



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0080; Notice 2]

ElectraMeccanica Vehicles Corp., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: ElectraMeccanica Vehicles Corp., (EMV) determined that certain model year (MY) 2018 ElectraMeccanica SOLO motorcycles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds)*. EMV filed a noncompliance report dated July 30, 2019. EMV subsequently petitioned NHTSA on August 12, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of EMV'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:

EMV has determined that certain MY 2018 and MY 2019 ElectraMeccanica SOLO motorcycles do not fully comply with paragraph S5.2(d) of FMVSS No. 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds)* (49 CFR 571.120).

EMV filed a noncompliance report dated July 30, 2019, pursuant to 49 CFR part 573, *Defect and*

Noncompliance Responsibility and Reports. EMV subsequently petitioned NHTSA on August 12, 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 EMV's petition was published with a 30-day public comment period on September 20, 2019, in the **Federal Register** (84 FR 49621). No comments were received. To view the petition and all supporting documents log on to the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0080."

II. Motorcycles Involved:

Approximately 20 MY 2018 ElectraMeccanica SOLO motorcycles, manufactured between March 1, 2018, and June 28, 2019, were reported by the manufacturer.

III. Noncompliance:

EMV explains that the noncompliance is that the subject vehicles are equipped with rims that are missing the manufacturer's name, trademark, or symbol marking as required by paragraph S5.2(d) of FMVSS No. 120.

IV. Rule Requirements:

Paragraph S5.2(d) of FMVSS No. 120 includes the requirements relevant to this petition. Each rim or, at the option of the manufacturer in the case of a single-piece wheel, wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this paragraph, in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in paragraphs (a) through (c) of this paragraph shall appear on the weather side. In the case of rims of multi-piece construction, the information listed in paragraphs (a) through (e) of this paragraph shall appear on the rim base and the information listed in paragraphs (b) and (d) of this paragraph shall also

appear on each other part of the rim. (d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol.

V. Summary of EMV's Petition:

The following views and arguments presented in this section, "V. Summary of EMV's Petition," are the views and arguments provided by EMV and do not reflect the views of the Agency. In its petition, EMV describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, EMV offers the following reasoning:

1. EMV states that the absence of the manufacturer name, trademark, or symbol does not have any effect on the operation, performance, or safety of the affected vehicles. In support of this argument, EMV points out that the manufacturer name, trademark, or symbol is not required to be marked on rims for use on passenger cars in accordance with FMVSS No. 110. EMV acknowledges that the marking is helpful for traceability in the event of the future discovery of a wheel defect. However, EMV states that the absence of the marking on the affected rims does not inhibit traceability because EMV has only a single supply source for the pertinent rim style. EMV notes that the affected rims do contain other markings, such as the date of manufacture, heat treatment lot, and all other markings required as per FMVSS No. 120, paragraph S5.2, providing for sufficient traceability of any given rim. EMV also relays that it is not aware of any crashes, injuries, or customer complaints associated with the absence of the rim manufacturer name, trademark, or symbol marking.
2. EMV states the granting of its petition for inconsequential noncompliance would be consistent with previous NHTSA decisions regarding FMVSS No. 120 and FMVSS No. 110 (for vehicles other than passenger cars) requirements for rim markings. In support of its petition EMV cites

the granting of inconsequential noncompliance petitions for both the incorrect marking of the rim size in 2017¹ and the absence of required rim markings in 2008.²

3. EMV also states that all affected MY 2018 and MY 2019 vehicles under its control in, or destined for, the United States have been or are in the process of being brought into compliance with the FMVSS No. 120 manufacturer marking requirements. EMV adds that it has also ensured that all required markings will be present on rims used for future production.

EMV concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and contends 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.

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.³ 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.⁴ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not

¹ See Arconic Wheel and Transportation Products, Grant of Petition for Decision of Inconsequential Noncompliance (Docket No. NHTSA-2016-0137; Notice 2), 82 Fed. Reg. 196, October 12, 2017 (82 FR 47599).

² See Nissan North America, Inc.; Grant of Petition for Decision of Inconsequential Noncompliance (Docket No. NHTSA-2007-27073; Notice 2), 72 Fed. Reg. 83, July 16, 2008 (72 FR 23889).

³ 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).

⁴ 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”).

consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also do not justify granting an inconsequentiality petition.⁵ Similarly, mere assertions that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance are unpersuasive. The percentage of potential occupants that could be adversely affected by a noncompliance is not relevant to whether the noncompliance poses an inconsequential risk to safety. Rather, NHTSA focuses on the consequence to an occupant who is exposed to the consequence of that noncompliance.⁶ The Safety Act is preventive, and manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall.⁷ Indeed, the very purpose of a recall is to protect individuals from risk.⁸ NHTSA has evaluated the merits of EMV's petition and is granting the petitioner's request for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120. The Agency considered the following prior to making this determination:

EMV states in its petition and noncompliance report that the noncompliance is that a subset of MY 18 SOLOs equipped with silver rims with 12 spokes are missing the required marking of the manufacturer's name, trademark, or symbol and therefore do not comply with the requirements of paragraph S5.2(d) of FMVSS No. 120. EMV explains that a miscommunication between EMV and the rim manufacturer resulted in the absence of the manufacturer marking required for

⁵ 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).

motorcycles in accordance with FMVSS No. 120 S5.2(d). EMV confirms that four of the affected MY18 SOLOs shipped to the U.S. between November 2018 and July 2019 equipped with the affected rims have been sold to consumers, and that all other affected MY18 and MY19 vehicles in the U.S. have been or are in the process of being brought into compliance with the marking requirement. EMV states that no remedy or reimbursement program is planned for the affected vehicles.

EMV explains it has only one source for supply of the pertinent rim style and that the absence of the manufacturer name, trademark, or symbol marking will therefore not inhibit traceability of the affected rims. It further states that other markings present, such as the date of manufacture and all other required rim markings from paragraph S5.2, (including some not required, such as “heat treatment lot”), provide for sufficient traceability of any given rim.

Given the nature of the vehicle, the markings present on the rim, and the rim’s unique design, it appears most likely that if a consumer encountered a problem with the rim, including finding a proper replacement, they could contact the vehicle manufacturer for further assistance or, if seeking a replacement, replace the rim based on the correct tire rim size present on the side of the rim. The aforementioned facts support a conclusion that the noncompliance is inconsequential to motor vehicle safety, as all other information markings as required by FMVSS No. 120 are correctly marked.

NHTSA’s Decision:

In consideration of the foregoing, NHTSA finds that EMV has met its burden of persuasion that the subject FMVSS No. 120 noncompliance at issue is inconsequential to motor vehicle safety. Accordingly, EMV’s petition is hereby granted and EMV is consequently exempt 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 EMV no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 EMV 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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