DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0031; Notice 2]

BMW of North America, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: BMW of North America, LLC (BMW), a subsidiary of BMW AG in Munich, Germany, has determined that certain model year (MY) 2014-2015 BMW R nineT motorcycles do not fully comply with paragraph S6.4.3(a) (Table V-b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices and Associated Equipment*. BMW has filed an appropriate report dated February 20, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. BMW then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Mike Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5319, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. BMW's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition 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 BMW's petition was published, with a 30-day public comment period, on June 4, 2015 in the Federal Register (80 FR 31966). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: http://www.regulations.gov/. Then follow the online search instructions to locate docket number "NHTSA-2015-0031."

II. Motorcycles Involved: Affected are approximately 1,792 MY 2014-2015 BMW R nineT motorcycles manufactured between November 27, 2013 and January 26, 2015.

III. Noncompliance: BMW explains that, due to an obstruction caused by the tail lamp assembly, the noncompliance is that the rear turn signal lamps were manufactured with a corner point of 5°IB. The turn signal lamps should have had a corner point of 20°IB as required by paragraph S6.4.3(a)(Table V-b) of FMVSS No. 108.

BMW has since revised its petition to indicate that the obstructed lens area was 666 sq-mm and that the photometric test

point (20°IB/5° down) was also obstructed and measured only 1.1 cd (FMVSS No. 108, S6.1.3.1 and S7.1.2.13.2).

IV. Rule Text: FMVSS No 108 requires in pertinent part:

> Paragraph S6.1.3.1: Each lamp, reflective device, and item of associated equipment must be securely mounted on a rigid part of the vehicle, other than glazing, that is not designed to be removed except for repair, within the mounting location and height limits as specified in Table I, and in a location where it complies with all applicable photometric requirements, effective projected luminous lens area requirements, and visibility requirements with all obstructions considered;
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> Paragraph S6.4.3(a): When a vehicle is equipped with any lamp listed in Table V-b each such lamp must provide not less than 1250 sq mm of unobstructed effective projected luminous lens area in any direction throughout the pattern defined by the corner points specified in Table V-b for each such lamp;
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> Paragraph S7.1.2.13.2: As an alternative to S7.1.2.13.1, a rear turn signal lamp installed on a motorcycle may be designed to conform to the photometry requirements of Table XIII-a.

V. Summary of BMW's Analyses: BMW stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

A) BMW states that when the subject motorcycles are upright on a level surface and equipped with standard tires at their recommended cold tire inflation pressure; the lower edge of the rear turn signal lenses are approximately 747 mm above ground, the lower edge of the tail lamp lens is approximately 710

mm above ground and the tail lamp lens extend upward. BMW believes that due to these geometric conditions there is some overlap in the vertical direction between the rear turn signal lenses and the tail lamp lens however, they are not aligned along the same longitudinal centerline [of the turn signals]. Specifically, the tail lamp is on the motorcycle's longitudinal centerline while the rear turn signals are on stalks offset from the centerline. As a result, BMW believes that this has a very minor affect upon the effective projected luminous lens area.

B) BMW stated its belief that the obstruction from the tail lamp only occurs if another road user in a following vehicle has an eye-point of approximately 747 mm above ground (extremely low for an average vehicle) and is a worst-case-scenario. For other road users with a higher eye-point, there is no apparent obstruction and the turn signal would appear to meet the requirements of FMVSS No. 108.

C) BMW also stated its belief that the effect of the noncompliance, i.e., the overlap or interference of the turn signal lamp by the tail lamp does not occur during critical traffic conditions. A road user, who is following an affected motorcycle, and in the same

lane as an affected motorcycle, will be able to fully view an affected motorcycle's rear turn signal at a distance of approximately 1,935 mm (approximately 6 ft). BMW believes that in most traffic conditions, a road user would not want to be closer to a motorcycle than 6 ft. Thus, this "non-visible" rear turn signal condition is not likely to occur during the vast majority of traffic conditions. BMW provided detailed analysis of specific travel conditions including following directly behind an affected motorcycle and overtaking/passing an affected motorcycle that it believes supports its conclusion that the condition caused by the subject noncompliance will not interfere with the safety of the motorcycle rider or another road user.

D) BMW Customer Relations has not received any contacts from motorcycle riders, or other road users regarding this issue. Also, BMW is not aware of any accidents or injuries that have occurred as a result of this issue.

BMW has additionally informed NHTSA that it has corrected the noncompliance so that all future production of the subject vehicles will fully comply with FMVSS No. 108.

In summation, BMW believes that the described noncompliance of the subject motorcycles is inconsequential to motor vehicle

safety, and that its petition, to exempt BMW from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA'S DECISION:

NHTSA's Analysis of BMW's Arguments: BMW stated that a number of traffic conditions were analyzed to determine whether the noncompliance is perceptible to other road users and, if so, its affect upon safety.

The first condition BMW reviewed was the rear turn signal mounting height. BMW indicates that for another road user with a higher eye-point, there is no apparent obstruction[1] and the turn signal would appear to meet the requirements of FMVSS No. 108. While many road users will have higher eye-points on a flat road than the mounting height of these lamps, the downward requirements applicable to lamps are generally necessary for instances when other road users are below the preceding vehicles, such as vehicles cresting a hill. NHTSA has previously relaxed the provisions of downward photometric test angles for low mounted turn signal lamps,[2] however, this provision would not apply to BMW's turn signal lamps due to their moderately higher mounting height. Regardless, even for lower mounted lamps, the

[1] BMW later indicated that the obstruction of the turn signal that created the noncompliance was due to a redesigned stop lamp.
[2] See Final Rule at 69 FR 48805, August 11, 2004

photometric test angles were relaxed at test points that were 15° down and 10° down only. Essentially, any photometric requirements for a low mounted turn signal lamp at the 15° down and 10° down locations are allowed to be met at 5° down. In the instant case, BMW's turn signal lamps (as installed) at the 20°IB/5° down test point are 75% below the required minimum photometric requirements. As such, we are not compelled by BMW's argument on this point.

The second condition that BMW reviewed was a traffic condition of "*Following Directly Behind an Affected Motorcycle*." BMW's analysis in this case assumes that the motorcycle and following vehicle are in the same lane, and the motorcycle is on the left side of the lane directly in front (and inline) with the driver of the following vehicle. BMW argues that the following driver would have to be closer than 6 feet from the motorcycle for the lamp to become obstructed and that would be unlikely unless they were in bumper to bumper traffic. However, BMW did not analyze the case where the motorcycle and the following vehicle were in the same lane, but the motorcycle was oriented on the right hand side of the lane. In this instance, the motorcycle could be offset by 7.5 feet or more to the opposite side of the following driver, and the distance from the motorcycle where the right turn signal lamp would begin to become obstructed would be over 65 feet. This situation could

occur when the motorcyclist is preparing for a right hand turn and the following driver may not receive the signal that the motorcycle is about to slow down for the turn. As such, we are not compelled by BMW's argument on this point.

The third condition that BMW reviewed was a traffic condition of "*Overtaking/Passing an Affected Motorcycle*." BMW's analysis in this case assumes that the following vehicle is not in the same lane as the motorcycle and that if the motorcyclist used its turn signal to indicate a turn into the same lane as the following vehicle, the turn signal lamp would not be obstructed. In this case, where a motorcyclist indicates a turn into the same lane as a following vehicle, NHTSA agrees that the turn signal lamp on that side would not be obstructed.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that BMW has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance described is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby denied and BMW is obligated to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

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Gregory K. Rea,
Associate Administrator for
Enforcement

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