



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0040; 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 X Multi D+ replacement tires 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*. MNA filed an original noncompliance report dated March 25, 2022. MNA subsequently petitioned NHTSA on April 19, 2022, and later supplemented the petition on September 20, 2022, 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, Office of Vehicle Safety Compliance, NHTSA, (325) 655-0547.

#### SUPPLEMENTARY INFORMATION:

**I. Overview:** MNA determined that certain Michelin X Multi D+ replacement tires do not fully comply with paragraph S6.5(j) 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).

MNA filed an original noncompliance report dated March 25, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. MNA subsequently petitioned

NHTSA on April 19, 2022, and later supplemented the petition on September 20, 2022, 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 July 12, 2022, in the Federal Register (87 FR 41380). 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-2022-0040."

**II. Tires Involved:** Approximately 160 Michelin X Multi D+, size 11R22.5, replacement tires, manufactured between May 26, 2019, and June 29, 2019, were reported by the manufacturer.

**III. Noncompliance:** MNA explains that the noncompliance was due to a mold error in which the subject tires are missing the letter designating the tire load range as required by paragraph S6.5(j) of FMVSS No. 119. Specifically, the sidewalls of the subject tires omit the designated load range letter "H."

**IV. Rule Requirements:** Paragraph S6.5(j) of FMVSS No. 119 includes the requirements relevant to this petition. The subject tires are required to be marked on each sidewall with the tire load range letter.

**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.

MNA explains that the noncompliance was found when a Michelin Field Engineer was notified that some of the subject tires "had a different tread pattern than the customer was accustomed to." MNA explains that the subject tires were intended for the Asia and India tire

markets, yet “entered the US through channels outside of Michelin’s control.” MNA states that the tires were certified to the applicable U.S. FMVSS, and properly labeled with the certification symbol “DOT” despite being manufactured for markets other than the US. MNA also states that it has taken corrective measures to block the SKUs in its internal databases to prevent shipment and sale through MNA’s distribution channels.

MNA states that the subject tires were manufactured as a load index 148 single/145 dual tire with a maximum single load rating of 3,150 kilograms or 6,940 pounds at 830 kPa or 120 psi cold inflation pressure and a maximum dual load rating of 2,900 kilograms or 6,395 pounds at 830 kPa or 120 psi cold inflation pressure. MNA asserts that it tested the subject tires and found that they comply with the necessary performance requirements required by FMVSS No. 119. Except for the subject noncompliance, MNA also claims that the subject tires meet all marking requirements and “are also marked with load indices for single and dual applications,” which MNA contends will “provide both dealers and consumers with the necessary information to enable proper selection and application of the tires.” MNA also states that the molds will be updated to include the required load range letter designation and until then, the SKU will remain blocked in its systems.

MNA says that NHTSA has previously granted petitions which it believes are similar to the subject petition. MNA refers to the granting of the petition submitted by China Manufacturers Alliance, LLC (79 FR 78562), for truck and bus radial replacement tires that were missing the load range letter.

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.

On September 20, 2022, MNA supplemented its petition with evidence that it relied on to certify that the tires comply with the performance requirements of FMVSS No. 119

**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>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 inconsequential noncompliance petition submitted by MNA and is granting MNA's request for relief from notification and remedy based on the following:

1. Based on information submitted by MNA, NHTSA has no clear basis to determine that the tires do not meet all performance requirements of FMVSS No. 119, including the applicable static breaking energy requirement for a load range "H" tire.
2. The Agency agrees that information intended to be conveyed by the missing load range letter is contained in the other markings on the tires, specifically: the maximum load and maximum permissible inflation pressures that are marked on the sidewall of the subject tires. The marked values correctly correlate to the maximum loads and pressure listed by

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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").

the ETRTO 2019 yearbook. The Agency believes that enough information is present on the subject tires for both dealers and consumers to properly select and use the tires.

3. NHTSA believes that the missing load range letter will not affect the ability of the manufacturer or consumer to identify the affected tires in the event of a recall.

**VII. NHTSA's Decision:** In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the subject FMVSS No. 119 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, any decision on 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,**

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