

July 9, 2020

VIA FEDERAL EXPRESS

James C. Owens
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
West Building
Washington, D.C. 20590

Re: Petition for Determination of Inconsequential Noncompliance:
Supplemental Submission

Dear Mr. Owens:

On behalf of Arai Helmet, Inc., in response to a request from NHTSA personnel, enclosed is Arai Helmet's Supplemental Submission to its March 28, 2019 Petition for Determination of Inconsequential Noncompliance, Docket No. NHTSA-2019-0015. NHTSA published a notice of receipt at 84 Fed. Reg. 48211 (Sep. 12, 2019).

We appreciate your consideration of this petition. Please contact me with any questions.

Sincerely,



R. Nicholas Englund

RNE/krb
Enclosure

cc: Paloma Lampert (NHTSA OVSC)
Brian Weston (Arai Helmet, Inc.)

Arai Helmet, Inc.
Petition for Determination of Inconsequential Noncompliance
Supplemental Submission
July 9, 2020

In response to a request from NHTSA staff, Arai Helmet, Inc. (Arai) is submitting this supplement to its March 28, 2019 Petition for Determination of Inconsequential Noncompliance pursuant to the National Traffic and Motor Vehicle Safety Act (Safety Act), 49 U.S.C. §§ 30118(d) and 30120(h) and 49 C.F.R. §§ 556.1-556.9, for an exemption from the notice and remedy requirements of 49 U.S.C. §§ 30118 and 30120, on the ground that the noncompliance to which this petition relates is inconsequential to motor vehicle safety. The petition relates to the noncompliance described in Arai's Noncompliance Notification, which has been assigned NHTSA Recall No. 19E-021, and Arai's petition, which has been assigned docket number NHTSA-2019-0015. NHTSA published a notice of receipt at 84 Fed. Reg. 48211 (Sep. 12, 2019).

NHTSA has requested additional information regarding how consumers would identify helmets subject to a potential recall in the event of a future performance-related concern. Because Arai's petition seeks exemption from the notification and remedy provisions for the subject noncompliance, Arai describes in the next section the general approach it would use in the event a recall becomes necessary to address a future safety concern. Further below, we address the stated purposes of the discrete-size label requirement, and explain that NHTSA's primary purpose in adopting this requirement was not to assist in identifying recalled helmets, but to identify which headform the Agency should use when conducting compliance testing on new helmets.

Assisting Consumers to Identify Arai Helmets

Every Arai helmet is labeled with a unique serialized number on a Snell label,¹ which is cross referenced to the helmet model, the date of manufacture, the outer shell size, the corresponding fit of the helmet, and the distributor to whom Arai sold the helmet – or for direct-to-consumer sales, the customer information for the first retail sale. While NHTSA does not require Snell certification and the Snell label, these labels are permanently affixed to the helmet and removing these labels leaves evidence of tampering. *See* Attachment No. 1.

In the event of a recall, Arai would direct consumers to the Snell label to determine whether a specific helmet was subject to the recall. Depending on the scope and context of the recall, Arai may also rely on other information on the helmet to guide consumers. This additional information that is on every helmet includes the helmet model and style, the graphics package on the shell of the helmet, the date code laser-etched into chinstrap's D-ring, and the information listed on the label sewn into the headliner.² To the extent necessary, Arai would provide information in the

¹ Arai certifies its helmets through the Snell Foundation, a not-for-profit organization dedicated to research, education, testing, and development of helmet safety standards. Additional information about the Snell Foundation can be found at <https://www.smf.org/about>.

² The headliners are snapped into the helmet and may be removed. Arai does sell replacement headliners, which would have a sewn-in label containing the helmet thickness, the generic helmet size, and the country of origin. The liners are snapped into the helmet, and replacement headliners must have corresponding snaps. Accordingly, a size small headliner would not fit into a size M/L shell and vice versa. Arai is not aware of any third-party headliners for its helmets.

owner notification letter required by 49 Part 577 to assist consumers. For example, photographs of the Snell label and other relevant identifying information would be included to assist consumers. Arai would also provide a customer service line staffed by agents prepared to explain to consumers how to locate the relevant identifying information.

With respect to equipment such as motorcycle helmets, the scope of any potential recall would necessarily be determined based on identifying information available to the consumers. If any Arai helmet is involved in a future recall, Arai would follow the general approach explained above, looking first to the serial number on the Snell label and, if necessary, to the other information depending on the context of the recall.

Purpose of the Discrete Size Labeling Requirement

Arai understands that required labeling such as the discrete-size label could potentially be used to assist in the identification of a recalled product. But unlike the Vehicle Identification Number (49 CFR Part 565) and Tire Identification Number (49 CFR Part 574) requirements, the Agency's stated purposes for requiring the discrete-size label were not to assist consumers in identifying recalled helmets. When NHTSA proposed adding this requirement in 2008, it explained that its purpose was to "eliminate enforcement problems." *See* 73 Fed. Reg. 57297, 57304 (Oct. 2, 2008). Previously, NHTSA had permitted generic head sizes on the helmet label, which lacked the precision the Agency desired for enforcing the helmet standard, raising potential problems with the objective requirements of 49 U.S.C. § 30111(a). In the proposal, NHTSA stated its rationale as follows:

The reason for this is to eliminate enforcement problems that arise when helmets are labeled only with a generic size specification (e.g., Small, Medium, or Large). Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular "designated discrete size or size range," a helmet's generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing.

Id. In the final rule, NHTSA further elaborated that defining the discrete size "would have two benefits."

First, it would provide certainty as to the headform on which the helmet would be tested by NHTSA, thereby improving the enforceability of the standard. Second, it would provide more precise information to customers. Further we note that the requirement would in no way preclude manufacturers from specifying a generic size in addition to the discrete size on the size label.

76 Fed. Reg. 28132, 28144 (May 13, 2011).

FMVSS 218 does not define an objective test for the label's permanency and NHTSA has not generally defined the meaning of "permanently affixed" in other contexts within the safety standards themselves. Rather, NHTSA has generally dealt with the question of permanency through various legal interpretations. *See* Letter to Todd Mitchell, 19 Mar. 2001,

<https://isearch.nhtsa.gov/files/22512.rbm.html>, Letter to R. Mark Willingham, 1 Apr 1994; <https://isearch.nhtsa.gov/files/9640.html> (specifying precisely how the label is to be permanently affixed would be design restrictive). Within the context of the labels required under FMVSS 208, NHTSA determined “that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions.” Letter to Todd Mitchell; *see also* Letter to Tony Dosmann, 15 Apr 2005, <https://isearch.nhtsa.gov/files/GF002565.html> (stating that the rim label “must be affixed in a manner that would make it likely to stay attached and legible during the lifetime of the vehicle, under normal conditions”). Based on these interpretations, the permanency of the label depends on the purpose of the label. For these determinations, the underlying purposes of these labeling requirements was to provide useful safety information to users over the life of the equipment or vehicle. Thus, it is understandable that “permanency” in these contexts would mean that the label could not be easily removed throughout the life of the product.

With respect to the discrete-size label, however, the label’s primary purpose is to assist NHTSA in selecting the correct headform to test a new helmet. The content of the subject labels met this primary purpose, as NHTSA was able to select the correct headform for the subject helmets. Moreover, the label did not (and would not likely have) become detached from the helmet prior to the final sale of the helmets. Indeed, removal of the label would require a deliberate act; these labels would not fall off on their own and, therefore, would remain in place at the time of any NHTSA compliance test.

Likewise, the secondary purpose of the label – to provide more precise information to consumers – would remain satisfied as, again, the label would be in place on the helmet at the time of purchase. Size information is also available to consumers on the helmet’s packaging and on a label sewn into the helmet’s headliner providing the generic size.³ Moreover, consumers are more likely to rely on the fit of the helmet by trying it on, rather than the discrete size listed on the label. In short, the noncompliance does not affect NHTSA’s ability to identify the correct headform for testing purposes or a consumer’s ability to determine the proper fit. And, as noted, this labeling issue does not affect the helmet’s ability to protect the wearer in the event of a crash.

³ Arai’s March 28, 2019 petition erroneously stated that the label sewn into the headliner of the subject helmets included the discrete size. Further investigation revealed that the size small headliners that are used in the subject helmets do not include the discrete size information.

Conclusion

To summarize, the subject helmets satisfied NHTSA's primary concern, enforceability, as evidenced by NHTSA's ability to conduct the performance tests on the helmets. The helmet's potential failure to permanently provide "customer information" does not pose a "significantly greater risk" to the user of a noncompliant helmet compared to the user of a compliant helmet. Arai is not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject noncompliance. Accordingly, Arai continues to believe that the noncompliance is inconsequential to motor vehicle safety.

Respectfully submitted,

Arai Helmet, Inc.

ATTACHMENT NO. 1

WARNING

SOME REASONABLY FORESEEABLE IMPACTS
MAY EXCEED THIS HELMET'S CAPABILITY TO
PROTECT AGAINST SEVERE INJURY OR
DEATH.

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SAMPLE OF THIS HELMET
MODEL HAS PASSED THE
SNELL STANDARD AND IS
SO CERTIFIED.

SNELL[®]
MEMORIAL
FOUNDATION

WARNING

SOME REASONABLY FORESEEABLE IMPACTS
MAY EXCEED THIS HELMET'S CAPABILITY TO
PROTECT AGAINST SEVERE INJURY OR
DEATH.

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CERTIFIED.

INELL®
MEMORIAL
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PROTECT AGAINST SEVERE INJURY
OR DEATH.

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SEVERE IMPACTS MAY EXCEED THIS HELMET'S CAPABILITY TO PROTECT AGAINST SEVERE INJURY TO DEATH.

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