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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0094; Notice 1]

Hitachi Cable America Inc., now known as Proterial Cable America, Inc., and Harley-Davidson Motor Company, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Hitachi Cable America Inc. (HCA), now known as Proterial Cable America, Inc. (PCA), and Harley-Davidson Motor Company (Harley-Davidson) (collectively, "the Petitioners") have determined that certain PVC, Nylon, and "Revised Socket" Nylon brake hose assemblies equipped in certain model year (MY) 2008-2022 Harley-Davidson motorcycles, and also sold to Harley-Davidson dealers as replacement parts, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*. HCA filed an original noncompliance report on July 27, 2022, and amended the report on August 25, 2022, October 18, 2022, October 26, 2022, November 16, 2022, and March 30, 2023. Harley-Davidson filed its initial noncompliance report dated August 9, 2022, and amended the report on December 6, 2022, February 7, 2023, February 8, 2023, and March 8, 2023. HCA petitioned NHTSA (the "Agency") on August 19, 2022, and amended its petition on November 10, 2022, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. Harley-Davidson petitioned NHTSA on September 2, 2022, and amended its petition on December 29, 2022, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This document announces receipt of the Petitioners' petitions.

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 10:00 am to 5:00 pm, except on 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, 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 petitions are 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 these petitions 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).

FOR FURTHER INFORMATION CONTACT: Manuel Maldonado, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7235.

SUPPLEMENTARY INFORMATION:

I. Overview: The Petitioners determined that certain PVC, Nylon, and "Revised Socket" Nylon brake hose assemblies equipped in certain MY 2008-2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, and also sold as replacement parts, do not fully comply with paragraph S5.3 of FMVSS No. 106, *Brake Hoses* (49 CFR 571.106).

HCA filed its initial noncompliance report on July 27, 2022, and amended the report on August 25, 2022, October 18, 2022, October 26, 2022, November 16, 2022, and March 30, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. HCA petitioned NHTSA on August 19, 2022, and later amended its petition on November 10, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that the subject noncompliances are inconsequential as they relate 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.*

Harley-Davidson filed its initial noncompliance report on August 9, 2022, and later amended the report on December 6, 2022, February 7, 2023, February 8, 2023, and March 8, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Harley-Davidson petitioned NHTSA on September 2, 2022, and amended its petition on December 29, 2022, for an exemption from the notification and remedy requirements 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 the Petitioners' petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or another exercise of judgment concerning the merits of the petitions.

II. Motorcycles and Equipment Involved: Approximately 6,174,355 PVC, Nylon, and "Revised Socket" Nylon brake hose assemblies manufactured by HCA, between February 28, 2007, and October 13, 2022, were reported by HCA as the population of the recall. Approximately 1,527,260 MY 2008-2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, manufactured between May 17, 2007, and October 16, 2022, may have been equipped with the noncompliant brake hoses assemblies manufactured by HCA.

III. Noncompliance: The Petitioners explain that certain Nylon, and "Revised Socket" Nylon assemblies do not meet high temperature impulse (HTI), brake fluid compatibility (BFC), constriction, whip resistance, and water absorption whip resistance requirements, and certain PVC assemblies did not meet the whip resistance, water absorption whip resistance, constriction, tensile, burst, and high temperature impulse requirements. Therefore, the subject brake hose assemblies do not comply with paragraph S5.3 of FMVSS No. 106.

IV. Rule Requirements: Paragraphs S5.3, S5.3.1, S5.3.2, S5.3.3, S5.3.4, S5.3.7, S5.3.9, and S5.3.12 of FMVSS No. 106 include the requirements relevant to the petitions, and are broadly summarized herein. A hydraulic brake hose assembly must be capable of meeting the requirements when tested under the conditions specified in the standard and the applicable procedures of paragraph S6. Paragraph S5.3.1 pertains to the constriction requirement that every inside diameter of the brake hose assembly shall not be less than 64 percent of the nominal inside diameter of the brake hose. Paragraph 5.3.2 pertains to the expansion and burst strength requirement that the maximum expansion of a hydraulic brake hose assembly not exceed the values specified by Table 1 at the given psi. The hydraulic brake hose assembly must then withstand a water pressure of 4,000 psi for 2 minutes without rupture, then not rupture at the less than 7,000 psi for a 1/8 inch hose or smaller or at less than 5,000 psi for a hose with a diameter larger than 1/8 inch. Paragraph S5.3.3 pertains to the whip resistance requirement that the brake hose assembly not rupture when subjected to a 35-hour continuous run on a flexing machine. Paragraph S5.3.4 pertains to the forces that a brake hose assembly must withstand without separation of the hose from its end fittings. Paragraph S5.3.7 pertains to water absorption and whip resistance, and requires the hose not to rupture when subjected to a 35-hour continuous run on a flexing machine after immersion in water for 70 hours. Paragraph S5.3.9 provides the requirements for BFC after the brake hose assembly has been exposed to brake fluid for a specified time at a specified temperature. These requirements include compliance with constriction, per S5.3.1, as well as withstanding water pressure of 4,000 psi for 2 minutes, and then shall not rupture at less than 5,000 psi. Paragraph S5.3.12 describes the HTI test, which requires the brake hose assembly to withstand pressure cycling, followed by a 2-minute, 4,000 psi pressure hold test, during which the hose shall not rupture, and then shall not subsequently burst at a pressure less than 5,000 psi.

V. Summary of the Petitioners' Petitions: The following views and arguments presented in this section, "V. Summary of the Petitioners' Petitions," are the views and arguments provided

by the Petitioners. These views and arguments have not been evaluated by the Agency and do not reflect the views of the Agency. The Petitioners describe the subject noncompliances and contend that the noncompliances are inconsequential as they relate to motor vehicle safety. The Petitioners' arguments for PVC, Nylon, and "Revised Socket" Nylon hoses are combined and considered together, unless otherwise noted.

The Petitioners believe that the subject noncompliances are inconsequential to motor vehicle safety for the following reasons, which are summarized in detail below:

1. The Petitioners state that their own testing yielded "variable," "inconsistent," and "nonuniform" results with respect to certain provisions of FMVSS No. 106. Furthermore, they argue that, while there were failures, the leaking exhibited was minimal, and do not pose a significantly greater risk to braking performance.
2. According to the Petitioners, laboratory testing does not reflect use of these brake hose assemblies in the "real-world."
3. The Petitioners argue that supplemental testing demonstrates that under extreme conditions, any noncompliances found in the subject brake hose assemblies are inconsequential to motor vehicle safety. Supplemental testing was performed on similar or affected brake hose assemblies, and the Petitioners believe that those test results support a determination of inconsequential noncompliance.
4. The Petitioners contend that prior Agency decisions on petitions for inconsequential noncompliance support a finding of inconsequential noncompliance for the Petitioners' subject petitions.
5. The Petitioners conducted a review and analysis of field data and concluded that the review revealed no documented crashes or injuries attributable to the Petitioners' FMVSS No. 106 noncompliances.

The following summarizes, in more detail, some of the main arguments made by the Petitioners.

With respect to the testing, HCA states that "failures involved leaks at the pre-crimp, which–as Exponent explains in its Supplemental Technical Report– is not an anticipated failure mode because the rotational test motion applied during Water Whip and Whip testing stresses the hose element, not the end fitting pre-crimp area."[1] Further, the petitioners argue that the leaks that were observed did not result in observed pressure loss.

The Petitioners also claim that laboratory testing does not reflect use of these brake hose assemblies in the "real-world." The Petitioners contend that Harley-Davidson motorcycles do not experience the extreme stresses that brake hose assemblies are subjected to during FVMSS No. 106 testing. The Petitioners specifically explain that the "real-world" forces that brake hose assemblies are subjected to in the subject vehicles are principally vertical in nature between their upper and lower suspension stopping points. The Petitioners also argue that by contrast, the whip test applies principally rotational force, thus, the Petitioners believe that it does not reflect the way assemblies are typically mounted and utilized on a motorcycle. For this reason, the Petitioners argue that the whip test is sufficient to demonstrate that a brake hose assembly is resistant to dynamic fatigue, but a failure does not necessarily mean that an assembly will fail when exposed to "real-world" forces.

HCA's contractor inspected 156 "real-world" motorcycles spanning model years 2008-2020, which HCA characterizes as motorcycles that are equipped with brake hose assemblies that are included in the scope of HCA's recall. HCA explains that no signs of hose fatigue were observed on those brake hose assemblies.

The Petitioners also claim that supplemental testing demonstrates that under extreme conditions, any noncompliance found in the subject brake hose assemblies is inconsequential to motor vehicle safety. Supplemental testing was performed on similar or affected brake hose assemblies, and the Petitioners believe that those results support a determination of inconsequential noncompliance.

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[1] *See* HCA's supplemental petition dated November 10, 2022, page 9 available on the docket

Supplemental testing established by the Petitioners included full vehicle brake performance and/or accelerated durability testing on similar brake hose assemblies or on samples of affected brake hose assemblies. The Petitioners characterize their supplemental tests in various ways to include the following: accelerated durability testing, full vehicle brake performance testing, ABS certification testing, testing in accordance with FMVSS No. 122, laboratory-based dynamic fatigue test, pressure and time sensitivity testing, room temperature durability testing, elevated temperature durability testing, accelerated durability suspension stroke testing, accelerated durability suspension stroke testing following water absorption, and lifetime accelerated durability testing.

The Petitioners also claim that the following Agency decisions on petitions for inconsequential noncompliance support a finding of inconsequentiality for these petitions:

- Daimler Trucks North America, Grant of Petition for Decision of Inconsequential Noncompliance, 87 FR 14325 (March 14, 2022);
- Coupled Products II, Grant of Petition for Decision of Inconsequential Noncompliance, 70 FR 35774 (June 21, 2005);
- Coupled Products, Grant of Appeal of Decision on Inconsequential Noncompliance, 70 FR 32397 (June 2, 2005);
- General Motors, Grant of Petition for Determination of Inconsequential Noncompliance, 57 FR 1511 (January 14, 1992);
- Volvo GM Heavy Truck Corporation, Grant of Petition for Determination of Inconsequential Noncompliance, 57 FR 1511 (January 14, 1992);
- Navistar International and Mack Trucks, Inc., Grant of Petitions for Determination of Inconsequential Noncompliance, 56 FR 51440 (October 11, 1991);
- Sumitomo Rubber Industries, Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 83 FR 13002 (March 26, 2018);

- Ford Motor Co., Grant of Petition for Determination of Inconsequential Noncompliance; 45 FR 29160 (May 1, 1980);
- Philatron Int'l, Grant of Petition for Determination of Inconsequential Noncompliance; 57 FR 26687 (June 15, 1992); and
- FCA US, Denial of Petition for Determination of Inconsequential Noncompliance, 87 FR 61432 (October 11, 2022).

Finally, the Petitioners petitions included a review and analysis of field data. The Petitioners concluded that the review revealed no documented crashes or injuries attributable to the Petitioners' FMVSS No. 106 noncompliances. The Petitioners searches included the following types of records:

- NHTSA Vehicle Owner Questionnaire ("VOQ") records;
- Legal claims and lawsuits;
- Warranty data; and
- Customer contacts to Harley-Davidson's Technical Service Team's Call Center.

The Petitioners conclude by stating their belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and their petitions to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, 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 motorcycles and brake hose assemblies that the Petitioners no longer controlled at the time when the Petitioners determined that the noncompliances existed. However, any decision on these petitions does not relieve equipment and motorcycle distributors and dealers of the prohibitions

on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorcycles and brake hose assemblies under their control after the Petitioners notified distributors and dealers that the subject noncompliances 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.

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