



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0097; Notice 2]

#### FCA US, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of petition.

**SUMMARY:** FCA US LLC (f/k/a Chrysler Group LLC) (FCA) has determined that certain model year (MY) 2019 Chrysler Pacifica motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less*. FCA filed a noncompliance report dated August 27, 2019. FCA subsequently petitioned NHTSA on September 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of FCA's petition.

**FOR FURTHER INFORMATION CONTACT:** Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-7236.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview:

FCA has determined that certain MY 2019 Chrysler Pacifica motor vehicles do not fully comply with paragraphs S4.3(a) and (b) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less* (49 CFR 571.110). FCA filed a noncompliance report dated August 27, 2019, pursuant to 49 CFR part 573, *Defect and*

*Noncompliance Responsibility and Reports.* FCA subsequently petitioned NHTSA on September 20, 2019, 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.*

Notice of receipt of FCA's petition was published with a 30-day public comment period, on January 6, 2020, in the **Federal Register** (85 FR 553). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0097."

## **II. Vehicles Involved:**

Approximately 350 MY 2019 Chrysler Pacifica motor vehicles, manufactured between October 4, 2018, and July 3, 2019, are potentially involved.

## **III. Noncompliance:**

FCA explains that the noncompliance is that the subject vehicle's tire placard label erroneously states the seating capacity as seven occupants rather than eight occupants, and shows a combined occupant and cargo weight of 1,150 lbs. rather than 1,240 lbs. as required by paragraph S4.3 of FMVSS No. 110.

## **IV. Rule Requirements:**

Paragraphs S4.3(a) and S4.3(b) of FMVSS No. 110 include the requirements relevant to this petition. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in paragraphs S4.3(a), vehicle capacity weight expressed as the combined weight of occupants and cargo and S4.3(b) designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location).

## **V. Summary of FCA's Petition:**

The following views and arguments presented in this section, are the views and arguments provided by FCA.

FCA described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA submitted the following views and arguments in support of the petition:

1. While the number of occupants and the calculated weight are incorrect on the vehicle placard label, the calculated weight for seven occupants (1,150 lbs.) is below the calculated weight for eight occupants (1,240 lbs.), and therefore, there is no risk of vehicle overloading.
2. All information required for maintaining and/or replacing the front and rear tires is correct on the vehicle placard of the affected vehicles. In fact, the recommended cold tire inflation pressures for both the seven occupants and the eight occupant vehicles are the same. Therefore, there is no risk of under-inflation.
3. All other applicable requirements of FMVSS No. 110 have been met.
4. The vehicle certification label is correct. Vehicles with seven occupants and eight occupants share the same Gross Vehicle Weight Rating (6055 lbs.), and front and rear Gross Axle Weight Rating (2950 lbs. and 3200 lbs., respectively).
5. The number of seats and the number of safety belts installed in the vehicle will clearly indicate to a vehicle owner the actual seating capacity, the rear seating of the affected vehicles contains six seat belt assemblies, and provides adequate space for six people to occupy the rear seats. Further, the vehicle in fact does accommodate six occupants and not five as labeled.
6. FCA is not aware of any crashes, injuries, or customer complaints associated with this condition.
7. NHTSA has previously granted inconsequential treatment for FMVSS 110 noncompliance for incorrect vehicle placard seated capacity values. Examples

of the Agency granting a similar inconsequentiality petition for vehicle placard incorrect seated capacity are:

- General Motors, LLC, 79 FR 69557 (November 21, 2014)
- Ford Motor Company, 74 FR 69373 (December 31, 2009)
- BMW of North America, LLC, a subsidiary of BMW AG, 78 FR 43964 (July 22, 2013)

FCA seeks exemption 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.

## **VI. Comments:**

NHTSA received one comment from the general public. While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

**VII. NHTSA's Analysis:** The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.<sup>1</sup> Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.<sup>2</sup> In general, NHTSA does not

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<sup>1</sup> Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

<sup>2</sup> See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.”<sup>3</sup> “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”<sup>4</sup>

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.<sup>5</sup> Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.<sup>6</sup> These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

FCA explains that the noncompliance is that the subject vehicles’ tire placard label erroneously states the seating capacity as seven occupants rather than eight occupants, and shows a combined occupant and cargo weight of 1,150 lbs. rather than 1,240 lbs. as required by paragraph S4.3 of FMVSS No. 110.

NHTSA has reviewed and accepts FCA’s analyses and supporting documentation that the noncompliance is inconsequential to motor vehicle safety. FCA has provided sufficient

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<sup>3</sup> *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

<sup>4</sup> *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

<sup>5</sup> *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

<sup>6</sup> *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

documentation that other than the placard/labeling error, the vehicles comply with all other safety performance requirements of FMVSS 110. If owners were to follow the information on the label, there would be no risk of overloading the vehicle's tires. While the tire and loading placards incorrectly indicate the number of seating positions and the calculated weight capacity, the subject labeling error alone poses little if any risk to motor vehicle safety since the number of seating positions is readily apparent in the subject vehicles. The rear seating of the affected vehicles contains six seat belt assemblies and provides adequate space for six people to occupy the rear seats. In addition, all information required for maintaining and/or replacing the front and rear tires is located on the vehicle placard of the affected vehicles.

#### **VIII. NHTSA's Decision:**

In consideration of the foregoing, NHTSA finds that FCA has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby granted and FCA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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 subject vehicles that FCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 vehicles under their control after FCA 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,**

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