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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0145; Notice 2]

KBC 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: KBC America, Inc. "KBCA" has determined that certain motorcycle helmets manufactured by KBC Corporation for Harley-Davidson as Harley-Davidson brand helmets do not fully comply with paragraph S5.6 of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. KBCA has filed an appropriate report dated December 12, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Claudia Covell, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5293, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. KBCA's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), KBCA submitted a petition for an exemption from the notification and remedy

requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of KBCA's petition was published, with a 30-day public comment period, on June 6, 2014 in the Federal Register (79 FR 32817). One comment was received. In that comment, Harley-Davidson Motor Company reiterated KBCA's points supporting their belief that the noncompliance is inconsequential to motor vehicle safety. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2013-0145."

II. Helmets Involved: Affected are approximately 566 Jet model helmets that KBC Corporation manufactured in December 2012 for Harley Davidson, who in turn marketed these helmets under its own brand by the model name "Black Label Retro $\frac{3}{4}$."

III. Noncompliance: KBCA explains that the subject helmets fail to fully comply with the requirements of S5.6.1(e) of FMVSS No. 218 that was in effect on the date of manufacture of these helmets because the goggle strap holders on the rear of the helmets can obscure the DOT certification label from view.

IV. Rule Text: Paragraph S5.6.1(e) of FMVSS No. 218 requires in pertinent part:

S5.6.1 Each helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or any other permanent part, with the following: ...

(e) The symbol DOT, constituting the manufacturer's certification that the helmet conforms to the applicable Federal motor vehicle safety standards. This symbol shall appear on the outer surface, in a color that contrasts with the background, in letters at least 3/8 inch (1 cm) high, centered laterally with the horizontal centerline of the symbol located a minimum of 1 1/8 inches (2.9 cm) and a maximum of 1 3/8 inches (3.5 cm) from the bottom edge of the posterior portion of the helmet.

V. Summary of KBCA's Analyses: KBCA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. KBCA believes that the subject helmets comply with the performance requirements of FMVSS No. 218 and that neither the presence of the strap holder nor the fact that it can obscure the DOT label affects the helmet's ability to protect the wearer in the event of a crash.
2. KBCA states that other than the subject noncompliance the DOT label on the subject helmets comply with the requirements of FMVSS No. 218.
3. KBCA also believes that while the DOT label is not visible when the strap holder is fastened, a user can easily view the label by unfastening the strap holder to confirm that the helmet has been certified and thus

complies with the requirements set forth in FMVSS No. 218.

4. KBCA further believes that if their company were required to do a recall of the subject helmets, it would be likely that a very low percentage of helmets would be returned, if any, and that in doing so would leave the owners without a helmet while the subject helmets are retrofitted with a new label.
5. KBCA expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance regarding other products that have incorrect or missing label information required by other FMVSS's.

KBCA has additionally informed NHTSA that it no longer manufactures the subject helmets.

In summation, KBCA believes that the described noncompliance of the subject helmets is inconsequential to motor vehicle safety, and that its petition, to exempt KBCA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

VI. NHTSA'S DECISION:

NHTSA's Analysis of KBCA's Petition:

Because the goggle strap on this helmet can cover the certification label and prevents it from being easily read, KBCA acknowledges and NHTSA agrees that the subject helmets do not comply with the following language of Paragraph S5.6.1(e) of FMVSS No. 218:

S5.6.1 Each helmet shall be **labeled** ... in a manner such that the **label(s) can be read easily** ...with the following:
...

(e) The symbol DOT... This symbol **shall appear on the outer surface**...

The certification label indicates that the manufacturer has certified the helmet to meet or exceed all requirements of FMVSS No. 218. FMVSS No. 218 requires the certification label be placed in a specified location so that it is readily visible. Being visible to consumers is important so that consumers can ensure motorcycle helmets they purchase are certified to the standard. In addition, law enforcement personnel need to be able to easily read certification labels to enforce motorcycle helmet laws. This point was recently discussed in a Notice of Proposed Rulemaking¹ issued by NHTSA.

KBCA raises several points in support of its request to be exempt from the notification and remedy requirements for this helmet. KBCA believes that a very low percentage of helmets would be returned if a recall were conducted. In addition, they

¹ 73 FR 57297 published October 2, 2008

believe conducting a recall would leave owners without a helmet while the subject helmets are retrofitted with a new label. NHTSA notes that anticipating a low recall completion rate is no justification for not conducting a notification and remedy campaign. Furthermore, NHTSA has worked with many manufacturers who have devised strategies to minimize customers' inconvenience while having their recalled products remedied.

KBCA states and NHTSA agrees that the presence of the strap holder which obscures the DOT label does not affect the helmet's ability to protect the wearer in the event of a crash if that helmet meets or exceeds the performance requirements of FMVSS No. 218. In this instance, KBCA has certified this helmet and states in their petition that this helmet complies with all aspects of the standard other than the aspect for which it is requesting relief.

KBCA points out that when the goggle strap holder is unfastened, the helmet certification label can be read easily. Consumers, who might be asked by law enforcement personnel about the certification of this helmet, would be able to unfasten the goggle strap holder to reveal the certification label which conforms in content and location to the requirements of FMVSS No. 218.

KBCA expressed its belief that in similar situations NHTSA has granted petitions for inconsequential noncompliance

regarding other products that have incorrect or missing label information required by other FMVSS's. NHTSA responds that the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts of each case.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that KBCA has met its burden of persuasion and that in this instance, the subject FMVSS No. 218 noncompliance is inconsequential to motor vehicle safety. Accordingly, KBCA's petition is hereby granted and KBCA is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

However, a recent publication of changes to FMVSS No. 218 became effective on May 13, 2013 and allowed helmets manufactured on or after May 13, 2013 to display the certification label in a wider range of locations and therefore accommodate a variety of helmet designs. Along with the recently published changes came an emphasis on the importance of label visibility to law enforcement. For these reasons and others, NHTSA may not view future, similar requests for inconsequential non-compliance as inconsequential to safety.

NHTSA also 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 allows 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 helmets that KBCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant helmets under their control after KBCA 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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Office of Vehicle Safety Compliance

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