



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. NHTSA-2021-0056, NHTSA-2021-0057; Notice 2]

Vee Rubber Corporation Ltd. and American Honda Motor Co., Inc., Grant of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petitions.

SUMMARY: Vee Rubber Corporation Ltd. (VRC) and American Honda Motor Co., Inc., (Honda) have determined that certain Vee Rubber VRM133 motorcycle tires sold as replacement equipment and as original equipment for installation on certain model year (MY) 2019-2021 Honda Monkey motorcycles 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), Specialty Tires, and Tires for Motorcycles*. VRC filed a noncompliance report dated June 7, 2021, and Honda filed a noncompliance report dated June 22, 2021. Subsequently, VRC petitioned NHTSA on June 22, 2021, and Honda petitioned NHTSA on July 14, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of VRC and Honda's petitions.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655-0547.

SUPPLEMENTARY INFORMATION:

I. Overview: VRC and Honda have determined that certain Vee Rubber VRM133 motorcycle tires sold as replacement equipment and as original equipment for installation on certain 2019-2021 Honda Monkey motorcycles do not fully comply with the requirements of paragraph 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), Specialty Tires, and Tires for Motorcycles (49 CFR 571.119).

VRC filed a noncompliance report dated June 7, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. VRC subsequently petitioned NHTSA on June 22, 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*.

Honda filed a noncompliance report dated June 22, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Honda subsequently petitioned NHTSA on July 14, 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 VRC and Honda's petitions was published with a 30-day public comment period in the **Federal Register** (87 FR 79440, December 27, 2022). 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-2021-0056."

II. Tires Involved: Approximately 29,018 Vee Rubber VRM133 motorcycle tires sizes 120/80-12 and 130/80-12, sold as original equipment to Honda for installation in certain Honda motorcycles, and manufactured between March 5, 2018, and May 27, 2021, are potentially involved.

The subject tires were installed as original equipment on approximately 13,328 MY 2019-2021 Honda Monkey motorcycles manufactured between July 4, 2018, and April 2, 2021, and therefore these vehicles are also potentially involved.

III. Noncompliance: VRC and Honda explain that the noncompliance is that the subject tires contain extra markings between the manufacturer's code and production week mark within the tire identification number (TIN), and, therefore, do not comply with the requirements specified in paragraph S6.5(b) of FMVSS No. 119. Specifically, the tires included an extra grouping of characters, beginning with the letter "V" followed by numbers between the second and third grouping of characters. For example, the tires were marked "DOT 15A BCN133 Vxxxxxx xxxx" or "DOT 15A BBN133 Vxxxxxx xxxx" when they should have been marked "DOT 15A BCN133 xxxx" or "DOT 15A BBN133 xxxx," with "x" representing the number present on a specific tire.

IV. Rule Requirements: Paragraph S6.5(b) of FMVSS No. 119 includes the requirements relevant to these petitions. S6.5(b) provides that the TIN must meet the requirements as stated in 49 CFR 574 and may be marked on only one sidewall. 49 CFR 574.5(a) requires, in relevant part, that each new tire manufacturer must conspicuously label on one sidewall of each tire it manufactures, by permanently molding into or onto the sidewall, a TIN consisting of 13 symbols that contains the plant code, manufacturer's code, and date code, as described in paragraphs (b)(1) through (b)(3) of 49 CFR 574.5.

V. Summary of VRC and Honda's Petitions: The following views and arguments presented in this section, "V. Summary of VRC and Honda's Petitions," are the views and arguments provided by VRC and Honda. They do not reflect the views of the Agency. VRC and Honda describe the subject noncompliance and contend that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petitions, VRC and Honda submitted the following reasoning:

VRC claims that the subject tires meet the performance requirements of FMVSS No. 119 and, therefore, the "markings have no impact on the operational performance of the tires or on the safety of motorcycles on which these tires are installed." VRC also claims that the subject tires contain "a complete and identifiable TIN which is accessible while mounted" and that in the

event of a recall, a consumer would have access to all the necessary information required to determine whether their tires are subject to a recall.

In Honda's petition, they state that they support VRC's petition and believe that the extra markings on the tires do not pose a safety risk to riders or affect the performance of the subject motorcycle tires. Honda added that the subject tires are both identifiable and traceable since the extra markings "do not alter or remove any required identifying characters of the TIN."

The petitioners referred to the following inconsequential noncompliance petitions granted by NHTSA that they believe support the granting of their petitions for the subject noncompliance:

- Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 85 FR 37495, June 22, 2020.
- Bridgestone Firestone North America Tire, LLC, Grant of Petition for Decision of Inconsequential Noncompliance; 71 FR 4396, January 26, 2006.
- Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance; 71 FR 4396, January 26, 2006.
- Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance; 82 FR 17075, April 7, 2017.
- Nitto Tire USA., Inc., Grant of Petition for Decision of Inconsequential Noncompliance; 81 FR 17764, March 30, 2016.
- Hankook Tire America, Grant of Petition for Decision of Inconsequential Noncompliance; 79 FR 30688, May 28, 2014.

The petitioners state that they are not aware of any customer claims, complaints, injuries, incidents, or field reports associated with the extra markings in the TIN on the affected tires.

VRC states that they have already corrected the error at its plant so that the TIN on all new Model VRM133 tires in the affected sizes will be marked according to S6.5(b) of FMVSS

No. 119. VRC also states that they have recovered all affected tires in possession of United States distributors or retailers that have not yet reached end-users.

The petitioners conclude their petitions by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that their petitions 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:

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.¹ 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.² 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 inconsequential noncompliance petition submitted by VRC and Honda and agrees to grant 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 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety. The Agency considered the following prior to making this determination:

¹ 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).

² 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").

NHTSA has no basis to believe that the tires do not otherwise meet the performance and labeling requirements of FMVSS No. 119 based on information provided by the manufacturer.

In addition, NHTSA agrees that the additional characters in the TIN do not affect the ability of the manufacturer to identify the affected tires in the event of a recall in this specific case. The agency has confirmed with the manufacturer that all the subject tires were sent directly to Honda as original equipment on new motorcycles. Honda replaced and scrapped all the noncompliant tires that were within their inventory. For the vehicles that were sold with noncompliant tires, a consumer would register the vehicle and be notified by Honda in the event of a future recall. The petitioners argue that the TIN is identifiable and the extra markings do not alter the required TIN content. The agency is not persuaded by this argument because we disagree with this characterization since the additional characters are inserted into the middle of the TIN. However, because these tires are only sold as original equipment, any future safety recall would be completed by notifying consumers based on the VIN of the vehicle rather than the TIN markings of the tires.

VRC cited numerous petitions that have been granted in the past for various labeling noncompliances. Of those cited, the agency believes that only one is related to the subject noncompliance. The Michelin North America petition cited (85 FR 37495) involves the symbol “DOT” being mistakenly placed within the TIN thus creating a TIN with additional characters. The agency granted this petition based on the fact that the symbol “DOT” is correctly marked on one sidewall of the tire and that the manufacturer communicated that the tires will still be able to be registered. Therefore, while it may be relevant in some aspects, the number and nature of the incorrect symbols inserted into the TIN are sufficiently different when compared to the subject petition and NHTSA does not find the rationale in the Michelin grant persuasive in this instance.

Unlike the subject petition, in cases where the tires are not sold as original equipment on vehicles, TIN errors like this noncompliance potentially impact the consumer's ability to successfully register their tires. Despite NHTSA's decision to grant this petition, the agency

remains concerned that TIN errors such as the one found here frustrate the tire registration process when not sold as original equipment on vehicles, and have the potential to negatively impact recall effectiveness in general. Because these TIN errors also violate 49 CFR part 574, it is possible for NHTSA to seek civil penalties for violations of these requirements, and NHTSA may consider doing so if violations potentially affect the ability to recall tires.

VII. NHTSA's Decision:

In consideration of the foregoing, NHTSA finds that VRC and Honda have met their burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, VRC and Honda's petitions are hereby granted and VRC and Honda are 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 and vehicles that the petitioners no longer controlled at the time it determined that the noncompliance existed.

However, the grant of these petitions does not relieve tire and vehicle 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 and vehicles under their control after VRC and Honda 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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Director, Office of Vehicle Safety Compliance.

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