



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0013; Notice 2]

### Michelin North 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:** Michelin North America, Inc. (MNA), has determined that certain BFGoodrich All-Terrain T/A KO2 replacement tires do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. MNA filed a noncompliance report dated November 13, 2018, and subsequently petitioned NHTSA on December 10, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of MNA's petition.

**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:

MNA has determined that certain All-Terrain TA KO2 tires do not comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). MNA filed a noncompliance report dated November 13, 2018, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned

NHTSA on December 10, 2018, 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 40 U.S.C. 30118 and 49 U.S.C. 30120, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of MNA's petition was published, with a 30-day public comment period on July 3, 2019, in the **Federal Register** (84 FR 32010). 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-2019-0013."

## **II. Equipment Involved:**

Approximately 415 BFGoodrich All-Terrain T/A KO2 replacement tires, size LT275/65R20, manufactured between September 2, 2018, and October 6, 2018, are potentially involved.

## **III. Noncompliance:**

MNA explains that the noncompliance is that the subject tires were marked with an incorrectly sequenced Tire Identification Number (TIN) and therefore, do not meet the requirements of paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the DOT symbol was incorrectly placed between the first and second grouping of the TIN when the symbol should be placed either in front of or below the TIN, thus, both the DOT symbol and the plant code were marked in the incorrect sequence.

## **IV. Rule Requirements:**

Paragraph S5.5.1 (b) of FMVSS No. 139 includes the requirements relevant to this petition. Each tire must be labeled with the TIN on the intended outboard sidewall of the tire, as

required by 49 CFR part 574. Either the TIN or a partial TIN should contain all characters in the TIN, except for the date code and, at the discretion of the manufacturer, any optional code, and must be labeled on the other sidewall of the tire. If the tire does not have an intended outboard sidewall, the tire must be labeled with the TIN required by 49 CFR part 574 on one sidewall and with either the TIN, containing all characters in the TIN except for the date code and at the discretion of the manufacturer, any optional code, on the other sidewall.

## **V. Summary of Petition:**

MNA 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, MNA submitted the following reasoning:

### **1. Operational Safety:**

- a. The TIN marking noncompliance does not create any operational safety risk for the vehicle. The tires comply with applicable FMVSSs and all other applicable regulations.
- b. The incorrect marking sequence of the DOT symbol and TIN plant code has no bearing on tire performance.
- c. The subject tires are properly marked with all other markings required under FMVSS No. 139 such as S5.5(c) maximum permissible inflation pressure and S5.5(d) maximum load rating. The necessary information is available on the sidewall of the tire to ensure proper application and usage.
- d. The subject tires contain the DOT symbol on both sidewalls thus indicating conformance to applicable FMVSS.

### **2. Identification & Traceability:**

- a. All information required by 49 CFR 574.5 for Tire Identification Number (plant code + size code + option code + date code) is present on the sidewall of the tire.
- b. The marking discrepancy only exists on one sidewall of the tire. The opposing sidewall has the correct sequence of DOT + plant code + size code + option code.
- c. For identification and traceability purposes the key information of plant code and manufacturing date is present on the tire.
- d. In the event that dealer/owner notifications are required either the intended marking (DOT BF) or the actual marking (BF DOT) would serve as an identifier of the tire.

**3. Proactive Measures:**

- a. The mismarking has been communicated to BFGoodrich Customer Care representatives in order to effectively handle any inquiries from dealers or owners regarding the subject tires.

MNA 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.

**VI. NHTSA's Analysis:**

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by MNA and has determined that this particular noncompliance is inconsequential to

motor vehicle safety. Specifically, the Agency considered the following when making its decision:

1. Having the DOT code and TIN code markings in the incorrect sequence on one sidewall does not pose a risk to safety on the subject tires. The DOT symbol is stamped within the TIN code and still readily available in case an end-user would be in search of the DOT symbol as a sign of the certification of the subject tires. The symbol DOT is marked on the tire and accurately communicates the manufacturer's certification that the tire conforms to FMVSS No 139.

2. However, while correctly marked with the symbol DOT indicating certification of the tire, the sidewalls of one side of the tires were marked "BF DOT" instead of "DOT BF," which is the correct sequence. NHTSA evaluated whether the mislabeling of the subject tires poses a risk to safety considering the following areas:

**Operational safety:** At this time, NHTSA does not foresee a misunderstanding of the information conveyed due to the symbol DOT being out of sequence. Therefore, NHTSA agrees with MNA that reversing the order of the symbol DOT and plant code does not pose a safety risk for the vehicles on which these tires are mounted or the tires themselves.

**Performance:** NHTSA reviewed MNA's submission of certification data for the subject tires. The subject tires appear to comply with the FMVSS No. 139 performance requirements related to the endurance requirement, high-speed requirement, plunger energy test requirement, and bead unseat requirement.

Therefore, on the basis that the tires meet the minimum performance requirements of

applicable FMVSS, reversing the order of the symbol DOT and plant code does not pose a safety risk.

**Identification and Traceability:** A complete TIN is present with the plant code, size code, optional code, and date code on the sidewalls of the tires. One sidewall has an incorrect sequence while the correct sequence as stamped “DOT BF” is present and readily available on the opposite sidewall of the full TIN. MNA has ensured, for identification and traceability purposes, the key information (i.e. plant code and manufacturing date) is present on the tire. The markings “DOT BF” and “BF DOT” serve as identifiers of the tire, making it traceable in the event a recall should occur. MNA has notified its customer care representatives so they can properly address inquiries raised by customers or dealers about this noncompliance. In addition, MNA has communicated to NHTSA that although erroneously marked “BF DOT” instead of “DOT BF,” the tires will be able to be registered for traceability.

## **VII. NHTSA’s Decision:**

In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the FMVSS No. 139 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, MNA’s petition is hereby granted and MNA is exempted from the obligation of providing notification of, and a remedy for, the 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 MNA 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 MNA 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)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

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