



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0015; Notice 1]

#### Arai Helmet, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Receipt of petition.

**SUMMARY:** Arai Helmet, Inc. (Arai), has determined that certain Arai Corsair X Mamola Edge motorcycle helmets, do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019. Arai subsequently petitioned NHTSA on March 28, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Arai's petition.

**DATES:** Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [https://www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** Arai has determined that certain Arai Corsair X Mamola Edge helmets, size small, do not comply with paragraph S5.6.1(b) of FMVSS No. 218, *Motorcycle Helmets* (49 CFR 571.218). Arai filed a noncompliance report dated March 6, 2019, and later amended it on March 28, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on March 28, 2019, for an exemption from the notification and remedy requirement of 49 U.S.C Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Arai's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**II. Equipment Involved:** Approximately 24 Arai Corsair X Mamola Edge helmets, size small, manufactured between June 29, 2018, and January 31, 2019, are potentially involved.

**III. Noncompliance:** Arai explains that the noncompliance is that the discrete size label may not be permanently attached as required by S5.6.1(b) of FMVSS No. 218.

**IV. Rule Requirements:** Paragraph S5.6.1(b) of FMVSS No. 218, provides the requirements relevant to this petition. Each helmet must be labeled permanently and legibly, in a manner such that the label can be read easily without removing padding or any other permanent part, with “discrete size.”

**V. Summary of Petition:** Arai described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Arai submitted the following reasoning:

1. Arai states that the subject motorcycle helmets comply with all the performance requirements under FMVSS No. 218 and all labeling requirements of FMVSS No. 218, except that the discrete size label does not appear to be permanent as required by paragraph S5.6.1(b). Arai cited FMVSS No. 218, which says the discrete size means “a numerical value that corresponds to the diameter of an equivalent circle representing the helmet interior in inches ( $\pm 0.25$  inch) or to the circumference of the equivalent circle in centimeters ( $\pm 0.64$  centimeters).”
2. Arai believes NHTSA’s reasons for requiring the helmet’s discrete size is primarily to determine the appropriate headform for conducting the performance testing of paragraph S6.1 of FMVSS No. 218. In promulgating the discrete size label, Arai cited the agency as saying that it added the discrete size requirement to the standard to “eliminate enforcement problems.” *See* 73 FR 57297, 57304 (October 2, 2008). Arai says that the agency had previously permitted generic head sizes on helmet labels, however, they lacked the precision the agency desired for enforcing the helmet standard, raising potential problems with the objective requirements of 49 U.S.C. §

30111(a). Arai says that NHTSA explained its reasoning in the rulemaking for specifying the discrete size and cited the following:

- a. The reason for this is to eliminate enforcement problems that arise when helmets are labeled only with a generic size specification (e.g. Small, Medium, or Large). Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular “designated discrete size or size range,” a helmet’s generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing.
3. Arai stated that in the final rule, NHTSA further elaborated that defining the discrete size “would have two benefits:”
    - a. First, it would provide certainty as to the headform on which the helmet would be tested by NHTSA, thereby, improving the enforceability of the standard. Second, it would provide more precise information to customers. Further that the requirement would in no way preclude manufacturers from specifying a generic size in addition to the discrete size on the size label.
  4. Arai believes that the primary reason for requiring the discrete size is related to enforceability of the performance tests and that a label that is present on the helmet at the time of NHTSA’s testing, but that may not be permanently attached to the helmet does not expose the user of the noncompliant helmet to a “significantly greater risk” than to a user of a compliant helmet.
  5. Arai states that NHTSA tested Arai Helmet under FMVSS No. 218, and that the testing demonstrated that these helmets meet the performance standards. The discrete

- label helmet, tested by NHTSA, permitted the Agency to select the correct headform for the Arai Corsair-X, size small, helmet that was tested. According to Arai, the primary purpose of the discrete size label, specifically its enforceability of NHTSA's objective test standards, was met by the noncompliant helmet.
6. Arai believes that in the FMVSS No. 218 final rule, NHTSA explained that while the discrete label would provide "more precise information to customers," NHTSA acknowledged that generic sizes could also be used on helmets. Arai believes this indicates that the value to customers of a "more precise" helmet size serves limited safety benefits. Arai says that NHTSA did not claim the discrete size served a safety purpose, but stated that "discrete size labeling requirements will both improve customer information regarding the size of the helmet and avert potential enforceability problems." *See* 76 FR 28145.
  7. Arai stated that the noncompliance arose from the permanency of the label, not the content and that the label would be present, at a minimum, to the first purchaser. Further, Arai states that another label showing the discrete size of the helmet is sewn into a tag in the headliner; moreover, the helmet's packaging provides the size information and secondhand purchasers could try on the helmet to determine whether it properly fits; accordingly, the consumer would have sizing information available to determine the correct helmet size for purchase.
  8. Arai says that in a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet, NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 FR 47720. Arai went on to write that NHTSA reasoned that "the presence of the strap

holder which obscures the DOT label does not affect the helmet's ability to protect the wearer in the event of a crash if that helmet meets or exceeds the performance requirements of FMVSS No. 218." Arai believes the same reasoning applies here as well.

9. Arai stated their belief that the helmets potential failure to permanently provide "customer information" does not pose a "significantly greater risk" to the user of a noncompliant helmet compared to the user of a compliant helmet. Arai says they are not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject noncompliance.

Arai expressed the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

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, any decision on this petition only applies to the subject equipment that Arai no longer controlled at the time it determined that the noncompliance existed.

However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after Arai notified them that the subject noncompliance existed.

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

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

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