



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0058; Notice 2]

Polaris Group of America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial 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 the denial of Polaris's petition.

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.*

Notice of receipt of Polaris's petition was published with a 30-day public comment period, on July 3, 2023, in the **Federal Register** (88 FR 42814). No comments were 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-2022-0058."

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 stop lamp illumination without the application of the service brakes or by a device designed to retard the motion of the vehicle during certain riding conditions when a loss of wheel contact with the ground occurs.

IV. Rule Requirements:

Stop lamps are lamps that give 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 or 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 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 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.”

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).

- In a petition submitted by General Motors Corporation,³ 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.”

VI. NHTSA’s Analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.⁴

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

⁴ *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).

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.⁵ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.⁶ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

Polaris did not elaborate on the sensitivity of the lamp activation but did indicate that it can occur while going over a large bump like on railroad tracks and rumble strips. The Agency believes that the stop lamp illuminating for 500 milliseconds will be noticeable to other road users and going over a large bump on the road like railroad tracks or rumble strips is not an uncommon occurrence for motorists. Activation of the stop lamps for a purpose other than to indicate stopping or slowing will create confusion for the driver following the noncompliant vehicle as to the meaning of the signal, with the potential of causing the following driver to apply the brakes in his or her vehicle inappropriately. This is consistent with a decision on a petition by Daimler Trucks North America, and in response to a request for interpretation from General

⁵ 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).

⁶ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *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”).

Motors.⁷ NHTSA continues to adhere to the position that inappropriate and misleading activation of stop lamps is consequential to safety.

Polaris cited three separate Agency decisions to past petitions for inconsequential noncompliance in its petition. The Agency does not find any of these past decisions to be relevant to the subject petition. Each decision is addressed below:

First, the Daimler Trucks North America petition granted by the Agency involved the automatic illumination of the stop lamps when the low air pressure warning indicator light illuminates, which is an event that will occur once and will need to be resolved by the operator before continuing operation of the vehicle.⁸ The affected vehicle is taken out of service until the brake system can be repaired, which distinguishes that decision from the subject petition.

Second, the General Motors, LLC (GM) petition concerns the activation of parking lamps which distinguishes it from the subject petition because parking lamps and stop lamps serve completely different functions.⁹ Furthermore, other factors distinguish the two petitions including that the non-compliance in the GM petition only occurs during the daytime when parking lamps are generally not in use, requires a fairly high degree of unlikely user intervention for the non-compliance to occur, and the non-compliance will correct itself during operation. NHTSA believes that the noncompliance at issue here has the potential to occur more frequently because large bumps, railroad tracks, and rumble strips are obstacles found on roads throughout the United States.

The third decision notice which was cited, which is also in response to a GM petition, involved the brief activation of the center high-mounted stop lamp (“CHMSL”) when the hazard warning lamp switch was depressed to its limit of travel.¹⁰ The Agency has previously concluded that this brief illumination of the CHMSL upon activation of the hazard warning signal did “not

⁷ See *Daimler Trucks North America, Denial of Petition for Decision of Inconsequential Noncompliance*, 85 FR 67812 (Oct. 26, 2020); Letter from F. Seales, Jr., NHTSA, to C. Terry, GM (May 26, 2000), <https://isearch.nhtsa.gov/files/21281.ztv.html>.

⁸ See *Daimler Trucks North America, Grant of Petition for Decision of Inconsequential Noncompliance*, 87 FR 14325 (March 24, 2022),

⁹ 83 FR 7847 (February 22, 2018),

¹⁰ See *General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance*, 66 FR 32871 (June 18, 2001).

provide a conflicting message” and “would not confuse the intended general message.” In contrast, noticeable activation of the stop lamps in the manner described in Polaris’s petition would send a conflicting or confusing message since the vehicle appears to be braking when it is not.

VII. NHTSA’s Decision:

In consideration of the foregoing, NHTSA has decided that Polaris has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, Polaris’s petition is hereby denied and Polaris is consequently obligated to provide notification of and 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)

Eileen Sullivan,

Associate Administrator for Enforcement.