

Issued on: October 20, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004-18973; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that the sidewall markings on certain tires that it manufactured in 1993 through 2004 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on September 14, 2004, in the **Federal Register** (69 FR 55491). NHTSA received one comment.

A total of approximately 97,468 tires are affected. This includes approximately 68,950 Michelin tires consisting of 24,644 LT215/85R16XPS Rib; 35,934 LT225/75R16 XPS Rib; 5,348 LT215/85R16 XPS Traction; and 3,024 8.75R16.5 XPS Rib tires manufactured from May 1, 2003 through the week beginning July 12, 2004. It also includes 28,518 Michelin 8.75R16.5 XPS Rib tires manufactured from approximately mid-1993 through the week beginning July 12, 2004. The sidewall load and inflation markings of these two groups of tires do not comply with S6.5(d), "Tire markings." S6.5(d) requires that each tire shall be marked on each sidewall with "[t]he maximum load rating and corresponding inflation pressure of the tire" in both metric and English units.

The sidewall load and inflation markings on the 68,950 tires manufactured from May 1, 2003 through the week beginning July 12, 2004 are in English units only and do not have the metric units required by S6.5(d). The sidewall load and inflation markings on the 28,518 tires manufactured from approximately mid-1993 through the week beginning July 12, 2004 are incorrect for the Max. Load Dual

category; the tires are marked "2550 lbs at 75 psi" when they should be marked "2405 lbs at 80 psi."

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. With regard to the tires that are marked in English units only, Michelin stated that the tires are manufactured for sale in the U.S. replacement market where the English system is universally comprehended, and the maximum load expressed in "lbs." and air pressure expressed in "psi" will not confuse U.S. vehicle owners, nor result in unsafe use of the tires in terms of load or inflation values. With regard to the tires that are marked with the incorrect Max. Load Dual load and inflation, Michelin asserted that

"[w]hen both single and dual loads are marked on the tire (as is the case here), FMVSS No. 119 requires that performance compliance testing be done based on the single (higher, more punishing) tire load. Accordingly, the incorrect dual load marking is inconsequential for this tire. * * * Even at the lower, more punishing pressure of 75 psi, the tire meets all FMVSS No. 119 minimum performance requirements."

NHTSA received one comment on this petition from a private individual that did not address the effect on motor vehicle safety of this noncompliance.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety because the maximum load expressed in "lbs." and air pressure expressed in "psi" will not confuse U.S. vehicle owners, nor result in unsafe use of the tires in terms of load or inflation values. The agency also agrees that safety will not be compromised for the tires marked with the incorrect "max load dual" since the more severe "max load single" load is marked correctly. In addition, these tires meet or exceed all of the performance requirements of FMVSS No. 119, and all other informational markings as required by FMVSS No. 119 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

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Kenneth N. Weinstein,

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004-18923; Notice 2]

CCI Manufacturing IL Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

CCI Manufacturing IL Corporation (CCI) has determined that certain brake fluid containers manufactured by its supplier, Gold Eagle, do not comply with S5.2.2.2(d) of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, "Motor vehicle brake fluids." Pursuant to 49 U.S.C. 30118(d) and 30120(h), CCI has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on August 31, 2004, in the **Federal Register** (69 FR 53130). NHTSA received no comments.

A total of approximately 21,204 units of brake fluid containers manufactured in March 2004 are affected. S5.2.2.2 of FMVSS No. 116 requires that:

Each packager of brake fluid shall furnish the information specified in [paragraph d] of this S5.2.2.2 by clearly marking it on each brake fluid container or on a label (labels) permanently affixed to the container * * * After being subjected to the operations and conditions specified in S6.14, the information required by this section shall be legible. * * *

The information specified in paragraph (d) of S5.2.2.2 is "[a] serial number identifying the package lot and date of packaging." With regard to the noncompliant brake fluid containers, the lot and date codes required by S5.2.2.2(d) are not legible after the containers are subjected to the test conditions of S6.14.

CCI believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. CCI stated:

NHTSA has identified only one purpose for [the lot and date code] marking: namely, "to facilitate determination of the extent of defective brake fluid should such be discovered." * * * While it is clearly in the manufacturer's interest to be able to limit the "extent of defective brake fluid should such

be discovered," by reference to lot/date code markings, there is no serious risk to motor vehicle safety if that information is lost. Instead, in the event of a defect or noncompliance determination affecting certain batches of brake fluid, the brake fluid manufacturer would be compelled to recall a larger population of brake fluid containers than it otherwise would need to do, because it could not rely on the presence of a legible lot/date code marking to limit the population of the recall.

CCI explained that it sold the affected brake fluid only to Mercedes-Benz, who then distributed it to its dealerships and authorized repair facilities. CCI does not believe Mercedes-Benz offers the brake fluid for retail sale to customers. CCI stated:

First, Mercedes-Benz purchases and distributes the brake fluid to its dealerships and authorized repair facilities in bulk quantities, and those products are used quickly. Even in the unlikely event that a dealership or repair facility could not read the lot/date code on a particular container of brake fluid, that entity would likely have other containers from the same lot/date code on its premises, and could ascertain the lot/date code for the fouled container from its companion products. Second, CCI believes that all of the noncompliant containers in Mercedes-Benz's inventory may already have been used.

The agency agrees that under the circumstances, the lot and date information could most likely be determined if necessary. In addition, the brake fluid containers comply with all other requirements of FMVSS No. 116 and the brake fluid itself complies with the performance requirements of FMVSS No. 116. CCI has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, CCI's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: October 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-19347; Notice 1]

Bridgestone/Firestone North American Tire, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North American Tire, LLC (Bridgestone/Firestone) has determined that certain tires it manufactured do not comply with S6.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Bridgestone/Firestone has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bridgestone/Firestone's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 1,083 sizes 2.75-10 and 80/90-10 Bridgestone HOOP tires are affected. S6.5 of FMVSS No. 119 requires that the maximum load rating and corresponding inflation pressure of the tires be marked on the tire in both English and metric units. The noncompliant tires do not have the metric markings. The actual stamping is "MAX. LOAD 355 LBS AT 36 PSI COLD." The correct stamping should be "MAX. LOAD 160kg (353 LBS) AT 50 kPa (36 PSI) COLD."

Bridgestone/Firestone believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Bridgestone/Firestone states that the actual performance of the tires will not be affected by the mismarking, and that the tires meet or exceed all performance requirements of FMVSS No. 119. Further, Bridgestone/Firestone states that the mismarking will have no impact on the operational performance or safety of vehicles on which the tires are mounted, and that the problem has been corrected.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be

submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 26, 2004.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: October 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration; Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous