

[FR Doc. 2010-9553 Filed 4-23-10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

#### Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices and Associated Equipment; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** BMW of North America, LLC (BMW) requested a modification to the motorcycle headlighting system location requirements for a single headlamp with multiple light sources. The current standard requires that the light sources contained in a single motorcycle headlamp containing multiple light sources be located on the vertical centerline of the vehicle or horizontally disposed about the vertical centerline and mounted at the same height. BMW requested that the location requirements be based on the axes of reference instead of the light sources.

For compliance testing purposes, the agency utilizes the manufacturer's specified optical axis marking. As NHTSA explained in a letter of interpretation to Mr. Kiminori,<sup>1</sup> the optical axis is determined by the manufacturer in the certification process. Our lighting standard does not currently have requirements to specify where the optical axis marking must be located and we note that a modification of the standard, as requested by BMW, would effectively remove the location requirements for a single motorcycle headlamp with multiple light sources. Therefore, NHTSA is denying BMW's petition.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202-366-0098; FAX: 202-366-7002).

For legal issues, you may call Mr. J. Edward Glancy Office of the Chief Counsel (Phone: 202-366-2992; FAX: 202-366-3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

of polar bears through Letters of Authorization issued under 16 U.S.C.

#### Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment*, establishes lighting requirements for motor vehicles.<sup>2</sup> Motorcycle headlamp systems that contain a single headlamp with multiple light sources must be arranged according to the requirements of paragraph S7.9.6.2.<sup>3</sup> S7.9.6.2(a) requires that "If the headlamp contains more than one light source, each light source shall be mounted on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height."

#### BMW Group Petition

On October 10, 2008, BMW North America, LLC (BMW) petitioned the agency requesting that the requirements for a motorcycle headlighting system, containing a single headlamp, with multiple light sources, be modified. BMW stated that the purpose of its petition was to harmonize the requirements of FMVSS No. 108 with the similar European Communities (ECE) regulation No. 53 requirements, which have location requirements relative to the vehicle based on the axis of reference rather than the physical filaments in the lamp.

Specifically, BMW requested that paragraph S10.17.1.1.2<sup>4</sup> of the reorganized standard be amended from the sentence quoted above in "Background," to read as follows:

S10.17.1.1.2 If the headlamp contains more than one light source, each *axis of reference* must be *located* on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and *located* at the same height.<sup>5</sup>

BMW stated that "when using modern, state of the art asymmetrical reflectors, the center of reference is, because of the reflector surface, slightly differently located compared to the

<sup>2</sup> 49 CFR 571.108 (2009).

<sup>3</sup> In the amended standard, this requirement is found in paragraph S10.17.1.1.2 and paragraph S10.17.1.1.3. See 72 FR 68234 (Dec. 4, 2007). In a December 2007 final rule, NHTSA rewrote and reorganized FMVSS No. 108 to provide a more straightforward and logical presentation of the applicable regulatory requirements. *Id.* The effective date of those amendments has been delayed to December 1, 2012. 74 FR 58214 (Nov. 12, 2009).

<sup>4</sup> Paragraph S10.17.1.1.2 of the reorganized standard is identical to the same sentence currently found in paragraph S7.9.6.2(a), i.e., the requirement prior to the 2007 reorganization of the standard. See 72 FR 68234, 68283.

<sup>5</sup> *Id.* (emphasis added).

original light source. The center of reference is the basis for all photometric measurement, which are required by the ECE regulation." BMW also stated that its requested modification would harmonize FMVSS No. 108 with ECE Regulation No. 53, and would have no negative impact on traffic safety.

#### Analysis

In consideration of this petition, the agency reviewed the use of the defined term "axis of reference" in order to evaluate the appropriate use of this term within paragraph S10.14.1.1.2.

The axis of reference is defined as the following:

Axis of reference means the characteristic axis of the lamp for use as the direction of reference ( $H = 0^\circ$ ,  $V = 0^\circ$ ) for angles of field or photometric measurements and for installing the lamp on the vehicle.<sup>6</sup>

The term "axis of reference" is used in two key areas within the standard. First, the axis of reference is used in the determination of the effective projected luminous lens area.<sup>7</sup> The other key area in which this term is used is, in determination of the mounting height of various lamps. Lamps mounted with their axis of reference less than 750 millimeters (mm) above the road surface may meet the photometric requirements for the test points located below 5° down at 5° down, rather than at the specified required downward angle. This general concept applies to various lamps and is listed in the table of photometric requirements for each lamp to which it applies.<sup>8</sup>

The agency has also used the term "axis of reference" in a key guidance letter. In a letter to Mr. Kiminori, the agency explains the flexibility manufacturers have in the establishment of the optical marking and therefore the location of the axis of reference. The agency stated, "Paragraph S7.8.5.3(f) [paragraph numeration prior to the technical rewrite of 2007] of FMVSS No. 108 requires that a visually/optically aimed headlamp include a mark or markings identifying the optical axis of the headlamp. The location of this mark or markings is to be determined by the

<sup>6</sup> 49 CFR 571.108 S4, Definitions.

<sup>7</sup> "Effective projected luminous lens area means the area of the orthogonal projection of the effective light-emitting surface of a lamp on a plane perpendicular to a defined direction relative to the axis of reference. Unless otherwise specified, the direction is coincident with the axis of reference." *Id.*

<sup>8</sup> See 72 FR 68234, 68301-68327 (Tables V, VII, VIII, IX, X, XI, XII, XIV, XVI, XVII) (noting in Table footnotes that where various lamps are "mounted with their axis of reference less than 750 mm above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified requirement downward angle").

headlamp manufacturer. Once chosen, the mark establishes the reference axis that will be used to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. NHTSA will use this mark to identify the reference axis, and will conduct its compliance testing accordingly.”<sup>9</sup>

Although BMW claimed that the petitioned modification would have no negative impact on traffic safety, BMW did not provide data to demonstrate that the requested new specifications would provide safety benefits comparable to those of the existing standard or that cost savings would be realized without compromising safety.

Considering the flexibility with which a manufacturer has in determining the location of the axis of reference, the agency is concerned that modifying the standard as suggested by BMW would create a disconnect between the physical attributes of the lamp and the location of the axis of reference. While the agency understands that the focal center of a complex headlamp may not be at the center of the light source, the agency continues to believe that the light source provides the best physical attribute with which to link the location requirements of paragraph S10.17.1.1.2. Considering the flexibility with which manufacturers have in choosing the optical axis marking and thus the location of the reference axis and the lack of demonstrable benefits, the agency is denying this petition from BMW in order to avoid ambiguity in the requirement.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued: April 20, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0026]  
[MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered

**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 (Service), announce a 90-day finding on a petition to list the harlequin butterfly (*Atlantea tulita*), a butterfly endemic to Puerto Rico, as endangered under the Endangered Species Act of 1973, as amended, and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the harlequin butterfly 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 harlequin butterfly is warranted. To ensure that the 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, as provided in section 4(b)(3)(B) of the Act. **DATES:** To allow us adequate time to conduct this review, we request that you send us your information on or before June 25, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

After June 25, 2010, you must submit information directly 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 comments 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-R4-ES-2010-0026. 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: FWS-R4-ES-2010-0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received 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:

Edwin Muniz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone (787) 851-7297; or by facsimile (787) 851-7440. If you use a telecommunications device for the deaf (TDD) may 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 harlequin butterfly from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

- (1) The species’ biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species or its habitat or both.
- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:
  - (a) The present or threatened destruction, modification, or curtailment of its habitat or range;

<sup>9</sup> Letter of Interpretation to Mr. Hyodo (May 2007), available at <http://isearch.nhtsa.gov/files/06-005429as-6.htm> (last accessed March 29, 2010).