



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0047; 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 LTX
A/T2 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 April 14, 2023, and later amended the report on July 3, 2023. MNA subsequently
petitioned NHTSA (the “Agency”) on April 17, 2023, and later amended the petition on July 6,
2023, for a decision that the subject noncompliance is inconsequential as it relates to motor
vehicle safety. This document announces the grant of MNA’s petition.

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

SUPPLEMENTARY INFORMATION:

I. Overview: MNA determined that certain Michelin LTX A/T2 tires size LT275/65R20
126/123R, do not fully comply with paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139, *New
Pneumatic Radial Tires For Light Vehicles* (49 CFR 571.139).

MNA filed an original noncompliance report dated April 14, 2023, and later amended the
report on July 3, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility
and Reports*. MNA petitioned NHTSA on April 17, 2023, and later amended the petition on July
6, 2023, 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 March 26, 2024, in the **Federal Register** (89 FR 21170). 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-2023-0047."

II. Tires Involved: Approximately 7,153 Michelin LTX A/T2 tires sized LT275/65R20 126/123R Load Range E, manufactured between January 15, 2023, and February 8, 2023, were reported by the manufacturer.

III. Noncompliance: MNA explains that the subject tires contain incorrect information regarding the general name of cord materials and the actual number of plies on the intended outboard sidewall of the tires, and therefore, do not fully comply with paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139. Specifically, the sidewall of the subject tires states "TREAD PLIES: 2 POLYESTER + 2 STEEL SIDEWALL PLIES: 2 POLYESTER," when they should state "TREAD PLIES: 2 POLYESTER + 1 POLYAMIDE + 2 STEEL SIDEWALL PLIES: 2 POLYESTER."

IV. Rule Requirements: Paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139 include the requirements relevant to this petition. Paragraph S5.5(e) requires that the sidewall be marked with the generic name of each cord material used in the plies (both sidewall and tread area) of the tire, and paragraph S5.5(f) requires that the sidewall be marked with the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

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. They 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.

MNA explains that the subject noncompliance occurred as a result of an error made by a maintenance employee at the manufacturing site. On January 15, 2023, the employee accidentally used the incorrect plaquette when replacing a loose one in a mold for the subject tire. A tire verification employee noticed a gap in the information in the tread plies plaquette on the intended outboard side of the tire and notified the Quality team. MNA says that its internal investigation revealed that of the 7,997 tires produced, approximately 813 affected tires were identified and contained and approximately 598 affected tires (8 percent) of the production during this time period had entered the US market.

MNA asserts that the subject tires comply with all applicable FMVSS tire safety performance standards and they are marked with the correct tire size information, including the load range and maximum single and dual loads at the specified pressures. Further, MNA says that the subject tires were tested and passed all applicable FMVSS No. 139 performance tests. MNA says that it has taken corrective measures and removed the incorrect plaquette from the mold used on the subject tires and replaced it with the correct plaquette.

MNA contends that NHTSA has found petitions for similar noncompliances to be inconsequential to motor vehicle safety. MNA provides the following examples:

1. Michelin North America, Inc., NHTSA docket number 2020-0092, granted 7 February 2022
2. Hankook Tire America Corporation, NHTSA docket number 2020-0020, granted 21 January 2022
3. Continental Tire the Americas, LLC, NHTSA docket number 2017-0040, granted 30 July 2018
4. Sumitomo Rubber Industries, Ltd., NHTSA docket number 2017-0071, granted 26 March 2018

5. The Goodyear Tire and Rubber Company, NHTSA docket number 2016-0107, granted 17 April 2017

MNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and 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.

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 Michelin 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 based on the following:

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 agrees that, based on the facts presented, this specific noncompliance of the subject tires is inconsequential to motor vehicle safety. The Agency considered the following prior to making this determination:

1. **Operational Safety & Performance:** NHTSA agrees that in this case, the missing marking for the polyamide tread ply on the tire has no effect on the operational safety of vehicle. Additionally, the agency has no basis to believe that the affected tires do not meet all other performance and labeling requirements of the applicable FMVSS.
2. **Tire Identification and Traceability:** The tires have the required information per 49 CFR 574.5 to ensure that the tires may be properly registered for the purposes of a safety recall. The entire TIN, including the plant code and manufacturing date, is both legible and easily discernible.
3. **Downstream Operations:** The Agency must also consider other stakeholders, in addition to the manufacturer and end-user. Downstream entities involved in tire repair, retreading, and recycling operations require certain information to determine if tires may be safely used in their operations. The existence of steel in a tire's sidewall and tread can be relevant to the manner in which it should be repaired or retreaded. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. The Agency believes the noncompliance of the subject tires will have no measurable effect on the safety of the tire retread, repair, and recycling industries since the tire sidewalls are marked correctly for the number of steel plies.
4. **Consumer Feedback and Focus Groups:** The Agency has concluded, based on previous feedback, that the tire construction information, specifically the number of plies and cord material in the sidewall and tread plies, influences very few consumers when they are deciding to buy a motor vehicle or replacement tires.

This conclusion is based on information gathered from the Advance Notice of Proposed Rulemaking (ANPRM) that was published in the Federal Register on December 1, 2000, (65 FR 75222).

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)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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