



**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2017-0071; Notice 2]**

**Sumitomo Rubber Industries, Ltd., Grant of Petition for Decision of Inconsequential Noncompliance**

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

**ACTION:** Grant of petition.

**SUMMARY:** Sumitomo Rubber Industries, Ltd. (SRI), on behalf of itself and its subsidiary Sumitomo Rubber North America, Inc. (SRNA), have determined that certain Falken truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles*. SRI filed a noncompliance report dated June 20, 2017. SRI also petitioned NHTSA on July 10, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**FOR FURTHER INFORMATION CONTACT:** Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5310, facsimile (202) 366-5930.

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** SRI, on behalf of itself and its subsidiary SRNA, have determined that certain Falken truck tires do not fully comply with paragraph S6.5(f) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles* (49 CFR 571.119). SRI filed a noncompliance report dated June 20, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. SRI also petitioned NHTSA on July 10, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, 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.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 22, 2017, in the **Federal Register** (82 FR 44488). No comments were received. 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-2017-0071."

**II. Tires Involved:** Approximately 5,408 Falken truck tires (Model RI151), size 225/70R19.5, manufactured between October 17, 2016, and April 28, 2017, are potentially involved.

**III. Noncompliance:** SRI explains that the noncompliance is that the number of plies indicated on the sidewall of the subject

tires do not match the actual number of plies in the tire construction, and therefore, do not meet all applicable requirements specified in paragraph S6.5(f) of FMVSS No. 119. Specifically, the tires are marked with "TREAD 5 PLYS STEEL" whereas the correct marking should be "TREAD 4 PLYS STEEL."

**IV. Rule Requirements:** Paragraph S6.5 of FMVSS No. 119, titled "Tire Markings" includes the requirements relevant to this petition:

- Each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of paragraph S6.5.
- The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area.

**V. Summary of SRI's Petition:** As background, On June 12, 2017, SRI discovered that a population of 5,408 Falken brand truck tires, Model RI151, size 225/70R19.5 128/126L, manufactured from October 17, 2016 through April 28, 2017 at the company's plant in Miyazaki, Japan, were marked with the incorrect number of plies. On July 13, 2017, SRNA was informed of the marking error, shipments of the subject tires were halted, and the company determined that the subject tires failed to comply with the tire labeling requirements of Federal motor vehicle safety standard (FMVSS) No. 119, S6.5. Specifically, the subject tires were incorrectly marked "TREAD 5 PLYS STEEL," although they should

have been marked "TREAD 4 PLIES STEEL." Accordingly, these tires do not conform to the marking requirements of FMVSS No. 119, S6.5. The subject tires comply with the performance requirements and other marking requirements of FMVSS No. 119.

SRI submitted a Part 573 noncompliance report on June 20, 2017. NHTSA Recall No. 17T-012. SRI corrected the production molds. SRI began manufacturing correct versions of these tires on June 17, 2017.

SRI described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, SRI submitted the following reasoning:

Under the Safety Act, each Federal motor vehicle safety standard promulgated by the National Highway Traffic Safety Administration (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:

"the performance of a motor vehicle or motor vehicle equipment in a way that protects 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)(8) (emphasis added).

The Safety Act exempts manufacturers from the Safety Act's notice and remedy requirements when the Secretary of Transportation determines that a defect or noncompliance is inconsequential as it relates to motor vehicle safety. See 49 U.S.C. §30118(d). Section 30118(d) demonstrates Congress's acknowledgment that there are cases where a manufacturer has failed to 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) (emphasis added).

In the context of tires specifically, the agency has similarly stated that it "believes that one measure of inconsequentiality to motor vehicle safety is that there is no effect of the noncompliance on the operational safety of vehicles on which the tires are mounted. Another measure of inconsequentiality ... is the safety of people working in the tire retread, repair and recycling industries." See 72 Fed. Reg. 18210 (April 17, 2017) (granting petition for determination of

inconsequential noncompliance with respect to SRI tires marked with the incorrect number of plies).

We believe the labeling noncompliance at issue here is inconsequential to motor vehicle safety. The subject Falken tires were manufactured as designed and meet or exceed all applicable FMVSS No. 119 performance standards. Furthermore, all of the sidewall markings related to tire service (load capacity, corresponding inflation pressure, etc.) are correct and the tires correctly show that they contain steel plies. SRI does not believe the mislabeling of these tires presents a safety concern for consumers or retreading and recycling personnel. As noted above, the affected tire mold has been corrected and tires produced on and after June 17, 2017, are marked with the correct number of plies.

NHTSA has previously granted petitions involving similar noncompliances. In the most recent of these, the agency explained:

"Although tire construction affects the strength and durability of tires, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most

consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire."

See 82 FR 18210 (April 17, 2017).

Regarding potential safety risks to the tire service industry, the agency concluded that a misstatement of the number of plies "will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, because the sidewall markings indicate that some steel plies exist in the tire sidewall, this potential safety concern does not exist." As noted above, the markings on the subject tires correctly indicate that they contain steel plies (although the number is misstated as 5 instead of 4).

NHTSA also granted similar petitions involving tires manufactured by Cooper Tire and SRI (Dunlop). See 74 Fed. Reg. 10804 (March 12, 2009) (granting petition submitted by SRI where tires were labeled "Tread 3 Polyester + 2 Steel," whereas the correct marking should have been "Tread 2 Polyester + 2 Steel+ 2 Polyester"); and 82 Fed. Reg. 17075 (April 7, 2017) (granting petition submitted by Cooper Tire & Rubber Company where tires were marked "TREAD 1 PLY NYLON + 2 PLY STEEL + 2 PLY POLYESTER," whereas the correct marking should have been "TREAD 1 PLY NYLON+ 2 PLY STEEL+ 1 PLY POLYESTER."

SRI is not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject condition.

SRI concluded by expressing the belief 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.

**NHTSA'S DECISION:**

*NHTSA'S Analysis:* The agency agrees with SRI that the noncompliance is inconsequential to motor vehicle safety. The agency believes that one measure of inconsequentiality to motor vehicle safety is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. Another measure of inconsequentiality which is relevant to this petition is the safety of people working in the tire retread, repair and recycling industries.

Although tire construction affects the strength and durability of tires, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information

such as the load capacity, maximum inflation pressure, tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency also believes the noncompliance will have no measureable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, because of the sidewall marking indicate that some steel plies exist in the tire sidewall, this potential safety concern does not exist.

*NHTSA'S Decision:* In consideration of the foregoing, NHTSA finds that SRI has met its burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, SRI's petition is hereby granted and SRI 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, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that SRI no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after SRI 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)

**Claudia Covell,**

*Acting Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

[FR Doc. 2018-05983 Filed: 3/23/2018 8:45 am; Publication Date: 3/26/2018]