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Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0142; Notice 2]

Pirelli Tire LLC, Grant of

Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration

ACTION: Notice of Petition Grant

SUMMARY: Pirelli Tire LLC (Pirelli), has determined that approximately 30,881 Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 2, 2007, and December 12, 2009, do not fully comply with the tire labeling requirements of paragraphs S5.5 and S7.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. On March 12, 2010, Pirelli filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Pirelli 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. Specifically, Pirelli submitted the original petition dated

March 12, 2010, and a supplement to the original petition dated April 12, 2010.

Notice of receipt of Pirelli's petition was published, with a 30-day public comment period, on November 9, 2010, in the Federal Register (75 FR 68855). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2010-0142."

CONTACT INFORMATION: For further information on this decision, contact Mr. Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-0661, facsimile (202) 366-7002.

TIRES INVOLVED: Affected are approximately 30,881 Pirelli Pzero Nero M+S and Scorpion Zero Asimmetrico replacement tires produced between September 2, 2007, and December 12, 2009, - in the tire sizes indicated in the following list - have the subject noncompliance:

P245/45ZR17 95W, Pzero Nero M+S

P235/45ZR17 94W, Pzero Nero M+S

P235/40ZR18 91W, Pzero Nero M+S

P215/35ZR18 84W, Pzero Nero M+S

P215/35ZR19 85W, Pzero Nero M+S

265/35ZR22 102W Extra Load, Scorpion Zero Asimmetrico

295/30ZR22 103W Extra Load, Scorpion Zero Asimmetrico

305/35ZR23 111W Extra Load, Scorpion Zero Asimmetrico

265/45ZR20 108W Extra Load, Scorpion Zero Asimmetrico

SUMMARY OF PIRELLI'S ANALYSIS AND ARGUMENTS: Pirelli described the noncompliance as the absence of either the complete or partial tire identification number (TIN) on the inner tire sidewall as required by paragraphs S5.5 and S7.3 of FMVSS No. 139.

Pirelli argues that because all of the affected tires have an asymmetric tread pattern that can only be correctly installed with the intended outer sidewall facing the outside of the vehicle. Pirelli also points out that asymmetric tires represent a very small percentage of the overall tire market.

Pirelli explained that all of the affected tires are stenciled on the intended outboard sidewall with the lettering OUTER in four different languages (English, French, German and Italian).

Pirelli further explained that the non-compliance was identified on February 26, 2010, during an inspection of mold branding at the plant that produced the subject tires. Pirelli then examined related production records in order to accurately identify the specific noncompliant tires. All molds are being modified or have been modified to ensure that the appropriate

TIN information is contained on both sidewalls for future production.

Pirelli provided the following basis of why they believe the subject noncompliance is inconsequential to motor vehicle safety:

While the subject tires are noncompliant with paragraph S5.5 of FMVSS No. 139 for labeling, the noncompliance has an inconsequential effect on tire performance and motor vehicle safety because all of the affected tires meet or exceed all of the minimum performance requirements of FMVSS No. 139.

In addition, the Company mentioned the existence of certain factors that facilitates and encourages proper installation and thus provide accessibility and visibility of the full TIN on the outboard sidewall:

Pirelli's internal policy allows dealers to sell these asymmetric tires only in pairs or in groups of four. As a result, these replacement tires are installed either on both sides of the rear axle or on all four locations. The odds of even one tire being mounted incorrectly are extremely remote, and the odds of two or four tires being mounted the wrong way are even more remote.

All subject tires are either Pzero Nero M+S or Scorpion Zero Asimmetrico. Both product families are ultra high performance tires; their asymmetric tread design is one of the main features sought by consumers for the following reasons: precision handling in all conditions; full and compact external shoulder blocks for increased safety and dry handling performance; and inner shoulders designed to maximize traction with deeper and more regular cuts. These benefits are obtained only if the tires are mounted with the outer sidewall

pointing to the outside of the vehicle. Having paid a substantial price to obtain these performance characteristics, the customers seek to ensure that their tires are installed correctly.

Pirelli's product literature and training procedures reinforce the message on proper mounting.

Pirelli provides extensive training to its authorized dealers, and that training focuses specifically on the need to mount asymmetric tires in the correct way.

A second TIN number (on the inboard side of the tire) is not necessary either to ensure traceability or to allow consumers to operate their vehicles safely.

Pirelli has not received a single complaint from any consumer, dealer, law enforcement agency, or other source that indicated any difficulty or problem in finding the full TIN, including the date code on its asymmetrical tires.

Pirelli collects and tracks data on warranty claims for all of tires, including the tires at issue here. The warranty data confirm that these tires have performed extremely well in the field. The number of claims is very small, and there have been no claims involving property damage.

In summation, for the reasons stated above, Pirelli believes that the described noncompliance concerning the tire labeling requirements of paragraphs S5.5 and S7.3 of FMVSS No. 139 are inconsequential and do not present a risk to motor vehicle safety. Thus, Pirelli requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall

noncompliance as required by 49 U.S.C. 30120, should be granted. In a supplement to its petition Pirelli requested that if NHTSA decides to deny the petition, that at a minimum, NHTSA exempt the company from the remedy requirements of 49 U.S.C. 30120. Rather than replacing all tires subject to any such recall, Pirelli suggests that it would instead issue recall notices to all end users who can be located. Pirelli then would have its dealers inspect the tires. If the tires are properly mounted, with the TINs facing the outboard side of the vehicle, the tires would be left on the vehicle. Finally, if any tires were found to be mounted with the outboard sidewalls facing inward (which is extremely unlikely), the tires would be remounted in the appropriate way.

REQUIREMENT BACKGROUND:

Paragraph s5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 *Tire Markings*. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches.

S5.5.1 Tire identification number.

(a) Tires manufactured before September 1, 2009. Each tire must be labeled with the tire identification number required by 49 CFR part 574 on a sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

(b) Tires manufactured on or after September 1, 2009. Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall..

NHTSA'S ANALYSIS OF PERELLI'S REASONING: NHTSA does agree with Pirelli's assessment that the noncompliance with FMVSS No. 139 is inconsequential to motor vehicle safety. As discussed below, the tire markings required by paragraph S5.5 of FMVSS No. 139 provide valuable information to assist consumers in determining if their tires are the subject of a safety recall. However, in these asymmetric tires, the TIN will always be on the intended outboard sidewall.

Paragraph S5.5.1 (b) of FMVSS No. 139 requires that radial tires manufactured on or after September 1, 2009 for motor vehicles less than 10,000 GVWR be permanently labeled with: 1) a full TIN required by 49 CFR Part 574 on the intended outboard sidewall of the tire; 2) except for retreaded tires, either the full or a partial TIN containing all characters in the TIN, except for the date code, and at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.¹

Tire recalls in the year 2000 highlighted the difficulty that consumers experienced when attempting to determine whether a tire is subject to a recall when a tire is mounted so that the sidewall bearing the TIN faces inward i.e., underneath the vehicle. After a series of congressional hearings about the safety of and experiences regarding the tires involved in those recalls, Congress passed and the President signed into law the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000. Pub. L. 106-414. 114 Stat. 1800.

One of the matters addressed by the TREAD Act was tire labeling. Section 11 of the TREAD Act required a rulemaking to

¹ Tires manufactured after September 1, 2009 must be labeled with the TIN on the intended outboard sidewall of a tire and either the TIN or partial TIN on the other sidewall. 49 CFR 571.139 S5.5.1(b). If a tire manufactured after September 1, 2009 does not have an intended outboard sidewall, one sidewall must be labeled with the TIN and the other sidewall must have either a TIN or partial TIN. Id.

improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall.

In response to the TREAD Act's mandate, NHTSA published a final rule that, among other things, required that the TIN be placed on a sidewall of the tire and a full or partial TIN be placed on the other sidewall. See 67 FR 69600, 69628 (November 18, 2002), as amended 69 FR 31306 (June 3, 2004). In the preamble to the 2002 final rule, the agency identified the safety problem which prompted the issuance of the rule. 67 FR at 69602, 69606, and 69610. The agency explained that when tires are mounted so that the TIN appears on the inward facing sidewalls, motorists have three difficult and inconvenient options for locating and recording the TINs. Consumers must either: 1) slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; 2) remove each tire, find and record the TIN, and then replace the tire; or 3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded. Without any TIN information on the outboard sidewalls of tires, the difficulty and inconvenience of obtaining the TIN by consumers results in a reduction of the number of people who respond to a tire recall campaign and the number of motorists who unknowingly continue to drive vehicles with potentially unsafe tires.

Pirelli suggests that this noncompliance does not preclude motorists from checking the inboard sidewall if the TIN is not found on the outboard sidewall. However, since asymmetric tires are specially constructed for certain performance parameters, and the TIN is marked on the intended outboard sidewall, the Agency agrees that it is extremely unlikely that the tires will be mismounted with the inboard sidewall facing outboard.

However, even though FMVSS No. 139 now requires TIN markings on both sidewalls of a tire so that consumers can readily determine if a tire is subject to a safety recall, in this case it is extremely unlikely that one or more of the asymmetric tires will be incorrectly mounted with the intended outboard sidewall facing inboard.

NHTSA DECISION: 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, Pirelli's petition is hereby granted.

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, these provisions only apply to the 30,881² vehicles that Pirelli no longer controlled at the time it determined that the noncompliance existed.

AUTHORITY: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8)

ISSUED ON: May 1, 2013.

Claude H. Harris, Director
Office of Vehicle Safety Compliance

BILLING CODE: 4910-59-P

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² Pirelli's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Pirelli as a Tire manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 30,881 affected tires. However, a decision on this petition cannot relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Pirelli notified them that the subject noncompliance existed.