when BMW furnished the agency with a revised estimate, and
- e. the details of the revised estimate.

23. With respect to NHTSA Recall Number 14V-815, provide a summary with dates describing all actions taken by BMW to develop a repair procedure, order repair parts, and implement the recall.

24. With respect to NHTSA Recall Number 14V-815, produce all documents relating to BMW's repair procedure, ordering of repair parts and implementation of the recall that have not been previously provided to NHTSA.

25. With respect to NHTSA Recall Number 15V-034, separately provide the following information for each 573.6(c)(10) communication:

- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
- b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.
- c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
- d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.

26. With respect to NHTSA Recall Number 15V-034, provide an explanation why the document found at <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM474361/RCMN-14V815-8017.pdf> was not submitted to NHTSA's Recall Management Division for NHTSA Recall Number 15V-034.

27. With respect to NHTSA Recall Number 15V-034, state whether BMW represented to the Agency that the planned owner notification date would be March 13, 2015.

28. With respect to NHTSA Recall Number 15V-034, state whether BMW became aware after filing its report under 49 C.F.R. Part 573 that either the beginning or the completion dates reported to the agency for any of the notifications would be delayed by more than two weeks. If the answer is yes, state the following:

- a. the date when BMW became aware that notifications would be delayed by more than two weeks,
- b. the date when BMW advised the agency of the delay,
- c. the reasons for the delay,
- d. the date when BMW furnished the agency with a revised estimate, and
- e. the details of the revised estimate.

29. With respect to NHTSA Recall Number 15V-034, separately state the date that each type of notification pursuant to 49 C.F.R. Part 577 (e.g. owner, dealer) began and the date when each type was completed. To the extent that BMW has not sent a final owner notification for NHTSA Recall Number 15V-034 as of the date of this Special Order, provide an estimated date on which it will begin sending final owner notifications and a detailed explanation as to why the final owner notification letter was not sent.

30. With respect to NHTSA Recall Number 15V-034, provide a summary with dates describing all actions taken by BMW to develop a repair procedure, order repair parts, and implement the recall.

31. With respect to NHTSA Recall Number 15V-034, produce all documents relating to BMW's repair procedure, ordering of repair parts and implementation of the recall that have not been previously provided to NHTSA.

32. A January 2015 Service Information Bulletin for NHTSA Recall Number 15V-034 contemplated replacement of two labels, as (1) the gross vehicle weight rating (“GVWR”) displayed on the VIN label is too low, and (2) the vehicle capacity weight value displayed on the tire label is too low.² According to the January 2015 Service Bulletin for NHTSA Recall Number 15V-034, the customer must first bring in the vehicle for an initial visit in order for the information for the new labels to be taken from his or her vehicle. The owner would then be notified at a later time when the new labels have arrived.³ However, BMW’s interim owner notification letter does not provide such information to the owners.⁴ Answer the following questions:

- a. Provide a detailed explanation as to why BMW did not inform NHTSA, including in its description of remedy under 49 C.F.R. § 573.6, that BMW would require owners to bring their vehicles in twice (once to get the information from the label and once to have the new label applied) in order to complete this remedy.
- b. Describe BMW’s plan for sending final owner notification letters to purchasers.
- c. Describe BMW’s plan for submitting final owner notification letters to NHTSA.

33. With respect to NHTSA Recall Number 15V-141, separately provide the following information for each 573.6(c)(10) communication:

- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
- b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA’s Recall Management Division.

² See <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM474362/RCRIT-15V034-0217.pdf>

³ *Id.*

⁴ See <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM477473/RIONL-15V034-5170.pdf>

- c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. § 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
 - d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.
34. With respect to NHTSA Recall Number 15V-141, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.
35. With respect to NHTSA Recall Number 15V-147, separately provide the following information for each 573.6(c)(10) communication:
- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
 - b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.
 - c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
 - d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.
36. With respect to NHTSA Recall Number 15V-147, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.
37. With respect to NHTSA Recall Number 15V-147, state whether BMW became aware after filing its report under 49 C.F.R. Part 573 that either the beginning or the completion

dates reported to the agency for any of the notifications would be delayed by more than two weeks. If the answer is yes, state the following:

- a. the date when BMW became aware that notifications would be delayed by more than two weeks,
- b. the date when BMW advised the agency of the delay,
- c. the reasons for the delay,
- d. the date when BMW furnished the agency with a revised estimate, and
- e. the details of the revised estimate.

38. With respect to NHTSA Recall Number 15V-147, state whether BMW failed to provide the notification required by 49 C.F.R. § 577.5 within the 60 days specified in 49 C.F.R. § 577.7(a)(1).

- a. If your answer to Request No. 38 is no, provide BMW's explanation for its contention that the notification was provided within the 60 days specified in 49 C.F.R. § 577.7(a)(1) and produce all documents to support your contention.
- b. If your answer to Request No. 38 is yes, provide BMW's explanation why the notification was not provided within the 60 days specified in 49 C.F.R. § 577.7(a)(1).

39. With respect to NHTSA Recall Number 15V-147, state the date when BMW provided to NHTSA the first calendar quarterly report for 2015 and answer the following questions:

- a. If BMW contends that the first calendar quarterly report for 2015 was submitted on or before April 30, 2015, produce all documents to support your contention.

- b. If BMW did not provide the report to NHTSA before April 30, 2015, explain in detail BMW's failure to do so.
40. With respect to NHTSA Recall Number 15V-147, state the date when BMW provided to NHTSA the second calendar quarterly report for 2015 and answer the following questions:
 - a. If BMW contends that the second calendar quarterly report for 2015 was submitted on or before July 30, 2015, produce all documents to support your contention.
 - b. If BMW did not provide the report to NHTSA before July 30, 2015, explain in detail BMW's failure to do so.
41. State the date that BMW made the decision to initiate NHTSA Recall Number 15V-148. Produce all documents to support your assertion.
42. With respect NHTSA Recall Number 15V-148, the purported owner letter submitted to NHTSA appears to be related to another recall. *See <http://www-odi.nhtsa.dot.gov/acms/cs/jaxrs/download/doc/UCM478894/RCONL-15V148-9350.pdf>*. State whether this notification is intended for NHTSA Recall Number 15V-148. If it is not, provide the correct owner notification letter.
43. With respect to NHTSA Recall Number 15V-148, separately provide the following information for each 573.6(c)(10) communication:
 - a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
 - b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.

- c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. § 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
 - d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.
44. With respect to NHTSA Recall Number 15V-148, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.
45. With respect to NHTSA Recall Number 15V-189, separately provide the following information for each 573.6(c)(10) communication:
- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
 - b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.
 - c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. § 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
 - d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.
46. With respect to NHTSA Recall Number 15V-189, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.
47. With respect to NHTSA Recall Number 15V-189, state whether BMW became aware after filing its report under 49 C.F.R. Part 573 that either the beginning or the completion

dates reported to the agency for any of the notifications would be delayed by more than two weeks. If the answer is yes, state the following:

- a. the date when BMW became aware that notifications would be delayed by more than two weeks,
- b. the date when BMW advised the agency of the delay,
- c. the reasons for the delay,
- d. the date when BMW furnished the agency with a revised estimate, and
- e. the details of the revised estimate.

48. With respect to NHTSA Recall Number 15V-450, separately provide the following information for each 573.6(c)(10) communication:

- a. The date the communication was initially sent to more than one manufacturer, distributor, dealer or purchaser.
- b. The date that a representative copy of the 573.6(c)(10) communication was submitted to NHTSA's Recall Management Division.
- c. If any 573.6(c)(10) communication was not submitted to NHTSA's Recall Management Division within the time allowed under 49 C.F.R. § 573.6(c)(10), provide an explanation for BMW's failure to timely submit it.
- d. If any 573.6(c)(10) communication has not been previously provided to NHTSA, produce a copy.

49. With respect to NHTSA Recall Number 15V-450, identify the 573.6(c)(10) communications that BMW claims are its notifications pursuant to 49 C.F.R. Part 577.

50. With respect to NHTSA Recall Number 15V-450, state whether BMW became aware after filing its report under 49 C.F.R. Part 573 that either the beginning or the completion

dates reported to the agency for any of the notifications would be delayed by more than two weeks. If the answer is yes, state the following:

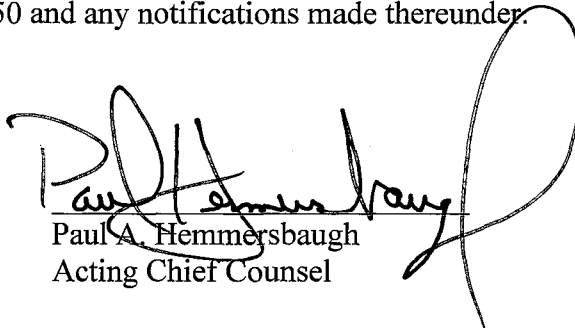
- a. the date when BMW became aware that notifications would be delayed by more than two weeks,
- b. the date when BMW advised the agency of the delay,
- c. the reasons for the delay,
- d. the date when BMW furnished the agency with a revised estimate, and
- e. the details of the revised estimate.

51. Provide a detailed explanation of the circumstances surrounding BMW's decision to recall the subject vehicles for the noncompliance identified in the report submitted pursuant to 49 C.F.R. Part 573 for NHTSA Recall Number 15V-450. Your response must include the date that the noncompliance decision was made, identify who made that decision, what information was relied on in making that decision, when the information that was relied on in making that decision was received and how it was received.

52. Provide all documents that were relied upon, referenced, or reviewed in formulating BMW's decision to recall the subject vehicles for the noncompliance identified in the report submitted pursuant to 49 C.F.R. Part 573 for NHTSA Recall No. 15V-450.

53. Provide all documents referring or relating to BMW's decision to recall the subject vehicles for the noncompliance identified in the report submitted pursuant to 49 C.F.R. Part 573 for NHTSA Recall No. 15V-450 and any notifications made thereunder.

Dated: September 28, 2015


Paul A. Hemmersbaugh
Acting Chief Counsel