



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0058; Notice 1]

Polaris Group of America, 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: Polaris Group of America, Inc., (Polaris), has determined that certain motorcycles manufactured by Indian Motorcycle Company do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Indian Motorcycle Company, on behalf of Polaris, filed an original noncompliance report dated April 13, 2022, and later amended the report on September 9, 2022. Polaris petitioned NHTSA on May 13, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Polaris'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, 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).

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (202) 366-5304.

SUPPLEMENTARY INFORMATION:

I. Overview: Polaris determined that certain motorcycles manufactured by Indian Motorcycle Company do not fully comply with paragraph S7.3.5 and Table I-c of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108).

Indian Motorcycle Company, on behalf of Polaris, filed an original noncompliance report dated April 13, 2022, and amended it on September 9, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Polaris petitioned NHTSA on May 13, 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 Polaris's petition 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 petition.

II. Motorcycles Involved: Approximately 12,619 of the following motorcycles manufactured by Indian Motorcycle Company between July 10, 2018, and April 1, 2022, were reported by the manufacturer:

- 2019-2020, 2022 Indian FTR 1200,
- 2019-2020, 2022 Indian FTR 1200 S,
- 2020, 2022 Indian FTR 1200 Rally,
- 2022 Indian FTR R Carbon
- 2020-2022 Indian Challenger,

- 2020-2022 Indian Challenger Limited,
- 2020-2021 Indian Challenger Dark Horse,
- 2022 Challenger Elite
- 2022 Indian Challenger Dark Horse Icon
- 2022 Indian Challenger JD Limited Edition
- 2022 Indian Pursuit Limited
- 2022 Indian Pursuit Limited Premium
- 2022 Indian Pursuit Limited Premium Icon
- 2022 Indian Pursuit Premium Dark Horse
- 2022 Indian Pursuit Dark Horse Premium
- 2022 Indian Pursuit Dark Horse Premium Icon

III. Noncompliance: Polaris explains that the subject motorcycles are equipped with a specific Antilock Braking System (ABS) module that can cause the subject motorcycle to experience inadvertent stop lamp illumination without rider input during certain riding conditions when a loss of wheel contact with the ground occurs.

IV. Rule Requirements: *Stop lamps* are lamps giving a steady light to the rear of a vehicle to indicate a vehicle is stopping or diminishing speed by braking. Paragraph S7.3.5 and Table I-c of FMVSS No. 108 include the requirements relevant to this petition. Stop lamps equipped on motorcycles must be steady burning. In addition, they must be activated upon application of the service brakes. The stop lamp may also be activated by a device designed to retard the motion of the vehicle.

V. Summary of Polaris' Petition: The following views and arguments presented in this section, "V. Summary of Polaris' Petition," are the views and arguments provided by Polaris. They have not been evaluated by the Agency and do not reflect the views of the Agency. Polaris describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Polaris explains that the subject noncompliance occurs due to an inadvertent software logic error. Specifically, Polaris says the subject noncompliance occurs because a “loss of wheel contact may result in a front and rear wheel speed differential that exceeds the calibration threshold within the ABS module software.” This causes the ABS module to provide a signal to the ECM, which then illuminates the brake lights, even when there is no brake application by the motorcycle user.

Polaris believes that the subject noncompliance is inconsequential to motor vehicle safety because the brake light is illuminated for 500 milliseconds and only occurs under certain conditions. Polaris says that the resulting brake light illumination is “analogous to a rider tapping the brake lever or pedal to cancel cruise control, thereby illuminating the lights, but not meaningfully engaging the brake system to decelerate.” Other than the subject noncompliance, Polaris states that the affected motorcycles comply with FMVSS No. 108 requirements. Furthermore, Polaris says it is not aware of any crashes or injuries related to the subject noncompliance.

Polaris references three previous petitions NHTSA has granted “for lighting requirements where a technical noncompliance exists but does not create an adverse effect on safety.”

- In a petition submitted by Daimler Trucks North America,¹ Polaris points to the following NHTSA statement: “when a vehicle with air brakes experiences a low-air event and notifies that driver of a brake system malfunction, NHTSA believes that the driver would likely respond by pulling over to the side of the road and taking the vehicle out of service until the brake system can be repaired.”
- Polaris cited a decision notice for a General Motor’s petition for inconsequential noncompliance² and stated that, “NHTSA noted that a number of factors led them to the conclusion that under the specific circumstances described in GM’s Petition

¹ *Daimler Trucks North America, Grant of Petition for Decision of Inconsequential Noncompliance*; 87 FR 14325 (March 24, 2022)

² *General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*; 83 FR 7847 (February 22, 2018).

would have a low probability of occurrence and would neither be long lasting nor likely to occur during a period when parking lamps are generally in use.” Polaris also points to a statement in this petition where NHTSA stated, “when the noncompliance does occur, other lamps remain functional. The combination of all of the factors, specific to this case, abate the risk to safety.”

- In a petition submitted by General Motors Corporation³, Polaris points to the following NHTSA statement, “[e]ven if a visible CHMSL illumination occurs upon hazard flasher activation, it would almost certainly have no adverse effect on safety. However, if a CHMSL illuminated due to this condition when the vehicle was on the road, a following driver would likely see a brief single flash of the CHMSL. As a practical matter, the following driver might not notice this flash at all. Even if he or she did, there would seem to be no likelihood of driver confusion or inappropriate responses.” Polaris also points to another statement in this petition where NHTSA stated, “[w]e can foresee no negative effects on motor vehicle safety if a vehicle’s CHMSL is briefly illuminated as described upon activation of the hazard warning lamps. The intended use of a hazard warning lamp and the momentary activation of the CHMSL do not provide a conflicting message. The illumination of the CHMSL is intended to signify that the vehicles brakes are being applied and that the vehicle might be decelerating. Hazard warning lamps are intended as a more general message to nearby drivers that extra attention should be given to the vehicle. A brief illumination of the CHMSL while activating the hazard warning lamps would not confuse the intended general message, nor would the brief illumination in the absence of the other brake lamps cause confusion that the brakes were unintentionally applied.”

³ *General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance*; 66 FR 32871 (June 18, 2001)

Polaris concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and 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 motorcycles that Polaris no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle 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 under their control after Polaris 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.

[FR Doc. 2023-14064 Filed: 6/30/2023 8:45 am; Publication Date: 7/3/2023]