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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0082; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain model year (MY) 2019–2020 Audi A6, MY 2019–2020 Audi A7, and MY 2020 Audi A6 Allroad motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or less*. Volkswagen filed a noncompliance report dated May 20, 2020. Volkswagen simultaneously petitioned NHTSA on May 20, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Volkswagen'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: Volkswagen has determined that certain MY 2019–2020 Audi A6, MY 2019–2020 Audi A7, and MY 2020 Audi A6 Allroad motor vehicles do not fully comply with the requirements of paragraph S4.3(c) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or Less* (49 CFR 571.110). Volkswagen filed a noncompliance report dated May 20, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Volkswagen simultaneously petitioned NHTSA on May 20, 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 Volkswagen's petition was published with a 30-day public comment period, on October 23, 2020, in the **Federal Register** (85 FR 67605). 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-2020-0082."

II. Vehicles Involved: Approximately 652 MY 2019–2020 Audi A6, MY 2019–2020 Audi A7, and MY 2020 Audi A6 Allroad motor vehicles, manufactured between September 24, 2018, and May 14, 2020, are potentially involved.

III. Noncompliance: Volkswagen explains that the noncompliance is that the subject vehicles are equipped with a tire placard label (located on the driver's side B-pillar) that was incorrectly printed to include cold tire inflation pressure information for a spare tire that is not present in the affected vehicles and therefore, does not meet the requirements specified in paragraph S4.3(c) of FMVSS No. 110. Specifically, since the subject vehicles are not equipped with a spare tire, the tire placard label should contain the word "none" in the cold tire inflation pressure section.

IV. FMVSS Requirements: Paragraph S4.3(c) of FMVSS No. 110 includes the requirements relevant to this petition. If no spare tire is provided, the word "none" must replace the manufacturer's recommended cold tire inflation pressure.

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

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

Volkswagen contends that the subject noncompliance does not affect the subject vehicle's drivability, safety, or tire wear because the incorrect information provided on the tire placard label pertains to a spare tire that is not equipped on the vehicle. Volkswagen reports that as of May 15, 2020, the

subject noncompliance has been corrected in production. Volkswagen says that the affected vehicles held at the factory, as well as unsold vehicles in dealer inventory, will be corrected before being sold. Volkswagen adds that it is unaware of any field or customer complaints related to the subject noncompliance, nor is it aware of any accidents or injuries occurring as a result of the subject noncompliance.

Volkswagen concludes by 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.

Volkswagen's complete petition and all supporting documents are available on <https://www.regulations.gov> by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in an FMVSS is substantial and difficult to meet. Accordingly, NHTSA has not found many such noncompliances inconsequential.¹

In determining the 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.² 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.³ Further, because each

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² 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).

³ 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 defec

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inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

Volkswagen explains that the noncompliance is that the vehicle placard on the subject vehicles states a cold inflation pressure for the spare tires, but no spare tire was equipped and the placard should state “none.” The intent of FMVSS No. 110 is to ensure that vehicles are equipped with tires appropriate to handle maximum vehicle loads and to prevent overloading.

FMVSS No. 110 requires that the original tires installed on a vehicle and the tires listed on the vehicle placard be appropriate for the maximum loading conditions of the vehicle. However, the vehicles at issue are neither intended to have a spare tire or be equipped with a spare tire even though a cold inflation pressure is erroneously listed for the spare tire on the vehicle placard with no other information for the spare tire size. Since there is no spare tire size listed on the placard, the subject vehicles would not be at risk of being overloaded with only a cold inflation pressure information listed.

Given the above factors, NHTSA agrees with Volkswagen that the subject noncompliance is inconsequential to motor vehicle safety and that there is no risk of possible underinflating or overloading spare tires that are not present in the subject vehicles.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted, and Volkswagen 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,

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”.

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 Volkswagen 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 vehicles under their control after Volkswagen notified them that the subject noncompliance existed. (Authority: 49 U.S.C. 30118, 30120; 49 CFR part 556, 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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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

I. Overview

EMV has determined that certain MY 2018 and MY 2019 ElectraMeccanica SOLO motorcycles do not fully comply