



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0035; 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 Michelin Primacy Tour A/S replacement passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. MNA filed an original noncompliance report dated March 25, 2021, and subsequently, MNA petitioned NHTSA on April 7, 2021, 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: Jayton Lindley, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (325) 655-0547, email Jayton.Lindley@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview:

MNA has determined that certain Michelin Primacy Tour A/S replacement passenger car tires do not fully comply with the requirements of 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 March 25, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. MNA subsequently petitioned NHTSA on April 7, 2021, 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*.

Notice of receipt of MNA's petition was published with a 30-day public comment period, on November 18, 2021, in the Federal Register (86 FR 64595). 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-2021-0035."

II. Tires Involved:

Approximately 1,196 Michelin Primacy Tour A/S replacement passenger car tires, size 235/65R18 106H, manufactured between January 3, 2021, and January 23, 2021, were identified by MNA as being potentially involved, however, MNA clarified that 1,139 tires were captured and retained in MNA's inventory. Any decision on this petition will only apply to the approximately 57 tires that MNA no longer controlled at the time it determined that the noncompliance existed.

III. Noncompliance:

MNA explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with an inverted plant code and, therefore, do not comply with the requirements specified in paragraph S5.5.1(b) of FMVSS No. 139.

IV. Rule Requirements:

Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to this petition.

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.

- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of MNA's Petition:

The following views and arguments presented in this section, "V. Summary of MNA's Petition," are the views and arguments provided by MNA and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. The TIN marking noncompliance does not create any operational safety risk for the vehicle. The tires comply with applicable FMVSS and all other applicable regulations.
2. The incorrect orientation of the TIN plant code has no bearing on tire performance.
3. The subject tires are 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.
4. The subject tires contain the DOT symbol on both sidewalls, thus, indicating conformance to applicable FMVSS.
5. The plant code on the intended outboard side of the tires contain all the information required by 49 CFR 574.5 for the TIN (plant code + size code + option code + date code), however the 3-digit plant code is inverted. The text should read "DOT 1M3" and instead reads "DOT 3M1."

6. The plant code orientation discrepancy only exists on the intended inboard sidewall of the tire. The intended inboard sidewall has the correct sequence of DOT + plant code + size code + option code + manufacturing date, with all characters oriented in the proper direction.
7. For identification and traceability purposes the key information of plant code and manufacturing date is present on the tire.
8. In the event that dealer/owner notifications are required, either the intended marking (DOT 1M3) or the actual marking (DOT inverted “1M3”) would serve as an identifier of the tire.
9. Upon identification of the mismarking, Michelin instituted a block on the affected tires and initiated a sorting of inventories. A total of 1,139 of the 1,196 tires produced with the incorrect marking were captured and retained in Michelin inventory.
10. The plant code plate in the affected mold has been restored to its correct orientation.
11. The mismarking has been communicated to Michelin Customer Care representatives in order to effectively handle any inquiries from dealers or owners regarding the subject tires.
12. MNA contends that NHTSA has concluded in other petitions related to similar TIN marking errors that this type of noncompliance is inconsequential to safety. Most notably, Cooper Tire & Rubber Company, 81 FR 43708 (July 5, 2016) petitioned for tires produced with an inverted date code. MNA states that NHTSA concluded that the inverted marking did not affect the consumers’ ability to identify the tire and other examples exist where TIN information was incorrect, missing, or molded in the wrong sequence and NHTSA granted the petition.

MNA concludes its petition by stating 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.¹

VII. NHTSA’s Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.³ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

NHTSA has evaluated the merits of the petition submitted by MNA and is granting MNA’s request for relief from notification and remedy based on the following:

1. Based on its review of the information MNA submitted, NHTSA has no basis to believe that tires do not meet the performance and labeling requirements of FMVSS 139, with the exception of the inverted plant code.
2. NHTSA believes that manufacturers and consumers will be able to identify the affected tires in the event of a recall for the following reasons:

¹ NHTSA requested that Michelin provide compliance test data for the subject tires while processing this request. Michelin provided this data but requested confidential treatment under 49 CFR part 512. This is reflected in a memo placed in the docket.

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

- a. The oval surrounding the plant code portion of the TIN visually groups the 3 characters from the rest of the TIN. This helps the reader to understand that the mold plate for the plant code portion of the TIN was put in place inverted.
 - b. The font style is such that it is evident that the characters are inverted, however the inverted plant code could possibly be read as “EWI,” “EWL,” or “EW1.” None of these are currently assigned to an active tire plant registered with NHTSA, and EWI in particular would not be assigned because “I” is not a permitted symbol.
 - c. The inboard sidewall of the tire has the plant code molded in the correct orientation.
3. NHTSA believes that the manufacturer has taken sufficient steps to ensure that the affected tires are included in any future recalls by:
- a. Ensuring that the affected tires may be registered with either the correct TIN or any of the possible interpretations of the inverted characters.
 - b. Ensuring that any future safety-related recalls for the affected tires will include TIN numbers with all the possible interpretations of the inverted characters.
 - c. Coordinating with customer care representatives to handle inquiries related to the inverted plant code characters.

VII. NHTSA’s Decision: In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, MNA’s petition is hereby granted, and MNA 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 MNA no longer

controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire 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)

Eileen Sullivan,

Associate Administrator for Enforcement.

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