



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0118; Notice 2]

Kawasaki Motors Corp., U.S.A. Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Kawasaki Motors Corp., U.S.A. (KMC), has determined that certain model
year (MY) 2020–2021 Kawasaki ZR900F and ZRT00K motorcycles do not fully comply with
Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays*.
KMC filed a noncompliance report dated November 16, 2020. KMC simultaneously petitioned
NHTSA on November 16, 2020, for a decision that the subject noncompliance is inconsequential
as it relates to motor vehicle safety. This notice announces the grant of KMC’s petition.

FOR FURTHER INFORMATION CONTACT: Joshua Ulbricht, Compliance Engineer,
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SUPPLEMENTARY INFORMATION:

I. Overview: KMC has determined that certain MY 2020–2021 Kawasaki ZR900F and
ZRT00K motorcycles do not fully comply with the requirements of paragraph S5.2.3(b) of
FMVSS No. 123, *Motorcycle Controls and Displays* (49 CFR 571.123). KMC filed a
noncompliance report dated November 16, 2020, pursuant to 49 CFR part 573, *Defect and
Noncompliance Responsibility and Reports*. KMC simultaneously petitioned NHTSA on
November 16, 2020, 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 KMC's petition was published with a 30-day public comment period, on April 23, 2021, in the **Federal Register** (86 FR 21787). 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-2020-0118."

II. Motorcycles Involved: Approximately 2,302 MY 2020–2021 Kawasaki ZR900F and ZRT00K motorcycles, manufactured between December 4, 2019, and November 2, 2020, are potentially involved.

III. Noncompliance: KMC explains the noncompliance is that the subject motorcycles are equipped with ignition switches that use the ISO identification symbol to identify the off position instead of the word "Off" as specified in paragraph S5.2.3(b) of FMVSS No. 123.

IV. Rule Requirements: Paragraph 5.2.3(b) of FMVSS No. 123 includes the requirements relevant to this petition. If an item of equipment listed in Table 3, Column 1 of FMVSS No. 123 is provided, the item and its operational function shall be identified by (b) Wording shown in both Column 2 and Column 4. In this case, Table 3, No. 1, shows the Control and Display Identification Word "Ignition" and the Identification at Appropriate Position of Control and Display as "Off".

V. Summary of KMC's Petition: The following views and arguments presented in this section, "V. Summary of KMC's Petition," are the views and arguments provided by KMC. KMC describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

KMC explains that the ignition switch for the affected motorcycles is located in a pod directly in front of the operator, near the fuel filler opening on top of the fuel tank and is operated by an ignition key. The ignition switch is enclosed by a plastic cover that designates each

position with a corresponding symbol. KMC's petition includes illustrations of each of these symbols. Sequentially in a clockwise direction, the symbols represent the following positions: (1) the front wheel of the motorcycle is locked in position when parked, (2) the ignition is disabled, and (3) the ignition is enabled. KMC says that the button that operates the starter motor is positioned on the handlebar, as opposed to the standard automotive practice of having the ignition switch operate the starter motor. A separate starting button must be pressed after inserting the key into the switch and turning the ignition to the "on" position in order to start the subject motorcycle. KMC claims that if an operator of the subject motorcycle only used the ignition switch, they would not be able to inadvertently start the engine. KMC notes that the owner's manual provided with the subject motorcycle instructs the operator to turn the ignition key to the correct symbol in order to stop the engine and provides an illustration of that symbol. Additionally, KMC says that the engine's stop switch on the handlebar of the subject motorcycles can also be used to turn off the motorcycle's engine.

According to KMC, the absence of the "Off" identification for the ignition is not consequential to safety. KMC contends that operators of the subject motorcycles are knowledgeable with the function, location, and operation of the ignition switch, as well as the ignition key. KMC believes that the location of the engine's stop switch, along with the operator's familiarity with the engine start switch, means that the operator is familiar with the location of the engine stop switch.

KMC concludes 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.

VI. NHTSA's Analysis:

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.¹ 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, including riders, have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.³ 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.⁴ These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

NHTSA has identified that the subject motorcycles use an ISO symbol in place of the word “Off” on the ignition switch. This configuration deviates from the requirements of FMVSS

¹ 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).

² 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”).

³ 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).

⁴ 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).

No. 123, S5.2.3, which stipulates the use of the word “Off” at the ignition-off position on motorcycle ignition switches.

As detailed in the petition, the affected motorcycles are equipped with ignition switches consistent with the control and display identification requirements in FMVSS No. 123, except for using the ISO symbol instead of “Off.”

The ignition switch’s clear design, as described in the Petition, suggests ease of use, even for riders unfamiliar with these models. The ignition-off position is one of only two switch positions, accessible through normal key rotation, reducing the likelihood of confusion or error in identifying the correct switch position for stopping the engine. In the absence of a larger selection of switch positions, it would not be possible for an operator to select another key position except Off (labeled with the ISO symbol in this case) when the motorcycle is running.

NHTSA concludes that KMC’s noncompliance does not pose a consequential vehicle safety concern. Notably, as required for all motorcycles under FMVSS No. 123, the subject Kawasaki motorcycles are equipped with an engine kill switch located on the right handlebar. This placement allows the motorcycle operator an alternative means to shut off the engine without moving their hand from the handgrip. Utilizing the kill switch is a secondary safety measure, providing operators with a quick alternative to the ignition switch for shutting off the engine in urgent situations. Consequently, the absence of the “Off” label on the ignition switch should not impede the immediate shut-down of the engine.

Given the ignition switch's two-position design and the presence of the engine kill switch, NHTSA determines that the non-standard labeling of the ignition switch does not significantly compromise operational safety. The design elements of the ignition switch, combined with the additional safety feature of the engine kill switch, ensure that the risk associated with the non-standard labeling is effectively mitigated, upholding the overall safety of the motorcycle operation.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that KMC has met its burden of persuasion that the subject FMVSS No. 123 noncompliance in the affected motorcycles is inconsequential to motor vehicle safety. Accordingly, KMC's petition is hereby granted and KMC 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 motorcycles that KMC no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve 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 under their control after KMC 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)

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Director, Office of Vehicle Safety Compliance.

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