



**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2019-0129; Notice 2]**

**Transamerica Tire Co. 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:** Transamerica Tire Co. Ltd. (Transamerica) has determined that certain Transeagle ST tires manufactured by Shandong Yinbao Tyre (Yinbao) 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*.

Transamerica, on behalf of Yinbao, filed a noncompliance report dated November 21, 2019.

Transamerica petitioned NHTSA on November 25, 2019, and amended its petition on April 22, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Transamerica'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](mailto:Jayton.Lindley@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Overview:**

Transamerica has determined that certain tires manufactured by Yinbao do not fully comply with paragraphs S6.5, specifically S6.5(b), 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). Transamerica, on behalf of Yinbao, filed a noncompliance report dated November 21, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and*

*Reports.* Transamerica also petitioned NHTSA on November 25, 2019, 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 Transamerica's petition was published with a 30-day public comment period in the **Federal Register** (86 FR 64593, November 18, 2021). 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-2019-0129."

## **II. Tires Involved:**

Approximately 9,551 Transeagle ST radial tires, sizes ST235/85R16, ST235/80R16, and ST225/90R16, manufactured between September 23, 2017, and August 10, 2019, were reported by the manufacturer.

## **III. Noncompliance:**

Transamerica explains that the noncompliance is that the subject tires were inadvertently labeled with a Tire Identification Number (TIN) that contains an incorrect manufacturer's code and, therefore, do not meet the requirements specified in paragraph S6.5(b) of FMVSS No. 119.

For the tires that are the subject of this petition, what should be a 6 character manufacturer code contains an additional 7<sup>th</sup> character at the end of the labeled sequence, inadvertently producing a 14-character TIN instead of a 13-character TIN. Specifically, the subject tires were incorrectly marked with the code as "1BP TTFEFTL" whereas the manufacturer intended to mark the tires as follows:

- ST235/85R16: "1BP TTFEFT"
- ST235/80R16: "1BP TFEFTL"

- ST225/90R16: “1BP TTFEF”<sup>1</sup>

#### **IV. Rule Requirements:**

Paragraphs S6.5 and S6.5(b) of FMVSS No. 119 include the requirements relevant to this petition. These requirements state that each tire shall be marked on one or both sidewalls with the TIN that meets the requirements of 49 CFR Part 574. The TIN is comprised of 3 distinct codes totaling 13 characters. The first is the plant code, which uses 3 symbols, second is the manufacturer’s code using exactly 6 symbols, and last is the date code, using 4 numbers to represent the week and year of production.

#### **V. Summary of Transamerica’s Petition:**

The following views and arguments presented in this section, “V. Summary of Transamerica’s Petition,” are the views and arguments provided by Transamerica and do not reflect the views of the Agency.

##### **Background**

On October 21, 2019, Transamerica received a letter from NHTSA explaining that NHTSA's Office of Vehicle Safety Compliance “has received information alleging that at least one of the tires manufactured by [Yinbao] and imported by [Transamerica] may not be in compliance with [FMVSS] No. 119.” Accordingly, the letter included a “photo showing a labeling failure on the tires branded Transeagle ST radial size 235/85R16.” Specifically, it is alleged that “[t]he tires appear to have an improper 14 character [TIN] instead of the 8-13<sup>2</sup> character TIN required by FMVSS No. 119.”

Upon the receipt of NHTSA’s inquiry, Transamerica conducted an investigation to determine the validity of the allegations and the universe of tires affected by such

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<sup>1</sup> In its amended petition submitted on April 22, 2021, Transamerica acknowledges that this TIN which the manufacturer intended to use is also noncompliant because it does not contain six symbols as required. Because these tires are included in the scope of this petition, NHTSA does not need to further consider this fact in its analysis.

<sup>2</sup> NHTSA is clarifying the manufacturer’s misunderstanding that an 8–13-character TIN would have been acceptable for these tires. Because the tires are marked with a 3-symbol plant code instead of a 2-symbol plant code, the TIN must conform to the 13-character format described in 49 CFR Part 574.

noncompliance. Transamerica found that a total number of 9,551 tires branded Transeagle ST radial tires size ST235/85R16, ST235/80R16, and ST225/90R16 contained an incorrect manufacturer's code in their TIN labels molded on the sidewall of the tires.

### **Manufacturer's Arguments**

Transamerica offers the following views and arguments in support of its petition:

1. Transamerica says that, except for the incorrect manufacturer's code, all other information labeled on the tires is correct, including the manufacturer's assigned identification mark (typically referred to as plant code) as well as the week and year of manufacture (typically referred to as date code), and that the Transeagle ST tires otherwise comply with all applicable standards.
2. Both Yinbao and Transamerica state that they are not aware of any crashes, injuries, customer complaints, or field reports in connection with this noncompliance.
3. Transamerica claims that the inaccurate manufacturer's code would not affect either their or a consumers' ability to identify the tires should they be recalled for a performance related noncompliance.
4. Transamerica states that they have taken measures to ensure that the tires can be registered correctly. There is a "Tire Registration" option on Transamerica's website where consumers can register their TIN and contact information. Transamerica has taken steps to ensure that the incorrect TINs with the additional characters can also be registered for any future recalls or warranty issues.
5. Transamerica has already corrected the molds at the applicable manufacturing plant, such that no additional tires were fabricated with the noncompliance. Transamerica stated that they will also improve their internal processes to prevent future TIN errors.
6. Transamerica states that NHTSA has previously granted petitions for inconsequential noncompliance where TIN information labels are incorrect or missing information and that granting this petition would be consistent with NHTSA's prior decisions on petitions

involving tires labeled with inaccurate TIN information. Transamerica cites the following petitions:

- Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 76412 (November 2, 2016)
- Cooper Tire & Rubber Company, Grant of Application for Decision of Inconsequential Noncompliance, 63 FR 29059 (May 27, 1998)
- Tireco, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 80 FR 66614 (October 29, 2015)
- Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4397 (January 26, 2006)
- Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance, 82 FR 52966 (November 15, 2017).
- Yokohama Tire Corporation, Grant of Petition for Decision of Inconsequential Noncompliance, 84 FR 64403 (November 21, 2019).

Transamerica concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety and asking 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, be granted. Transamerica's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and following the online search instructions to locate the docket number listed in the title of this notice.

## **VI. 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.<sup>3</sup>

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<sup>3</sup> 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.*

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.<sup>4</sup> 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 have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by Transamerica and grants the petitioner's request for an exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120 based on the following:

1. NHTSA believes, based on information provided by the manufacturer, that the tires otherwise meet the performance criteria of FMVSS No. 119 and that the subject labeling noncompliance likely has no effect on the operational safety and performance of the affected tires.
2. NHTSA agrees that the additional characters in the TIN do not affect the ability of the manufacturer or consumer to identify the affected tires in the event of a recall. The agency has also verified with the manufacturer that the affected tires with additional characters in the TIN may be registered. Transamerica has also ensured that any future safety related recalls will include the incorrectly marked TIN numbers if needed.

This grant exempts Transamerica from its obligations under 49 U.S.C. 30118 and 30120 to provide notification of, and a free remedy for, the noncompliance with FMVSS No. 119.

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*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).

<sup>4</sup> *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").

However, erroneous TIN marking is also a violation of 49 CFR part 574. Grants of petitions for inconsequential noncompliance do not absolve entities subject to regulations other than the FMVSS from their obligations under those regulations. Although NHTSA has chosen not to do so in this instance, NHTSA may consider seeking civil penalties in the future for violations of part 574 by tire manufacturers and importers.

## **VII. NHTSA's Decision:**

In consideration of the foregoing, NHTSA finds that Transamerica has met its burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Transamerica's petition is hereby granted and Transamerica 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 Transamerica 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 Transamerica 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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