

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,
Acting Associate Administrator for
Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0094; Notice 2]

Hitachi Cable America Inc., Now Known as Proterial Cable America, Inc., and Harley-Davidson Motor Company, Receipt of Supplemental Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of supplemental
petitions.

SUMMARY: Hitachi Cable America Inc. (HCA), now known as Proterial Cable America, Inc. (PCA), and Harley-Davidson Motor Company (Harley-Davidson) (collectively, “the Petitioners”) have determined that certain PVC, Nylon, and “Revised Socket” Nylon brake hose assemblies equipped in certain model year (MY) 2008–2022 Harley-Davidson motorcycles, and also sold to Harley-Davidson dealers as replacement parts, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*. The Petitioners filed the appropriate noncompliance reports and subsequently petitioned NHTSA (the “Agency”) for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. Notice of receipt was first published on April 13, 2023. This document announces receipt of the Petitioners’ supplemental petitions.

DATES: The comment period for the notice published on April 13, 2023, at 88 FR 22523, is extended. Send comments on or before September 21, 2023.

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 10:00 a.m. to 5:00 p.m., except on 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 petitions are 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 these petitions 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).

FOR FURTHER INFORMATION CONTACT: Manuel Maldonado, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview: The Petitioners determined that certain PVC, Nylon, and “Revised Socket” Nylon brake hose assemblies equipped in certain MY 2008–2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, and also sold as replacement parts, do not fully comply with paragraph S5.3 of FMVSS No. 106, *Brake Hoses* (49 CFR 571.106).

PCA filed its initial noncompliance report on July 27, 2022, and amended the report on August 25, 2022, October 18, 2022, October 26, 2022, November 16, 2022, March 30, 2023, and May 15, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. PCA petitioned NHTSA on August 19, 2022, and later amended its petition on November 10, 2022, December 2, 2022, April 21, 2023,¹ and May 15, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that the subject noncompliances are inconsequential as they relate 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*.

Harley-Davidson filed its initial noncompliance report on August 9, 2022, and later amended the report on December 6, 2022, February 7, 2023, February 8, 2023, March 8, 2023, May 11, 2023, and June 21, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Harley-Davidson petitioned NHTSA on September 2, 2022, and amended its petition on December 29, 2022, and June 2, 2023, 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 the Petitioners’ prior petitions was published on April 13, 2023, in the **Federal Register** (88 FR 22523). To view the petitions 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–2022–0094.”

This notice of receipt of the Petitioners’ supplemental petitions is

¹ The supplemental petition submitted on April 21, 2023, was incorrectly dated as April 21, 2022.

published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or another exercise of judgment concerning the merits of the petitions.

II. Motorcycles and Equipment

Involved: Approximately 6,139,858 PVC, Nylon, and “Revised Socket” Nylon brake hose assemblies manufactured by PCA, between February 28, 2007, and October 13, 2022, were reported by PCA as the population of the recall. Approximately 1,662,246 MY 2008–2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, manufactured between May 17, 2007, and October 16, 2022, may have been equipped with the noncompliant brake hoses assemblies manufactured by PCA, as reported by Harley-Davidson as the population of the recall.

III. Noncompliance: The Petitioners explain that certain Nylon, and “Revised Socket” Nylon assemblies do not meet constriction, whip resistance, water absorption and whip resistance, brake fluid compatibility (BFC), and high temperature impulse (HTI) requirements, and certain PVC assemblies did not meet the constriction, expansion and burst strength, whip resistance, water absorption and whip resistance, tensile strength, water absorption and tensile strength, water absorption and burst strength, and high temperature impulse requirements. Therefore, the subject Nylon brake hose assemblies do not comply with paragraphs S5.3.1, S5.3.3, S5.3.7, S5.3.9 and S5.3.12 of FMVSS No. 106. The subject PVC brake hose assemblies do not comply with paragraphs S5.3.1, S5.3.2, S5.3.3, S5.3.4, S5.3.6, S5.3.7, and S5.3.12 of FMVSS No. 106.

IV. Rule Requirements: Paragraphs S5.3, S5.3.1, S5.3.2, S5.3.3, S5.3.4, S5.3.6, S5.3.7, S5.3.9, and S5.3.12 of FMVSS No. 106 include the requirements relevant to the petitions, and are broadly summarized herein. A hydraulic brake hose assembly must be capable of meeting the requirements when tested under the conditions specified in the standard and the applicable procedures of paragraph S6. Paragraph S5.3.1 pertains to the constriction requirement that every inside diameter of the brake hose assembly shall not be less than 64 percent of the nominal inside diameter of the brake hose. Paragraph 5.3.2 pertains to the expansion and burst strength requirement that the maximum expansion of a hydraulic brake hose assembly not exceed the values specified by Table 1 at the given psi.

The hydraulic brake hose assembly must then withstand a water pressure of 4,000 psi for 2 minutes without rupture, then not rupture at the less than 7,000 psi for a 1/8 inch hose or smaller or at less than 5,000 psi for a hose with a diameter larger than 1/8 inch. Paragraph S5.3.3 pertains to the whip resistance requirement that the brake hose assembly not rupture when subjected to a 35-hour continuous run on a flexing machine. Paragraph S5.3.4 pertains to the forces that a brake hose assembly must withstand without separation of the hose from its end fittings. Paragraph S5.3.6 pertains to the tensile strength requirement that the brake hose assembly shall withstand after immersion in water for 70 hours. Paragraph S5.3.7 pertains to water absorption and whip resistance, and requires the hose not to rupture when subjected to a 35-hour continuous run on a flexing machine after immersion in water for 70 hours. Paragraph S5.3.9 provides the requirements for BFC after the brake hose assembly has been exposed to brake fluid for a specified time at a specified temperature. These requirements include compliance with constriction, per S5.3.1, as well as withstanding water pressure of 4,000 psi for 2 minutes, and then shall not rupture at less than 5,000 psi. Paragraph S5.3.12 describes the HTI test, which requires the brake hose assembly to withstand pressure cycling, followed by a 2-minute, 4,000 psi pressure hold test, during which the hose shall not rupture, and then shall not subsequently burst at a pressure less than 5,000 psi.

V. Summary of the Petitioners’ Supplemental Petitions: The following views and arguments presented in this section, are the views and arguments provided by PCA. These views and arguments have not been evaluated by the Agency and do not reflect the views of the Agency. PCA and Harley-Davidson contend that the additional noncompliances identified since their prior filings are also inconsequential as they relate to motor vehicle safety.

On April 21, 2023, PCA submitted its second supplemental petition and a technical report in support of its petition for a decision of inconsequential noncompliance. PCA says that supplemental testing was performed on similar or affected brake hose assemblies and argues those test results support a determination of inconsequential noncompliance. PCA claims that the supplemental technical report shows that the subject noncompliances in the affected brake hose assemblies are inconsequential to motor vehicle safety because all of the noncompliant assemblies are “robust to

very severe conditions that exceed motorcycle lifetime demands with no adverse impact on brake performance.”

PCA says that in the contractor’s testing in support of its petitions and supplemental submissions, nearly 1,000 assemblies overall were subjected to testing which included: pressure and time sensitivity testing, accelerated durability pressure, accelerated durability suspension stroke testing, field inspections of assemblies for evidence of fatigue, master cylinder leaking testing, and dynamic response time testing. PCA says the test results show that the subject noncompliances, including in assemblies affected by multiple noncompliances, “presents no incremental risk to motor vehicle safety.”

PCA believes that the Agency’s 2022 decision² on a petition submitted by FCA US LLC further supports a finding of inconsequentiality for the subject noncompliance. PCA says that FCA US’s petition involved constricted brake hose assemblies for use in four-wheeled vehicle. PCA says the Agency denied FCA’s petition because, while any potential safety consequence resulting from FCA US’s noncompliance may not present itself initially, it can emerge over the service life of the product. PCA argues that this concern does not apply to the subject brake hose assemblies because PCA’s contractor conducted testing of the subject assemblies to “conditions far beyond what they would experience over a lifetime.” Furthermore, PCA says that the constriction level for FCA US’s noncompliance was 53 percent of the nominal inside diameter and PCA’s assemblies are closer to the 64 percent minimum required by FMVSS No. 106.

PCA adds that the Agency may have denied a 2001 petition by Federal Mogul that involved constricted brake hoses.³ Federal Mogul described testing in its petition however, PCA says that their testing “does not appear to have included any accelerated aging component” and the constriction present in the affected assemblies appears to be as low as 51.2 percent.

In addition to the decisions on petitions for inconsequential noncompliance PCA cited in its original petition, PCA says that the following decisions support a finding of inconsequentiality for the subject noncompliances:

² FCA US LLC, 87 FR 61432 (Oct. 11, 2022).

³ HCA notes that the Agency’s decision does not appear to be publicly available online, but Federal Mogul’s petition is available at <https://www.regulations.gov/document/NHTSA-2001-9956-0001>.

- Nissan North America, Inc., Grant of Petition for Determination of Inconsequential Noncompliance; 85 FR 39678 (July 1, 2020).

- Kolcraft Enterprises, Inc., Grant of Application for Determination of Inconsequential Noncompliance; 63 FR 24585 (May 4, 1998).

PCA concludes by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

On May 15, 2023, PCA submitted an addendum to its April 21, 2023, technical report. The technical report described testing that was in process and the addendum summarizes the completed testing and provides additional information concerning brake hoses that are affected by multiple noncompliances. PCA says that the completed testing supports the findings discussed in the prior technical reports.

On June 2, 2023, Harley-Davidson submitted its second supplemental petition and a second supplemental technical report in support of its petition. Harley-Davidson summarizes additional vehicle and brake hose assembly testing that took place after its initial technical report which Harley-Davidson believes further supports the granting of its petition. Further, Harley-Davidson expanded on its prior review of NHTSA's VOQ records, legal claims and suits, warranty data and customer contacts which it argues supports a determination of inconsequential noncompliance. In the second supplemental petition, Harley-Davidson adds that the Agency's 2006 decision on a petition involving a noncompliance with FMVSS No. 213, *Child Restraints*, which Harley-Davidson believes "highlight[s] the lack of direct correlation between the requirements for brake hose constriction and motorcycle safety in this specific vehicle application." (See *Grant of Petition for Determination of Inconsequential Noncompliance*, 67 FR 21798, May 1, 2002).

VI. Prohibition on sale, offer for sale, introduction or delivery for introduction of noncompliant motor vehicle equipment and vehicles: 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, any decision on this petition only applies to the subject motorcycles and brake hose assemblies that the Petitioners no longer controlled at the time when the Petitioners determined that the noncompliances existed. However, any decision on these petitions does not relieve equipment and 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 and brake hose assemblies under their control.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0113; Notice 2]

Mack Trucks, 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: Mack Trucks, Inc., (Mack Trucks), has determined that certain model year (MY) 2015-2023 Mack GU/GR Class 8 trucks and truck-tractors do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Mack Trucks filed an original noncompliance report dated November 1, 2022, and amended the report on November 3, 2022. Mack Trucks petitioned NHTSA on November 23, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Mack Trucks' petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (202) 366-5304.

SUPPLEMENTARY INFORMATION:

I. Overview: Mack Trucks determined that certain MY 2015-2023 Mack GU/GR Class 8 trucks and truck-tractors do not fully comply with paragraph S6.4.3(a) and Table V-b of FMVSS No.

108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108).

Mack Trucks filed an original noncompliance report dated November 1, 2022, and amended the report on November 3, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Mack Trucks petitioned NHTSA on November 23, 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*.¹

Notice of receipt of Mack Trucks' petition was published with a 30-day public comment period, on January 17, 2023, in the **Federal Register** (88 FR 2759). 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-2022-0113."

II. Vehicles Involved: Approximately 27,544 MY 2015-2023 Mack GU/GR Class 8 trucks and truck-tractors, manufactured between September 1, 2014, and September 30, 2022, are potentially involved:

III. Noncompliance: Mack Trucks explains that the subject vehicles are equipped with turn signal lamps that do not meet the visibility requirement at all angles specified by S6.4.3(a) and Table V-b of FMVSS No. 108. Based upon different axle positions and frame extension configurations, the forward turn signals on specific vehicles are not compliant with the 45 degree inboard and/or 15 degree downward angle visibility requirement.

IV. Rule Requirements: Paragraph S6.4.3 of FMVSS No. 108 includes the requirements relevant to this petition. A manufacturer is required to certify compliance of each lamp function to

¹ Mack Trucks' petition failed to include all of the necessary components of a petition pursuant to 49 CFR 556.4. The petition described the noncompliance, but failed to include any reasoning for why the noncompliance is inconsequential to safety. A petition is required to: "Set forth all data, views, and arguments of the petitioner supporting [the] petition." *Id.* § 556.4. Absent any reasoning, a petitioner cannot meet its burden of persuasion that a noncompliance is inconsequential to safety. Such an invalid petition does not require a response by the agency. Nevertheless, in this instance, the agency is publishing this notice to help ensure Mack Trucks and other petitioners are aware that a petition for inconsequentiality must be properly justified. In the future, the agency may reject such incomplete petitions without further consideration.