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CLIENT/MATTER NUMBER  
-0101

March 28, 2019

**BY FEDEX**

Heidi King  
Deputy Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Re: Petition for Determination of Inconsequential Noncompliance:  
Arai Helmet, Inc.

Dear Ms. King:

On behalf of Arai Helmet, Inc., I am submitting the enclosed Petition for Determination of Inconsequential Noncompliance pursuant to the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §§30118(d) and 30120(h), and 49 C.F.R. §§556.1-556.9. As discussed in the petition, Arai requests an exemption from the notice and remedy requirements of 49 U.S.C. §§30118 and 30120 on the grounds that the noncompliance to which this petition relates — motorcycle helmets with discrete size labels that may not be permanently attached — is inconsequential to motor vehicle safety.

Please contact me if you have any questions or need additional information.

Sincerely,

R. Nicholas Englund

RNE:krb  
Enclosures

cc: NHTSA – Recall Management Division  
C. Grigorian (Foley & Lardner LLP)

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4816-2172-8400.1  
ES19-001091

**Arai Helmet, Inc.**  
**Petition for Determination of Inconsequential Noncompliance**  
**March 28, 2019**

Arai Helmet, Inc. (Arai), a corporation organized under Pennsylvania law with its principal business address at 7020 Snowdrift Road Suite103, Allentown, Pennsylvania 18106, submits this 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.

**Background**

As described in Arai's March 6, 2019 Part 573 noncompliance report (NHTSA No. 19E-021), Arai determined that 24 Arai Corsair X Mamola Edge, size small, motorcycle helmets manufactured between June 29, 2018 and January 31, 2019, failed to comply with 49 CFR 571.218 (Federal motor vehicle safety standard or FMVSS 218). *See* Exhibit 1 (Copy of 573 Report). As described in the noncompliance notification, these helmets do not comply with the labeling requirement of the helmet's discrete size of FMVSS 218 S5.6.1(b).

Under FMVSS 218 S5.6.1(b), the discrete size of the motorcycle helmet must be listed on a label separate from the certification label and "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." The discrete size label on certain Arai helmets may not be permanently attached and, as such, they fail to comply with the requirements of FMVSS 218, *Motorcycle Helmets*. Arai based its determination, in part, on preliminary test results NHTSA's Office of Vehicle Safety Compliance shared with Arai. The Agency notified Arai by e-mail that the helmet complied with all performance requirements of FMVSS 218, but the discrete size label did not appear to be permanently attached. *See* Exhibit 2 (Copy of Feb. 2, 2019 E-mail from OVSC).

**Discussion**

Under the Safety Act, each FMVSS promulgated by NHTSA must be "practicable, meet the need for motor vehicle safety, and be stated in objective terms." 49 U.S.C. § 30111(a). The Safety Act defines "motor vehicle safety" as follows:

the performance of a motor vehicle or motor vehicle equipment in a way that protect the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

49 U.S.C. § 30102(a)(9).

The Safety Act exempts manufacturers from the Safety Act's notice and remedy requirements when NHTSA determines that a noncompliance is inconsequential as it relates to

motor vehicle safety. *See* 49 U.S.C. §§ 30118(d) and 30120(h). These provisions demonstrate Congress’s acknowledgement that there are cases where a vehicle or equipment does not comply with a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified. NHTSA has stated that the relevant consideration in evaluating an inconsequentiality petition is “whether an occupant who is affected by the noncompliance is likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle.” 69 Fed. Reg. 19897, 19900 (April 14, 2004).

Here, the subject motorcycle helmets comply with all the performance standards under FMVSS 218 and all the labeling requirements of FMVSS 218, except that the discrete size label required under S5.6.1(b) does not appear to be permanent. Under FMVSS 218, the discrete size means “a numerical value that corresponds to the diameter of an equivalent circle representing the helmet interior in inches ( $\pm 0.25$  inch) or to the circumference of the equivalent circle in centimeters ( $\pm 0.64$  centimeters).” 49 CFR 571.218 S4 *Definitions*.

Arai understands that NHTSA’s reason for requiring the helmet’s discrete size is primarily to determine the appropriate headform for conducting the performance testing of FMVSS 218 S6.1. In promulgating the discrete size label, NHTSA explained that it added the discrete size requirement to the standard to “eliminate enforcement problems.” 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). Indeed, NHTSA explained its reasoning in the rulemaking for specifying the discrete size.

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). Because the primary reason for requiring the discrete size is related to enforceability of the performance test, Arai believes that a label that is present on the helmet at the time of NHTSA’s testing – but that may not be permanently attached to the helmet – does not expose the user of the noncompliant helmet to a “significantly greater risk” than to a user of a compliant helmet.

First, NHTSA tested Arai's helmets under FMVSS 218 and its testing demonstrated that these helmets meet the performance standards. The discrete label helmet tested by NHTSA permitted the Agency to select the correct headform for the Arai Corsair-X, size Small, helmet that was tested. Thus, the primary purpose of the discrete size label – specifically enforceability of NHTSA's objective test standards – was met by the noncompliant helmet.

Second, NHTSA explained that while the discrete label would provide “more precise information to customers,” it acknowledged that generic sizes could also be used on helmets. This indicates that the value to customers of a “more precise” helmet size serves limited safety benefits. Indeed, NHTSA did not claim the discrete size served a safety purpose. Rather it stated that “discrete size labelling requirement will both improve customer information regarding the size of the helmet and avert potential enforceability problems.” 76 Fed. Reg. 28145.

Third, the noncompliance arose from the permanency of the label, not its content. The label would be present, at a minimum, to the first purchaser. Further, another label showing the discrete size of the helmet is sewn into a tag in the headliner. See Exhibit 3 (Photograph of Headliner Tag). Moreover, the helmet's packaging provides the size information and secondhand purchasers could try on the helmet to determine whether it properly fit. Accordingly, the consumer would have sizing information available to determine the correct helmet size for purchase.

In a petition related to a noncompliance that resulted from a goggle strap potentially obscuring the DOT label of a motorcycle helmet, NHTSA agreed that the noncompliance was inconsequential to motor vehicle safety. *See* 79 Fed. Reg. 47720 (Aug. 14, 2014). NHTSA reasoned 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.” *Id.* at 47721. The same reasoning applies here. Although the discrete size label does not appear to be permanently attached to the helmet, this noncompliance does not affect the helmet's ability to protect the wearer in the event of a crash. The subject helmets meet the performance criteria of FMVSS 218 and consumers can determine the size of the helmet from the packaging, the tag sewn into the headliner, and the ability to try on the helmet.

**Conclusion**

To summarize, the subject helmets satisfied NHTSA's primary concern, enforceability, evidenced by NHTSA's ability to conduct the performance tests on the helmets. The helmets 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 believes the noncompliance is inconsequential to motor vehicle safety and respectfully requests that NHTSA exempt Arai from the notice and remedy requirements of the Safety Act.

Respectfully submitted,

Arai Helmet, Inc.

# Part 573 Safety Recall Report

# 19E-021

**Manufacturer Name :** Arai Helmets, Inc.

**Submission Date :** MAR 28, 2019

**NHTSA Recall No. :** 19E-021

**Manufacturer Recall No. :** NR



## Manufacturer Information :

**Manufacturer Name :** Arai Helmets, Inc.

**Address :** 7020 Snowdrift Rd.

Suite 103 Allentown PA 18106

**Company phone :** 610-366-7220

## Population :

**Number of potentially involved :** 24

**Estimated percentage with defect :** 100 %

## Equipment Information :

**Brand / Trade 1 :** Arai Helmet

**Model :** Corsair-X

**Part No. :** 685311158956

**Size :** Small

**Function :** Helmet

**Descriptive Information :** Arai Corsair-X size small motorcycle helmets

**Production Dates :** JUN 29, 2018 - JAN 31, 2019

## Description of Noncompliance :

**Description of the Noncompliance :** The size labels on certain Arai Corsair-X helmets are not attached "permanently." As such, these helmets fail to comply with the requirements of Federal motor vehicle safety standard (FMVSS) No. 218, Motorcycle Helmets.

**FMVSS 1 :** 218 - Motorcycle helmets

**FMVSS 2 :** NR

**Description of the Safety Risk :** Arai believes this noncompliance is inconsequential to motor vehicle safety and intends to file a petition under 49 CFR Part 556.

**Description of the Cause :** The label used to convey the size of the helmet was not permanently secured to the helmet as required by FMVSS 218 S5.6.1(b).

**Identification of Any Warning that can Occur :** None

## Supplier Identification :

**Component Manufacturer**

Name : NR  
Address : NR  
NR  
Country : NR

**Chronology :**

Feb. 2, 2019: Arai received an e-mail from NHTSA's Office of Vehicle Safety Compliance advising that preliminary test results performed by the Agency's contractor indicated that the discrete size label on the subject helmets did not appear to be permanent. NHTSA indicated that a draft test report would be forthcoming.

Feb. 21, 2019: In a phone call with NHTSA, the investigator explained that the Agency was still finalizing the test report, but confirmed that the final test report would indicate that the helmet did not conform to the labeling requirements for the discrete size, although the helmets passed the performance requirements of the standard.

Feb. 21 – Feb. 27, 2019: Arai conducted an internal evaluation of the helmet sizing labels on the subject helmets.

Feb. 27, 2019: Based upon its review of the matter, Arai determined that size "small" Corsair X helmets did not conform to FMVSS 218 S5.6.1.

Arai is not aware of any injuries or accidents related to this noncompliance.

**Description of Remedy :**

Description of Remedy Program : Arai intends to submit a petition under 49 CFR Part 556, Exemption for Inconsequential Defect or Noncompliance.

How Remedy Component Differs from Recalled Component : Arai intends to submit a petition under 49 CFR Part 556, Exemption for Inconsequential Defect or Noncompliance.

Identify How/When Recall Condition was Corrected in Production : Arai will implement a new permanently attached label into current production.

**Recall Schedule :**

Description of Recall Schedule : Arai is submitting a petition under Part 556, Exemption for Inconsequential Defect of Noncompliance.

Planned Dealer Notification Date : NR - NR

Planned Owner Notification Date : NR - NR

**Purchaser Information :**

The following manufacturers purchased this defective/noncompliant equipment for possible use or installation in new motor vehicles or new items of motor vehicle equipment:

Name : NR

Address : NR

NR

Country : NR

Company Phone : NR

\* NR - Not Reported