



U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

11401 Woodlawn Avenue, N.W.
Washington, D.C. 20008

MAR 14 2012

BY FEDERAL EXPRESS

Mr. Don Snyder, CEO
Snyder Systems, Inc./Wildfire Motors
11 Technology Way
Steubenville, OH 43952

Re: MY 2009 Wildfire WF650-C Motorcycles, Recall No. 12V-031

Dear Mr. Snyder:

We have received Wildfire Motors' (Wildfire) Second Amended Part 573 report of noncompliance (Second Amended Part 573 Report) for model year (MY) 2009 Wildfire WF650-C motorcycles. By this letter, we are informing you of certain matters and requesting that you address the following issues.¹

1. Acknowledgement of Second Amended Part 573 Report

This letter serves to acknowledge Wildfire's Second Amended notification to the National Highway Safety Administration (NHTSA) of a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 122, "Motorcycle Brake Systems," for MY 2009 Wildfire WF650-C motorcycles.

Wildfire previously submitted a Part 573 report of noncompliance and an Amended Part 573 report of noncompliance detailing certain noncompliances with FMVSS No. 122. This action was assigned Recall No. 12V-031 by NHTSA's Recall Management Division (RMD). On February 20, 2012, Wildfire submitted a Second Amended Part 573 Report. In this Second Amended Part 573 Report, Wildfire states that the service brakes on MY 2009 WF650-C motorcycles fail to stop the motorcycle from 30 m.p.h. within a stopping distance not exceeding 54 feet as prescribed under FMVSS No. 122. The consequence of this noncompliance is an increased risk of a crash. Wildfire indicated that, as a remedy, it will replace the front and rear brake shoes with improved friction front and rear brake shoes. Wildfire also indicated that it "will test the service brakes of each motorcycle to ensure each stop within the DOT prescribed distances." This additional noncompliance with FMVSS No. 122 will also be included as part of Recall No. 12V-031.²

¹ Please note that these may not be the only issues with your Second Amended Part 573 Report. NHTSA's Recall Management Division (RMD) may, by separate letter, follow up with you on certain items.

² To assist you in complying with the requirements for the recall, please review the *Safety Recall Compendium*.

2. Expected Date to Implement Remedy

We note that your Second Amended Part 573 Report indicates that the replacement parts are expected to arrive from China in approximately 8 weeks. However, you have not indicated when you expect that the remedy for the recall will be ready to be implemented. Under 49 CFR 573.6(c)(8)(i), you are required to furnish a description of your plan for remedying the noncompliance. You will also need this information for your notification letters.³ *Please provide a date when you anticipate launching the recall.*

3. Technical Aspects of Your Remedy Program

With respect to the noncompliance with FMVSS No. 122 S5.2.1, you have now described the remedy in terms of repair. The letter from NHTSA's Office of Vehicle Safety Compliance (OVSC) dated February 9, 2012 requested that you provide information (within 5 working days) about the technical aspects of your program for remedying the noncompliance. You have stated that you will replace the front and rear brake shoes with improved friction front and rear brake shoes. Please provide additional information about the technical aspects of your program for remedying the noncompliance.

In your Second Amended Part 573 Report, you indicated that Wildfire Motors will test the service brakes of each motorcycle to ensure each stops within the DOT prescribed distances. You should expect that NHTSA will request your stopping distance testing information for these tests.

Once you have repaired the vehicle that OVSC previously tested (MY 2009 Wildfire WF650-C with VIN LTDKDVZ179TWF0221), including verifying that affected vehicles, as remedied, comply with FMVSS No. 122, please note that OVSC plans to retest the vehicle to all applicable requirements of FMVSS No. 122. Therefore, OVSC's testing may cover not only the four noncompliances with FMVSS No. 122 identified by Wildfire that are the subject of Recall No. 12V-031, but may also extend to the other requirements of FMVSS No. 122. As OVSC stated in its letter dated February 9, 2012, "Please note that any repair you make to the MY 2009 Wildfire WF650-C will need to bring the vehicle into complete compliance with FMVSS No. 122 beyond the first effectiveness stopping distance requirements in FMVSS No. 122 S5.2.1 and the three noncompliances with FMVSS No. 122 identified in your January 31, 2012 Part 573 report. Additional requirements of FMVSS No. 122 that must be met include: S5.3, *Service brake system – second effectiveness*; S5.4, *Service brake system – fade and recovery*; S5.5, *Service*

A Guide for the Reporting, Notification, and Remedy of Motor Vehicle and Motor Vehicle Equipment in Accordance with Title 49 of the United States Code, Chapter 301 and Supporting Federal Regulations, available at <http://www-odi.nhtsa.dot.gov/cars/problems/recalls/documents/recompendium.pdf>.

³ See 49 CFR 577.5(g)(1)(ii) (stating that the owner notification letter must include the "earliest date on which the defect or noncompliance will be remedied without charge. In the case of remedy by repair, this date shall be the earliest date on which the manufacturer reasonably expects that dealers or other service facilities will receive necessary parts and instructions.") See also 49 CFR 577.13(a) (stating that notification to dealers and distributors shall include a complete description of the recall remedy, and the estimated date on which the remedy will be available. If this information is not available at the time of the original notification, it must be provided as it becomes available).

brake system – final effectiveness (includes S5.5.2, Hydraulic service brake system – partial failure), S5.6, Parking brake system; and S5.7, Service brake system – water recovery.”

As noted in OVSC’s February 9, 2012 letter, “once your repairs are complete, we may request the data underlying your certification that the vehicle complies with all applicable FMVSS.” You should expect that NHTSA will request this data.

If the vehicle does not pass the compliance tests, the Agency may take further action. The Agency may decide to hold a public hearing on whether Wildfire has reasonably met the remedy requirements under 49 U.S.C. § 30120. *See* 49 CFR 557.6(d) and 49 CFR 557.7. Such a decision would be published in the Federal Register and a public hearing would be conducted. If such public hearing is held, it may result in a final decision that you have not reasonably met your obligation to remedy the vehicles, and may result in an order compelling you to take specified action.

Also, please note 49 U.S.C. § 30120(c)(1) provides, “If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—(A) replace the vehicle or equipment without charge with an identical or reasonably equivalent vehicle or equipment; or (B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.”

4. Notification to Owners, Purchasers, and Dealers of the MY 2009 WF650-C

In your Second Amended Part 573 Report, you indicated that you “will send out notifications to all purchasers of the WF650-C as soon as the replacement parts arrive from China and are available for the replacement which is expected to be in approximately 8 weeks.” Please note that under 49 U.S.C. §§ 30118(c) and 30119(d), you are required to provide notifications to the *owners, purchasers and dealers* of the vehicle. This notification shall be given within a reasonable time. 49 U.S.C. § 30119(c). Under 49 CFR 573.6(c)(8)(ii), your report of noncompliance is to have the “estimated date(s) on which [the manufacturer] will begin sending notifications to owners, and to dealers and distributors that there is a . . . noncompliance and that a remedy without charge will be available to owners, and the estimate date(s) on which it will complete such notifications (if different from the beginning date). If a manufacturer subsequently becomes aware that either the beginning or the completion dates reported to the agency for any of the notifications will be delayed by more than two weeks, it shall promptly advise the agency of the delay and the reasons therefore, and furnish a revised estimate.” *Please provide the estimated date on which you will begin sending notifications.*

Please note you are required to submit a draft owner notification letter to RMD no less than five business days prior to mailing it to customers. *See* 49 CFR 577.5(a).

NHTSA believes it is critically important that owners be informed promptly of failures of their products to meet minimum safety standards, even in those cases where the manufacturer may not have completed development and testing of its repair remedy or may not have sufficient parts to

be able to remedy all the recalled products for all owners immediately. NHTSA generally expects that the owners, purchasers, and dealers will be notified of a noncompliance within 60 days of a manufacturer's notification to NHTSA of a noncompliance in those vehicles, irrespective of parts availability. In the event a manufacturer is not prepared at that time to launch the free remedy, it will need to re-notify owners once it is ready.

We suggest that while you are waiting for the parts to arrive from China, that you continue with your actions in preparation for your recall campaign, including drafting the owner letter for RMD's review and compiling a list of registered owners.

Pursuant to 49 U.S.C. § 30166(e), Wildfire is required to provide a report containing the following information:

1. Provide the date when you anticipate launching the recall designated as 12V-031;
2. Provide additional information about the technical aspects of your program for remedying the noncompliance with FMVSS No. 122 S5.2.1. The information shall include, but not be limited to, the following specifications for the "improved friction front and rear brake shoes" identified in your Second Amended Part 573 Report. If the response is different for the new brake shoes to be installed on the front and rear axles and for individual brake shoes, provide separate information for each:
 - a. Nominal diameter, i.e., for 10 inch diameter drum brakes, and width of friction material, i.e., 2 inches;
 - b. Any identification markings on the friction materials, i.e., on the outboard edge (thickness) of the lining material, and brake shoes, i.e., on the shoe web;
 - c. The method to assure proper lining adjustment i.e., clearance to the drum.
3. The method by which compliance to all the requirements of FMVSS is to be determined;
4. Provide the estimated date on which you will begin sending notification letters; and
5. Provide copies of notification letters to NHTSA's Recall Management Division.

Failure to respond promptly and fully to this letter may be construed as a violation of 49 U.S.C. § 30166, which could subject Wildfire to civil penalties pursuant to 49 U.S.C. § 30165. Under 49 CFR 578.6(a)(3), "A person who violates section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$6,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$17,350,000."

We request that you provide all of the requested information within 5 working days. Address your response to:

U.S. Department of Transportation, NHTSA/ODI
Attn: Jennifer Timian, Room W48-302
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

I request and suggest that you also send an electronic copy of your response to me at Jennifer.timian@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Timian', with a horizontal line extending to the right.

Jennifer Timian
Chief, Recall Management Division
Office of Defects Investigation

cc: Harry Thompson, Chief, Vehicle Crash Avoidance Division, OVSC
Stu Siegel, Engineer, Vehicle Crash Avoidance Division, OVSC
Sarah Sorg, Trial Attorney, Office of Chief Counsel