

their request, MIC mentions that SAE Standard J587 was updated in 1997 to also allow for the 30 degree upward angle permitted by the ECE regulations.

In addition to the MIC petition for rulemaking of March 14, 2005, the agency has received petitions for reconsideration of the December 4, 2007 final rule that reorganized FMVSS No. 108. These petitions for reconsideration were also concerned with license plate holders and the mounting requirements. In that final rule, the agency included the license plate mounting requirements of SAE Standard J587 (October 1981) directly into the regulatory text. Petitioners objected on the grounds that the license plate mounting requirements of the 1981 SAE standard were never incorporated into FMVSS No. 108 and thus should not be included in an administrative rewrite of FMVSS No. 108 where the agency has stated no intent to substantively change the standard. A more detailed discussion of these petitions is available in today's **Federal Register** where the agency has issued a notice denying, in part, the petitions for reconsideration of the December 4, 2007 final rule.

### Conclusion

Having received this petition for rulemaking and the aforementioned petitions for reconsideration of the December 4, 2007 final rule reorganizing FMVSS No. 108, the agency has decided that MIC's petition merits further consideration through the rulemaking process and hereby grants its petition for rulemaking. The agency plans to initiate the rulemaking process later this year through the publication of a notice of proposed rulemaking. This agency also announces in a separate notice published in today's **Federal Register** that it is denying the aforementioned petitions for reconsideration as the agency has decided to resolve this issue through rulemaking. However, due to the special circumstances and confusion surrounding the license plate mounting requirements among the relevant stakeholders, the agency announces through this notice that it will not enforce the 15 degree license plate holder mounting requirement during the pendency of rulemaking on the issue of that requirement.

The granting of the petition from MIC, however, does not indicate that a final rule will be issued as requested by MIC. The determination of whether to issue a rule and the content of the rule is made after the study of the requested action and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

Issued on: April 21, 2011.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2007-28322]

### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

**ACTION:** Denying, in part, petitions for reconsideration.

**SUMMARY:** This document denies, in part, the petitions for reconsideration of the December 4, 2007, final rule reorganizing Federal Motor Vehicle Safety Standard (FMVSS) No. 108 (49 CFR 571.108). The petitions are denied only as they relate to subpart S6.6.3 (License Plate Holder) of the final rule.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Markus Price, Office of Crash Avoidance Standards (NVS-121), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366-0098) (*Fax:* (202) 366-7002).

*For legal issues:* Jesse Chang, Office of the Chief Counsel (NCC-112), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366-2992) (*Fax:* (202) 366-3820).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 30, 2005, the agency published in the **Federal Register** a notice of proposed rulemaking concerning 49 CFR 571.108 (Federal Motor Vehicle Safety Standard No. 108).<sup>1</sup> The agency stated that the goal of the proposal was to "amend the standard by reorganizing the regulatory text so that it provides a more straightforward and logical presentation of the applicable regulatory requirements." After the publication of a final rule on December 4, 2007,<sup>2</sup> adopting the proposal with revisions, the agency received petitions for reconsideration from Harley-Davidson Motor Company (January 18, 2008) and Ford Motor

Company (January 18, 2008) asking the agency to reconsider the license plate holder requirements in subpart S6.6.3. A submission by the Motorcycle Industry Council (MIC) on March 19, 2009 also requested a similar change to S6.6.3. However, the MIC submission was not timely for the purposes of reconsidering this final rule and has been considered as a petition for rulemaking per 49 CFR 553.35.

In subpart S6.6.3 of the December 4, 2007 final rule, the agency included provisions expressly requiring that manufacturers of motor vehicles design license plate holders so that the plane surface of a license plate in the holder would be within  $\pm 15^\circ$  of perpendicular to the plane surface on which the vehicle stands.

Paragraph S5.1.1 of the pre-reorganized version of FMVSS No. 108 required that passenger vehicles and motorcycles be equipped with the "lamps, reflective devices, and associated equipment" listed in Table III of Standard 108. Table III listed lamps such as turn signal lamps, reflectors such as reflex reflectors, and associated equipment such as turn signal operating units. Further, S5.1.1 required that the equipment listed in Table III conform to the corresponding SAE Standards listed in that table. One of the listed items of equipment was "license plate lamps." Table III required "license plate lamps" to be designed to conform to SAE Standard J587 (October 1981). Among other requirements, SAE Standard J587 states in paragraph 6.1 that "the angle between the plane of the license plate and the plane on which the vehicle stands will be  $90 \pm 15$  deg."

Petitioners request that the agency reconsider subpart S6.6.3 on a number of grounds. First, petitioners contend that license plate holders are not lamps, reflective devices, or associated equipment listed in Table III and thus were never regulated under S5.1.1 of the pre-reorganized version of FMVSS No. 108. Therefore, petitioners believe that as a result of including S6.6.3 in the reorganization of FMVSS No. 108, the agency was imposing a new requirement and contravening its statement in the December 4, 2007 final rule that the "final rule does not impose any new substantive requirements on manufacturers." In addition, petitioners assert that the license plate mounting provisions of SAE Standard J587 are intended to serve the purpose of ensuring an objective means of measuring photometric performance, but not intended to be a requirement. Finally, petitioners request that should the agency consider license plate holders to be regulated, the agency

<sup>1</sup> 70 FR 77454 (December 30, 2005).

<sup>2</sup> 72 FR 68234 (December 4, 2007).

should harmonize the license plate holder requirements with the most recent revision of SAE Standard J587 and the requirements in European Union.<sup>3</sup>

In 1995, the agency stated that FMVSS No. 108 “incorporated SAE J587 in its entirety, and there is no exclusion of paragraph 6.1.” The agency made this statement in an interpretation letter addressed to Volkswagen of America, Inc.<sup>4</sup>

Notwithstanding that interpretation, NHTSA takes note that there has been significant confusion among the relevant stakeholders as to whether or not the mounting provisions of SAE Standard J587 were incorporated into FMVSS No. 108 via Table III as referenced through S5.1.1. On the one hand, the Motorcycle Industry Council (MIC) petitioned this agency for rulemaking in March of 2005 (before the December 30, 2005 NPRM in this rulemaking) requesting that the agency update the incorporated SAE Standard J587 to allow for a 30 degree upward angle mounting position for license plates. The March 2005 petition seems to indicate that MIC believed that the license plate mounting provisions of SAE Standard J587 were incorporated into FMVSS No. 108 via S5.1.1 and Table III. On the other hand, the Alliance of Automobile Manufacturers commented on March 30, 2006 to the 2005 NPRM and disputed the view that those provisions were ever incorporated into FMVSS No. 108.

### Conclusion

Given the confusion over whether or not SAE Standard J587’s provisions on license plate holders were incorporated into the prior version of FMVSS No. 108 and given the petition to initiate rulemaking premised on their incorporation and requesting their relaxation, the agency has decided to resolve this matter through rulemaking. Thus, through this document, the agency denies the aforementioned petitions for reconsideration as they relate to S6.6.3 (License Plate Holder) of the December 4, 2007 final rule. However, the agency is granting the petition from MIC requesting the agency to initiate rulemaking to examine the issue of license plate holders and their mounting requirements<sup>5</sup> in a separate

<sup>3</sup> The 1997 revision of SAE Standard J587 permits license plates mounted at less than 1.2 meters above the ground to be angled upwards at 30 degrees and maintained the requirement for plates to be angled downward at no more than 15 degrees.

<sup>4</sup> Available at <http://isearch.nhtsa.gov/files/0788.html>.

<sup>5</sup> Motorcycle Industry Council Petition for Rulemaking, March 14, 2005 (Docket No. NHTSA-2005-20286-0009)

document published in today’s **Federal Register**. Further, due to the confusion and special circumstances surrounding this rule, the agency announced in the aforementioned document in today’s **Federal Register** that it will not enforce the 15 degree license plate holder mounting requirement during the pendency of rulemaking on the issue of that requirement.

The agency also notes that it is still considering the comments and requests relating to other issues in the petitions for reconsideration of the December 4, 2007 final rule and will respond to them in a separate document.

Issued on: April 21, 2011.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2011-0019]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Arapahoe Snowfly as Endangered or Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the Arapahoe snowfly (*Capnia arapahoe*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Arapahoe snowfly is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted under the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before June

27, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (*see ADDRESSES* section below) is 11:59 p.m. Eastern Time on this date. After June 27, 2011, you must submit information to the Field Office (*see FOR FURTHER INFORMATION CONTACT* section below). Please note that we might not be able to address or incorporate information that we receive after the above-requested date.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads “Enter Keyword or ID,” enter the Docket number for this finding, which is FWS-R6-ES-2011-0019. Check the box that reads “Open for Comment/ Submission,” and then click the Search button. You should then see an icon that reads “Submit a Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [Docket number FWS-R6-ES-2011-0019]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (*see* the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Susan Linner, Project Leader, by U.S. mail at Colorado Field Office, P.O. Box 25486, Denver, CO 80225; by telephone at (303) 236-4773, or by facsimile at (303) 236-4005. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Arapahoe snowfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other