

contractor that will receive access to the nonpublic information must be operating under a contract that contains the clause at 52.204–XX, Access to Nonpublic Information, which obligates the contractor to do the following:

(1) Utilize the nonpublic information only for the purposes of performing the services specified in this contract, and not for any other purposes;

(2) Safeguard nonpublic information from unauthorized use and disclosure;

(3) Limit access to the nonpublic information to only those persons who need it to perform services under this contract;

(4) Inform persons who may access nonpublic information about their obligations to utilize it only to perform the services specified in this contract and to safeguard that information from unauthorized use and disclosure;

(5) Obtain a signed nondisclosure agreement from each person who may have access to the nonpublic information; and

(6) Report to the Contracting Officer any violations of requirements (1) through (5) of this paragraph as soon as the violation is identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective actions taken as necessary.

(e) Paragraph (e) of the clause at 52.204–XX, Access to Nonpublic Information, included in the contract of the contractor with access to the nonpublic information provides that the third-party information owner may have the right to pursue third-party beneficiary rights against the contractor with access to the nonpublic information for breaches of the requirements of that clause.

(f) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of nonpublic information to this agency under the subcontract.

(End of clause)

#### **52.204–YZ, Unequal Access to Nonpublic Information.**

As prescribed in 4.402–5, insert a provision substantially the same as the following:

#### **Unequal Access to Nonpublic Information (Date)**

(a) *Definition.* Nonpublic information, as used in this provision, means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public, and the Government has not yet determined whether the information can or will be made available to the public.

(b) *Pre-proposal requirements.* Applying the principles of 4.402, the offeror shall inform the Contracting Officer, prior to the submission of its offer, if it or any of its

affiliates possesses any nonpublic information relevant to the current solicitation and provided by the Government, either directly or indirectly; the offeror should also advise the Contracting Officer of any actions that the offeror proposes to take to resolve the situation.

(c) *Proposal requirements.* If a firewall has been used to mitigate the impact of access to nonpublic information, the offeror represents, to the best of its knowledge and belief, that the firewall was implemented as agreed, and was not breached during the preparation of this offer; or, by checking this box [ ], that the firewall was not implemented or was breached, and additional explanatory information is attached.

(End of provision)

### **PART 53—FORMS**

#### **53.204–1 [Amended]**

28. Amend section 53.204–1 by removing from paragraph (a) “(see 4.403(c)(1).)” and adding “(see 4.403–2(c)(1).)” in its place.

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**BILLING CODE 6820–EP–P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

[Docket No. NHTSA–2011–0052]

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

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

**ACTION:** Granting petition for rulemaking.

**SUMMARY:** This notice grants the petition for rulemaking submitted by the Motorcycle Industry Council (MIC) requesting that the agency amend the license plate holder requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 to allow motorcycles to mount license plates at an upward angle of up to 30 degrees.<sup>1</sup> Based on the information received in MIC’s petition and the petitions for reconsideration of the December 4, 2007 final rule reorganizing FMVSS No. 108,<sup>2</sup> the agency believes that MIC’s petition merits further consideration through the rulemaking process.

The National Highway Traffic Safety Administration plans to initiate the

<sup>1</sup> Motorcycle Industry Council Petition for Rulemaking, March 14, 2005 (Docket No. NHTSA–2005–20286–0009)

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

rulemaking process on this issue with a notice of proposed rulemaking later this year. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

**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 March 14, 2005, MIC submitted to the agency a petition for rulemaking requesting that the agency include an additional subpart to FMVSS No. 108. Specifically, MIC requested the addition of a subpart to be designated as S5.1.1.30, which would read as follows:

“S5.1.1.30 On a motorcycle where the upper edge of the license plate is not more than 1.2 m (47.25 in.) from the ground, the plate bearing the license numbers shall face between 30 degrees upward and 15 degrees downward from the vertical plane.”

MIC submitted this petition for rulemaking with the understanding that the current FMVSS No. 108 requires license plates to be mounted at  $\pm 15$  degrees of perpendicular to the plane on which the vehicle stands. In their petition, MIC took note that “although the lighting standard doesn’t directly speak to license plate mounting, the requirement at issue is contained in SAE J587 October 1981, which is incorporated into FMVSS No. 108 in Table III for license plate lamps.” Petitioner notes that the requirements of the October 1981 Standard J587 are different from the European Community (ECE) regulations. By including the proposed subpart, petitioner hopes to harmonize the current motorcycle license plate requirements with the requirements in the ECE regulations.

Petitioner stated that this harmonization would not adversely affect safety or law enforcement efforts but would serve to reduce unnecessary design and manufacturing complexities for its member companies. Further, petitioner believes that by allowing a 30 degree upward angle, the manufacturers will be afforded greater flexibility in design without any detriment to real world reflective illumination of the license plates. As additional support for

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).