



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0020; Notice 1]

Hankook Tire America Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Hankook Tire America Corporation (Hankook) has determined that certain Hankook Dynapro MT2 tires, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Hankook filed a noncompliance report dated February 19, 2020, and subsequently petitioned NHTSA on March 11, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Hankook's petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview:

Hankook has determined that certain Hankook Dynapro MT2 tires, do not fully comply with paragraph S5.5(f) of FMVSS No. 139, *New pneumatic radial tires for light vehicles* (49 CFR 571.139).

Hankook filed a noncompliance report dated February 19, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on March 11, 2020, 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 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Hankook's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved:

Approximately 175 Hankook Dynapro MT2 tires, size LT215/85R16, manufactured between October 20, 2019, and November 30, 2019, are potentially involved.

III. Noncompliance:

Hankook explains that the noncompliance is that the subject tires were marked with the incorrect number of nylon plies in the tread; and, therefore, do not meet the requirements of paragraph S5.5(f) of FMVSS No. 139. Specifically, the tires were marked “TREAD 2 STEEL + 2 POLYESTER + 1 NYLON; SIDEWALL 2 POLYESTER”, when they should have been marked “TREAD 2 STEEL + 2 POLYESTER + 2 NYLON; SIDEWALL 2 POLYESTER.”

IV. Rule Requirements:

Paragraph S5.5(f) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on one sidewall with the actual number of plies in the sidewall and the actual number of plies in the tread area, if different, as specified in paragraph S5.5(f).

V. Summary of Hankook’s Petition:

The following views and arguments presented in this section, V. Summary of Hankook’s Petition, are the views and arguments provided by Hankook. The arguments presented by Hankook have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioner described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. Hankook cited the definition of motor vehicle safety as cited in the National Traffic and Motor Vehicle Safety Act of 1966, saying that there are cases where a vehicle fails to meet the requirements of 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. Hankook also cited NHTSA as saying that the “true measure of inconsequentiality to motor vehicle safety” for a tire

- labeling error is that the noncompliance has no effect on the operational safety of vehicles on which the tires are mounted. *See* Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 74 FR 10804 (March 12, 2009). In evaluating the effect on motor vehicle safety, Hankook says that NHTSA looks to the “specific facts before it in a particular petition.” *See* BMW of North America, LLC; Jaguar Land Rover North America, LLC; and Autoliv, Inc.; Decisions of Petitions for Inconsequential Noncompliance, 84 FR 19994 (May 7, 2019) (citing General Motors, LLC., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (December 20, 2016)).
2. Hankook states that for labeling and marking requirements, NHTSA looks to the underlying safety purpose of the labeling and what effect the reported noncompliance would have on consumers. “Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available.” *See* 84 FR 19997; *see also* 69 FR 19897 (April 14, 2004) (stating 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”).
 3. Hankook says that the noncompliance involves new pneumatic radial tires used on passenger vehicles that incorrectly list the “actual number of plies in the sidewall, and the actual number of plies in the tread area.” *See* 49 CFR 571.139 (FMVSS No. 139) S5.5(f). The incorrect ply labeling information does not affect

the operational safety of vehicles on which the tires are mounted. The tires meet or exceed the performance requirements of FMVSS No. 139, and they otherwise comply with the labeling and performance requirements of FMVSS No. 139. In addition, Hankook is not aware of any warranty claims, field reports, customer complaints, or any incidents, accidents, or injuries related to the subject condition.

4. Hankook states NHTSA has granted numerous petitions for inconsequential noncompliance related to mislabeling the ply information. *See* Bridgestone Americas Tire Operations, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 47049 (August 2, 2013); Hankook Tire America Corp, Grant of Petition for Decision of Inconsequential Noncompliance 79 FR 30688 (May 28, 2014); and Nitto Tire U.S.A., Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 17764 (March 30, 2016). In granting petitions related to incorrect ply information, the Agency has explained that, “[a]lthough 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.” *See* Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 36668 (July 30, 2018).
5. Hankook goes on to say that following passage of the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD Act) (Pub. L. 106-414), NHTSA looked closely at the impact tire labeling had on users. After collecting comments to an Advanced Notice of Proposed Rulemaking and

obtaining information from consumer focus groups, the Agency concluded that “it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.” *See* Cooper Tire & Rubber Company Grant of Petition for Decision of Inconsequential Noncompliance, 70 FR 53711 (September 9, 2005); *see also* Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 52064 (August 24, 2004). Based on these findings, NHTSA determined that “most consumers do not base tire purchases and vehicle operation parameters on the number of plies in the tire.” *See* Hankook Tire America, Corp., Grant of Petition for Decision of Inconsequential Noncompliance, 69 FR 12196 (March. 15, 2004).

6. Hankook asserts that in consideration of the impact on the tire retread, repair, and recycling industries, NHTSA has concluded that the “use of steel cord construction in the sidewall and tread is the primary safety concern of these industries,” and that this concern is not present when the tire is correctly marked with the number of steel plies. *See* Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 75 FR 17828 (April 7, 2010).
7. Hankook states that based on these factors, NHTSA has routinely concluded that mislabeling the number of plies is inconsequential to vehicle safety. *See* Continental Tire North America, Grant of Petition for Decision of Inconsequential Noncompliance, 72 FR 5494 (February 6, 2007); Goodyear Tire

& Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 74 FR 10804 (March 12, 2009); Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 47050 (August 2, 2013); and Sumitomo Rubber Industries, Ltd., Grant of Petition for Decision of Inconsequential Noncompliance, 83 FR 13002 (March 26, 2018).

8. Hankook believes the same reasoning applies to the subject tires. Mislabeling the number of nylon plies does not affect the operational safety of the vehicles. Further, the subject Hankook tires correctly label the number of steel plies, alleviating the safety concern for the tire retread, repair, and recycling industries.

Hankook 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 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, any decision on this petition only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed.

However, any decision on 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 Hankook 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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