

The complete application is given in DOT docket MARAD-2011-0126 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

By Order of the Maritime Administrator.  
Dated: October 13, 2011.

**Christine Gurland,**

*Acting Secretary,*

Maritime Administration.

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BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0106; Notice 2]

#### CFMOTO Powersports, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Denial of petition for inconsequential noncompliance.

**SUMMARY:** CFMOTO Powersports, Inc. (CFMOTO),<sup>1</sup> agent for the Chunfeng Holding Group Hangshou Motorcycles Manufacturing Co., LTD. (formerly known as Zhejiang CFMOTO Power Co., Ltd. (CHG)) has determined that certain model year 2005-2009 CHG Model

CF250T-3(V3) and CF250T-5(V5) motorcycles that CFMOTO imported did not fully comply with paragraph S5.2.1 of 49 CFR 571.123 Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays*. CFMOTO filed an appropriate report, dated January 13, 2010, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Specifically, CFMOTO estimated that approximately 6,405 model year 2005-2009 CHG model CF250T-3(V3) and CF250T-5(V5) motorcycles, produced January 1, 2005, through December 31, 2009 are affected (hereafter referred to as "noncompliant vehicles").

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR Part 556, CFMOTO has petitioned for an exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act as amended and rectified, 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of CFMOTO's petition was published, with a 30-day public comment period, on August 10, 2010, in the **Federal Register** (75 FR 49020). No comments were received.

**FOR FURTHER INFORMATION CONTACT:** For further information on CFMOTO's petition or this decision, contact Mr. Stuart Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5287, facsimile (202) 366-7002.

**SUPPLEMENTARY INFORMATION:** In October 2009, OVSC tested a model year (MY) 2009 V3 CF250T to the performance requirements of FMVSS No. 122 *Motorcycle Brakes* at Transportation Research Center (VRTC) in East Liberty, Ohio. At the conclusion of the testing,<sup>2</sup> it was noted that the vehicle appeared to not comply with S5.2.1 Control Location and Operation requirements of FMVSS No. 123. Specifically, according to Table 1 row 11 within that standard, the control for the rear wheel brake must be a right foot control unless the vehicle is a motor-driven cycle or a scooter with an automatic clutch in which case the left handlebar actuator is to be used. As the vehicle was equipped with only a left handlebar lever for rear brake actuation, but did not meet the definition of a scooter, and with an advertised 14 horsepower motor, did not meet the definition of a motor-

driven cycle,<sup>3</sup> a non-compliance appeared to be present. NHTSA notified CFMOTO of the apparent noncompliance in a letter dated December 4, 2009.

#### CFMOTO's Analysis of Noncompliance

CFMOTO provided the following arguments to support its contention that the subject noncompliance, (i.e., that the rear wheel brake control is located on the left handlebar instead of a right foot control as required by paragraph S5.2.1 FMVSS No. 123), is inconsequential to motor vehicle safety:

The subject vehicles were manufactured and certified as scooters by CHG. CHG believed that the vehicles met all of the requirements for a scooter under FMVSS No. 123. As a result of the scooter certification the rear wheel brake was placed on the left handlebar.

The placement of the rear brake on the left handlebar should be deemed by the NHTSA as an inconsequential noncompliance, based on the history and safety records of the vehicles. No consumer complaints and no warranty claims or incident reports have been received by CFMOTO or CHG that relate to the lack of a right foot actuated rear wheel brake.

One of the main reasons consumers have been attracted to the subject vehicles is that they have the appearance of a motorcycle and the operation or function of a scooter. Aside from a lack of pass-through leg area, the vehicles are scooters in all technical respects. It is the scooter functionality that has been the driving force behind consumer demand for the vehicles.

Individuals with disabilities prefer the left hand rear brake controls to those of a foot operated actuator. Similarly, many consumers want to upgrade from a scooter to a "motorcycle look" without the complexities of operating a motorcycle and therefore choose the subject vehicles.

In summation, CFMOTO believes that the described noncompliance is inconsequential to motor vehicle safety. Therefore, CFMOTO requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

CFMOTO also stated that CHG has corrected the problem that caused these errors so that they will not be repeated in future production.

#### NHTSA Decision

##### Background of the Requirements for a Motorcycle

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle*

<sup>1</sup> CFMOTO Powersports, Inc., a Minnesota Corporation, is an importer of motor vehicles.

<sup>2</sup> NHTSA No. C91202.

<sup>3</sup> CFR 49 571.3—Motor-driven cycle means a motor cycle with a motor that produces 5-brake horsepower or less.

*Controls and Displays*, specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment by standardizing certain motorcycle controls and displays. Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1, Row 11) requires the control for a motorcycle's rear wheel brakes to be operable by a right foot control. However, if the motorcycle is a motor-driven cycle or a scooter with an automatic clutch, the rear wheel brake control must be located on the left handlebar. This requirement was delineated in a Final Rule amending FMVSS No. 123 published in the **Federal Register** (70 FR 51286) on August 30, 2005. Additionally, this notice defined the "scooter" style motorcycle as (1) having a platform for the operator's feet or has integrated footrests, and (2) has a step-through architecture, meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position is lower than the operator's seat. NHTSA has consistently held that standardization for motorcycle control locations is critical to the safe operation of these vehicles. Specifically, in order to lessen the risk of such crashes due to driver misapplication or non-application of the rear wheel brake there is an expectation by the operator that the control locations on a motorcycle with certain design characteristics, such as a scooter or a step-over traditional styled motorcycle, will for each style, be consistent from motorcycle to motorcycle. In the absence of this uniformity, the operator is at risk when operating a new or unfamiliar motorcycle.

#### **NHTSA's Analysis of CFMOTO's Reasoning**

The subject vehicles were certified as scooter style motorcycles by the CHG. CHG believed that the vehicles met all of the requirements for a scooter under FMVSS No. 123.

CHG made a fundamental error in concluding that the motorcycle was a scooter. The subject CFMOTO motorcycles in question have body cladding forward of the operators seat and have a similar step-over body configuration as a traditional motorcycle. It is quite obvious that the subject units do not have the step-thru architecture that is required for a scooter designation. It is the responsibility of the manufacturer to certify that the vehicles it manufacturers are compliant

with all applicable FMVSS's and part of that process is ensuring that the vehicle is properly defined.

We will now address CHG's assertion that the placement of the rear brake on the left handlebar should be deemed by the NHTSA as an inconsequential noncompliance, based on the history and safety records of the vehicles. No consumer complaints and no warranty claims or incident reports have been received by CFMOTO or CHG that relate to the lack of a right foot actuated rear wheel brake.<sup>4</sup> NHTSA notes however, that the absence of this data does not necessarily indicate the lack of a potential safety problem.

CHG asserted that one of the main reasons consumers have been attracted to the subject vehicles is that they have the appearance of a motorcycle and the operation or function of a scooter. CHG asserted that aside from a lack of pass-through leg area, the vehicles are scooters in all technical respects, and that it is the scooter functionality that has been the driving force behind consumer demand for the vehicles.

In response, NHTSA notes that the subject vehicles have the appearance of a motorcycle which we interpret the petitioner as meaning the body styling of a traditional step-over motorcycle, yet the operation or function of a scooter, which we additionally interpret to mean automatic transmission and left handlebar brake and no right foot rear brake actuator. Not having the appearance of a scooter is the basis of the safety issue in question. A motorcycle that appears to be of standard configuration would be expected by operators to also have controls in the customary locations for a standard motorcycle. Thus, a safety scenario could arise as the operator riding on what they consider to be a standard motorcycle with commensurate standard control locations, during a braking event, would attempt to apply the traditional right foot brake lever when none was present, resulting in diminished braking capability and possible loss of vehicle control. CFMOTO has answered its own question as to why a motorcycle with a certain configuration yet with unexpected operational control locations presents a safety concern. Consequently, NHTSA is not persuaded by CFMOTO'S argument.

CFMOTO also asserted that individuals with disabilities prefer the left hand rear brake controls to those of a foot operated actuator, and that many

<sup>4</sup> We note no such consumer complaints, warranty claims or incident reports have been reported to NHTSA.

consumers want to upgrade from a scooter to a motorcycle without the complexities of operating a motorcycle and therefore choose the subject vehicles.

In response, NHTSA notes CFMOTO has provided no evidence backing its assertion regarding consumer preference or marketing strategies. However, if such consumer preference is true, the requirement for the right foot rear wheel brake actuator does not preclude incorporation of a supplemental left handlebar brake lever controlling the rear brake wheel for the CFMOTO units. Per S5.2.1 of the standard, "If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar." Thus the motorcycles in question can continue to have the left hand brake lever provided the right foot lever is provided.

#### **NHTSA Conclusions**

The subject noncompliant vehicles do not qualify as either "motor-driven cycle" type or "scooter" style motorcycle. Because the noncompliant vehicles clearly do not resemble scooters or motor-driven cycles, an operator will very likely expect the motorcycle to be of traditional design with controls traditionally located as well. In the absence of the right foot brake lever, the operator will be precluded from the right foot rear wheel brake application thereby possibly increasing stopping distance and the likelihood of loss of vehicle control.

Lastly, CFMOTO has not produced any data to support its contention that the noncompliance does not present a significant safety risk.

#### **Decision**

After a review of CFMOTO's arguments and the final rule preamble language, NHTSA concludes that CFMOTO has not met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA does not agree with CFMOTO that this specific noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliances described are inconsequential to motor vehicle safety. Accordingly, CFMOTO's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 19, 2011.

**Claude H. Harris,**

*Acting Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0141; Notice 2]

#### Mazda North American Operations, Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of Petition for Decision of Inconsequential Noncompliance.

**SUMMARY:** Mazda North American Operations (MNAO),<sup>1</sup> on behalf of Mazda Motor Corporation of Hiroshima, Japan (Mazda), has determined the lens of the headlamps equipped on certain 2004 through 2009 Mazda RX-8 model passenger cars, manufactured from April 1, 2003, to May 29, 2009, and certain 2006 through 2008 MX-5 model passenger cars, built from May 17, 2005, to November 27, 2008, failed to meet the requirements of paragraph S7.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 *Lamps, Reflective Devices, and Associated Equipment*. Mazda has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated December 16, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Mazda has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on October 21, 2010 in the **Federal Register** (75 FR 65053). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to

<sup>1</sup> Mazda Motor Corporation of Hiroshima, Japan (Mazda) is the manufacturer of the subject vehicles and Mazda North American Operations (MNAO) is the importer of the vehicles as well as the registered agent for Mazda.

locate docket number "NHTSA-2010-0141."

For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-7002.

Mazda estimates approximately 123,000 2004 through 2009 Mazda RX-8 model passenger cars, manufactured from April 1, 2003 to May 29, 2009, and 2006 through 2008 MX-5 model passenger cars, built from May 17, 2005 to November 27, 2008, are affected. All of the affected vehicles were built at Mazda's plant in Hiroshima Japan.

Mazda states that the noncompliance is that the lenses of the headlamps on the affected vehicles are not marked with the name or trademark of the manufacturer of the headlamp, the manufacturer of the vehicle, or the importer of the vehicle.

Mazda was notified by its headlamp manufacturer, Koito Manufacturing Company, Ltd. (Koito) of the apparent noncompliance. Mazda then concluded that the vehicles equipped with the affected headlamps failed to comply with paragraph S7.2(b) of FMVSS No. 108.

Mazda stated the following reasons why they believe the noncompliance is inconsequential to vehicle safety and does not present a risk to motor vehicle safety:

The affected headlamps fulfill all the relevant performance requirements of FMVSS No. 108, except that trade name and/or trademark of the manufacturer or importer is missing on the lens. However, the affected headlamps have the trademark of the headlamp manufacturer on the rim of the headlamp housing. Thus, Mazda contends that this marking on the rim is visible with the vehicle's front hood open and states that it believes that the rim marking could assist the easy identification of the headlamp manufacturer by the users of the vehicles.

Mazda has not received any complaints or claims related to the noncompliance nor is it aware of any known reports of accidents or injuries attributed to the noncompliance.

In summary, Mazda states that it believes the noncompliance is inconsequential to motor vehicle safety because the affected headlamps fulfill all other relevant requirements of FMVSS No. 108.

The company also states that it has taken steps to correct the noncompliance in future production.

Supported by the above stated reasons, Mazda believes that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as

required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

**NHTSA Decision:** NHTSA agrees with Mazda that the performance of the headlamps is not affected by the subject noncompliance. NHTSA also agrees that in this unique case that the marking of the trademark on the rim of the headlamp housing, rather than on the headlamp lens itself as required by the rule, fulfills the same function as the requirement because a vehicle user can readily determine the manufacturer of the headlamp.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the vehicles<sup>2</sup> that Mazda no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Mazda has met its burden of persuasion that the subject FMVSS No. 108 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Mazda's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.)

Issued on: October 19, 2011.

**Claude H. Harris,**

*Director, Acting Associate Administrator for Enforcement.*

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<sup>2</sup> Mazda's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Mazda as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected vehicles. However, a decision on this petition cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mazda notified them that the subject noncompliance existed.