

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on June 13, 2024 (89 FR 50405).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0077; Notice 2]

Harley-Davidson Motor Company, Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Harley-Davidson Motor Company (Harley-Davidson) has determined that certain model year (MY) 2018–2019 Harley-Davidson Softail 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)*. Harley-Davidson filed a noncompliance report dated June 20, 2019. Harley-Davidson subsequently petitioned NHTSA, on July 17, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces and explains the denial of Harley-Davidson's petition.

FOR FURTHER INFORMATION CONTACT: Kamna Ralhan, Office of Vehicle Safety Compliance, NHTSA, (202) 366–7236.

SUPPLEMENTARY INFORMATION:

I. Overview

Harley-Davidson has determined that certain MY 2018–2019 Harley-Davidson Softail motorcycles do not fully comply with paragraph S5.3.1 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). On June 20, 2019, Harley-Davidson filed a noncompliance report

with NHTSA for the subject motorcycles, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. On July 17, 2019, Harley-Davidson petitioned NHTSA for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301, asserting that the 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 Harley-Davidson's petition was published with a 30-day public comment period, on June 12, 2020, in the **Federal Register** (85 FR 35987). NHTSA did not receive any comments on the petition. 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–2019–0077.”

II. Motorcycles Involved

Approximately 12,931 MY 2018–2019 Harley-Davidson Softail FXBB Street Bob and FXLR Low Rider motorcycles, manufactured between June 22, 2017, and June 11, 2019, are potentially involved.

III. Noncompliance

Harley-Davidson explains that the noncompliance is that the subject motorcycles are equipped with a certification label which incorrectly states the recommended cold inflation pressure for the front tires and, therefore, does not fully comply with paragraph S5.3.1 of FMVSS No. 120. Specifically, when a motorcycle's tires are set to the inflation pressure stated on the certification label, the load ratings of the front tires, according to the Tire and Rim Association Year Book (TRA Year Book), are less than the stated front gross axle weight ratings (GAWR) of the motorcycles.

IV. Rule Requirements

Paragraphs S5.1.2 and S5.3.1 of FMVSS No. 120 set forth the relevant requirements for which Harley-Davidson is claiming an inconsequential noncompliance. Pursuant to FMVSS No. 120, S5.1.2, the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label, which is required by 49 CFR part 567. Additionally, FMVSS No. 120, S5.3.1 requires that the sum of the load ratings of the tires on each axle, based on the tire size designation (not

necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires, is appropriate for the GAWR as calculated in accordance with S5.1.2.

V. Summary of Harley-Davidson's Petition

The following views and arguments presented in this section are the views and arguments provided by Harley-Davidson in its petition and do not reflect the views of the Agency.

Harley-Davidson describes the subject noncompliance and states that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, Harley-Davidson offers the following reasoning:

The front wheel of the FXBB motorcycle is fitted with a Dunlop D401F 100/90–19 57H BW tire as original equipment. The model has a GAWR of 450 lbs., but when a motorcycle owner inflates the tire to the recommended inflation level that is shown on the certification label (*i.e.*, 30 psi), the calculated load rating of the front tire, according to the TRA Year Book, is 386 lbs. Because the FXBB's GAWR is 450 lbs., the tire's load rating at its recommended inflation pressure is 64 lbs. below the required front tire GAWR.

The front wheel of the FXLR motorcycle is fitted with a Michelin Scorchers “31” 100/90B19 62H BW tire as original equipment. The front axle has a GAWR of 450 lbs., but when a motorcycle owner inflates the tire to the recommended inflation level shown on the certification label (*i.e.*, 30 psi), the calculated load rating of the front tire, according to the TRA Year Book, is 443 lbs. Because the FXLR's GAWR is 450 lbs., the tire's load rating at its recommended inflation pressure is 7 lbs. below the required front tire GAWR.

Harley-Davidson cites NHTSA as explaining that the GAWR “formalizes the decision each manufacturer makes about the load-bearing ability of the tires, rims, axle, brakes, and suspension components (at a minimum) chosen to support and control the loaded vehicle.” See 42 FR 7140 (February 7, 1977). FMVSS No. 120, S5.3.1 seeks to ensure that the combination of the tire size designation and the recommended cold inflation pressure can support and control the loaded vehicle.

In its views, despite the load rating of the tires at the recommended inflation pressure falling below the GAWR, Harley-Davidson contends that the noncompliant tires were designed to carry a greater load than specified. Harley-Davidson supports its position by submitting test results conducted by

its respective tire manufacturers (Michelin and Dunlop) to confirm that the subject tires could be safely operated on the motorcycles at 30 psi to support the required GAWR of 450 lbs.

Accordingly, Harley-Davidson believes the noncompliance is inconsequential to motor vehicle safety.

For the Dunlop tire, Harley-Davidson commissioned an endurance test that tracks the testing conditions in FMVSS No. 119, S7.2 and Table III. Tires for the test were set to the recommended tire pressure of 41 psi. The test simulated the three phases of the endurance test detailed in Table III of FMVSS No. 119—beginning with maximum sidewall load and increasing the load at each phase. The test also added a fourth, extended phase that tested the tire at the recommended tire pressure of 30 psi. The phases break down as follows:

- *Phase 1:* 100% maximum sidewall load (507 lbs.) for 4 hours totaling 200 miles;
- *Phase 2:* 108% maximum sidewall load (549 lbs.) for 6 hours totaling 300 miles;
- *Phase 3:* 117% maximum sidewall load (594 lbs.) for 24 hours totaling 1,200 miles; and
- *Phase 4:* 125% of the gross axle load (495 lbs., derived by applying the 0.88 correction factor under the FMVSS No. 119 test procedure) for 8,300 miles at 30 psi.

In total, the four-phase endurance test ran the tire for 10,000 total miles at loads above the stated GAWR of the motorcycles. The tire passed all four phases of the endurance test. Based on the endurance test results—including the worst-case scenario of Phase 4—the load carrying capacity of the Dunlop tire at 30 psi would adequately support a GAWR of 450 lbs.

For the Michelin Scorcher tire, which is the original fitment for the FXLR model and optional/replacement fitment for the FXBB model, Harley-Davidson worked with Michelin to confirm that the Scorcher “31” could be operated safely at a recommended tire pressure of 30 psi on both of these models when loaded to the full GAWR of 450 lbs. Michelin confirmed the performance of the tires through a high-speed test on a smooth drum by inflating the tire to 30 psi, applying a load of 450 lbs., and running the tire at a maximum speed of 130 mph. Based on its testing, Michelin provided Harley-Davidson with letters certifying that the tire would adequately support a GAWR of 450 lbs.

Harley-Davidson adds that the above-referenced Dunlop and Michelin tires are the only fitments specified as original or replacement equipment for the two model types of motorcycles.

Based upon this factor and the test results from its tire manufacturers, Harley-Davidson concludes that the noncompliance does not expose the riders of the noncompliant motorcycles to a significantly greater risk than the riders of compliant motorcycles. While the recommended inflation pressure of 30 psi would reduce the tire’s load rating as stated in the TRA Year Book, the tire’s actual load carrying capacity is sufficient to allow the motorcycles to be safely operated at the full GAWR of 450 lbs. Accordingly, Harley-Davidson believes that the difference is inconsequential to motor vehicle safety. Harley-Davidson also notes that NHTSA has previously granted a petition for inconsequential noncompliance where the recommended cold inflation pressure on the certification label was below the appropriate “GAWR as calculated in accordance with S5.1.2.” See 55 FR 49365 (November 27, 1990).

Harley-Davidson concludes by again contending 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 have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

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

Harley-Davidson explains the noncompliance is that, at the stated cold tire inflation front tire pressure listed on the vehicle’s certification label, the load rating (according to the Tire and Rim Association yearbook) may be less than the stated vehicle’s front GAWRs, and therefore may not comply with FMVSS No. 120, S5.3.1. Furthermore, Harley-Davidson asserts that although the certification label indicates an inflation pressure for the forward axle/wheel of 30 psi, the operator is not at a significantly greater safety risk than if the front tire/wheel were inflated to the “correct” inflation pressure that is required to achieve the vehicle’s stated GAWR. Harley-Davidson enlisted both tire manufacturers that it utilizes to outfit its motorcycles to conduct additional tire testing to verify that its claims are correct.

For the Dunlop brand tire used on Harley-Davidson’s FXBB model motorcycles, Harley-Davidson commissioned the manufacturer to perform the endurance test of FMVSS No. 119, S7.2 and Table III consisting of four phases of various test loading conditions, tire pressures and testing miles. Phases 1 through 3 were run for a combined total of 34 hours and 1,700 miles as well as with load up to 125 percent greater than the maximum sidewall load. While for the fourth phase test, Dunlop ran the test at a load of 125% of the GAWR (495 lbs.—derived by applying the 0.88 correction factor under the FMVSS No. 119 test procedures) for a total of 8,300 miles and at 30 psi.

The Michelin tires used by Harley-Davidson (original fitment on the “FXLR” model and optional/replacement fitment on the FXBB model) were also tested by Michelin on a smooth high-speed drum. The tire was inflated to 30 psi, run at 130 mph with an applied load of 450 lbs. This high-speed test resulted in a duration of 77 minutes and equated to a distance of 208 kilometers or 129 miles. Based upon these tests, Michelin certified that the tires would adequately support a GAWR of 450 lbs.

The supplemental tire testing conducted by the tire manufacturers utilized by Harley-Davidson on the subject motorcycles is significant and does help NHTSA understand the tire’s potential durability at initial sale. However, these wheel dynamometer tests and live on-road usage over the entire useful life of the tires are not interchangeable. The nuances of a dynamic load on a tire combined with

such hazards, in this case fires, can definitely be expected to occur in the future”).

varying road conditions, weather and driver reactions/abilities is not representative of the laboratory tests commissioned by Harley-Davidson. In addition, the reductions in tire pressure and load-carrying capacities for the given labeling error are significant. At a tire pressure of 30 psi for Dunlop 100/90–19 57H tire, there is a 26.8% reduction in the required recommended tire pressure of 41 psi, and the load-carrying capacity reductions range up to 17% compared to the GAWR of the vehicle. Also, the 2023 TRA book suggests that the load-carrying capacity of the Dunlop tire (100/90–19 57H) at the recommended tire pressure of 35 psi should be able to withstand 450 lb, which is a 14.3% difference in the tire pressure. That being said, if the Dunlop tire can hold up to 450 lb then the recommended tire pressure on the certification label should be 35 psi instead of 30 psi. This 5 psi change is significant because it reduces the tire's load carrying capacity by 64 lb which is a 17% reduction. In avoiding certain crashes, even the slightest change in tire pressure effects vehicle safety. If the recommended tire pressure on the certification label is 30 psi then the GAWR should be 386 lb.

Furthermore, three out of four of the laboratory endurance tests performed to FMVSS No. 119, S7.2 and Table III conducted by Dunlop, were set to a recommended tire pressure of 41 psi and not 30 psi. Only one endurance test performed by Dunlop was conducted at 30 psi—representing the pressure the tires would likely experience on-road. However, during this test, despite using loading ranging from 11.7% to 28.2% greater than the GAWR of the vehicle and conducted for 10,000 miles, these conditions are well below the expected tread life of the tires. This factor is heightened given that additional tire pressure losses are expected during normal use of the vehicle will reduce the load carrying capacity of a tires as the inflation pressure decreases from 30 psi. At these pressures, the loading can cause premature tire wear and possible failures.

Consequently, NHTSA disagrees with Harley-Davidson's conclusion that the subject noncompliant certification label is inconsequential to motor vehicle safety. Without additional notification and/or follow-up, it is reasonable to assume motorcycle operators may simply observe and fill their tires to the significantly less safe cold tire pressure displayed on the incorrect motorcycle's certification label. Combined with the lack of real world testing, owner-operators of the subject Harley-Davidson motorcycles may be considered to be at

increased risk of increased bodily harm than those owner-operators which receive a unit with the correct compliant certification label.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Harley-Davidson has not met its burden of persuasion that the subject FMVSS No. 120 noncompliance is inconsequential to motor vehicle safety. Accordingly, Harley-Davidson's petition is hereby denied and Harley-Davidson 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.

[FR Doc. 2024–21065 Filed 9–16–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0047; Notice 1]

Volkswagen 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: Volkswagen Group of America, Inc. (Volkswagen) has determined that certain model year (MY) 2019–2024 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Volkswagen filed a noncompliance report dated April 10, 2024, and subsequently petitioned NHTSA (the “Agency”) on May 3, 2024, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Volkswagen's petition.

DATES: Send comments on or before October 17, 2024.

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 a.m. to 5 p.m. 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).