



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2021-0076; Notice 2]**

### **Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance**

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

**ACTION:** Grant of petition.

**SUMMARY:** Continental Tire the Americas, LLC (“CTA”), has determined that certain Continental Nanocontact A/S tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. CTA filed an original noncompliance report dated September 10, 2021, and subsequently petitioned NHTSA on September 30, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of CTA’s petition.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview:**

CTA has determined that certain Continental VanContact A/S tires do not fully comply with the requirements of paragraph S5.5(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). CTA filed a noncompliance report dated September 10, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. CTA subsequently petitioned NHTSA on September 30, 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 CTA's petition was published with a 30-day public comment period, on April 18, 2024, in the Federal Register (89 FR 27831). 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-2021-0076."

## **II. Tires Involved:**

Approximately 419 Continental VanContact A/S tires, size LT245/70R17 119/116 Q, manufactured between May 31, 2020, and May 22, 2021, are potentially involved.

## **III. Noncompliance:**

CTA explains that the noncompliance is that the tire size designation on both sidewalls of the subject tires, is missing the tire size prefix "LT" and, therefore, does not fully comply with paragraph S5.5(b) of FMVSS No. 139. Specifically, the tire size on the subject tires' sidewalls read "245/70R17 119/116 Q," however, they should read "LT245/70R17 119/116 Q."

## **IV. Rule Requirements:**

Paragraph S5.5(b) of FMVSS No. 139 includes the requirements relevant to this petition. Each tire must be marked on each sidewall with the tire size designation as listed in the documents and publications specified in S4.1.1 of the standard.

## **V. Summary of CTA's Petition:**

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

In support of its petition, CTA submits the following reasoning:

CTA says that other than the missing tire size designation marking on both sidewalls, the subject tires contain all other required markings and meet all the performance requirements of FMVSS 139 for LT 245/70R17 119/116 Q, Load Range E tires.

CTA states its belief that the missing markings do not impact the operational safety of the tires. CTA adds that the subject tire sidewalls contain the correct markings for the Load Index and load capacities for single and dual fitments and that “there is no higher load tire specified for size 245/70R17 in the [Tire and Rim Association] yearbook or the European Tyre and Rim Technical Organization, thus the tires could not mistakenly be placed in an overloaded application.”

CTA contends that the granting of a petition submitted by Michelin North America Incorporated describes a similar noncompliance to the one affecting the subject tires and therefore, supports the granting of its petition. *See Michelin North America, Incorporated, Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 30963 (May 23, 2013).

CTA also says that the subject tires were installed on “pre-serial production vehicles” that were not sold to end consumers or released into the replacement tire market. Additionally, CTA says that all remaining CTA inventory will be scrapped and that “no additional tires will be manufactured or sold with the noncompliance.”

CTA concludes 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.

In response to email correspondence from NHTSA on November 7, 2022, CTA clarified that Rivian owned, controlled, and operated the subject vehicles and the tires were sent to Toyota Arizona Proving Grounds for Prototype vehicle testing.

**VI. NHTSA’s Analysis:** In determining the 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>1</sup> 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>2</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 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 CTA and is granting its request for relief from notification and remedy based on the following:

1. NHTSA has no basis to believe that the subject tires do not meet the performance and labeling requirements of FMVSS No. 139, except for the “LT” size designation marking.
2. CTA has confirmed that all the subject tires were installed on pre-serial production vehicles which will not be sold to consumers, and consequently, none of the subject tires were sold into the replacement market. Because of this, the risk of the tires being incorrectly applied to a vehicle for which they were not designed is minimized.
3. All the tire loading information, including the load range letter “E,” is correctly marked. Therefore, omission of the LT designation combined with the fact that the subject tires are correctly marked with the highest load specified for 245/70R17 tires

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<sup>1</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. 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>2</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”).

within the TRA Yearbook and ETRTO manuals, does not increase risk of overloading the tires, regardless of the vehicle on which the tires are installed.

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