



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0071; Notice 1]

**Sumitomo Rubber Industries, Ltd., Receipt of Petition for
Decision of Inconsequential Noncompliance**

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

ACTION: Receipt of petition.

SUMMARY: Sumitomo Rubber Industries, Ltd. (SRI), on behalf of
itself and its subsidiary Sumitomo Rubber North America, Inc.
(SRNA), have determined that certain Falken truck 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) and Motorcycles*. SRI
filed a noncompliance report dated June 20, 2017. SRI also
petitioned NHTSA on July 10, 2017, for a decision that the
subject noncompliance is inconsequential as it relates to motor
vehicle safety.

DATES: The closing date for comments on the petition is **[INSERT
DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written
data, views, and arguments on this petition. Comments must refer

to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a

stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000, (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Sumitomo Rubber Industries, Ltd. (SRI), on behalf of itself and its subsidiary Sumitomo Rubber North America, Inc.

(SRNA), have determined that certain Falken truck tires do not fully comply with paragraph S6.5(f) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles*. SRI filed a noncompliance report dated June 20, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. SRI also petitioned NHTSA on July 10, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, 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.

This notice of receipt of SRI and SRNA'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.

II. Tires Involved: Approximately 5,408 Falken truck tires (Model RI151), size 225/70R19.5, manufactured between October 17, 2016, and April 28, 2017, are potentially involved.

III. Noncompliance: SRI explains that the noncompliance is that the number of plies indicated on the sidewall of the subject tires do not match the actual number of plies in the tire construction, and therefore, do not meet all applicable requirements specified in paragraph S6.5(f) of FMVSS No. 119.

Specifically, the tires are marked with "TREAD 5 PLIES STEEL" whereas the correct marking should be "TREAD 4 PLIES STEEL."

IV. Rule Text: Paragraph S6.5 of FMVSS No. 119 states, in pertinent part:

S6.5 Tire Markings.

Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section...

...

(f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area.

V. Summary of SRI's Petition: As background, On June 12, 2017, SRI discovered that a population of 5,408 Falken brand truck tires, Model RI151, size 225/70R19.5 128/126L, manufactured from October 17, 2016 through April 28, 2017 at the company's plant in Miyazaki, Japan, were marked with the incorrect number of plies. On July 13, 2017, SRNA was informed of the marking error, shipments of the subject tires were halted, and the company determined that the subject tires failed to comply with the tire labeling requirements of Federal motor vehicle safety standard (FMVSS) No. 119, S6.5. Specifically, the subject tires were incorrectly marked "TREAD 5 PLIES STEEL," although they should have been marked "TREAD 4 PLIES STEEL." Accordingly, these tires do not conform to the marking requirements of FMVSS No. 119,

S6.5. The subject tires comply with the performance requirements and other marking requirements of FMVSS No. 119.

SRI submitted a Part 573 noncompliance report on June 20, 2017. NHTSA Recall No. 17T-012. SRI corrected the production molds. SRI began manufacturing correct versions of these tires on June 17, 2017.

SRI described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, SRI submitted the following reasoning:

Under the Safety Act, each Federal motor vehicle safety standard promulgated by the National Highway Traffic Safety Administration (NHTSA) must be "practicable, meet the need for motor vehicle safety, and be stated in objective terms." 49 U.S.C. §30111(a). The Safety Act defines "motor vehicle safety" as:

"the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle."

49 U.S.C. §30102(a)(8) (emphasis added).

The Safety Act exempts manufacturers from the Safety Act's notice and remedy requirements when the Secretary of Transportation determines that a defect or noncompliance is inconsequential as it relates to motor vehicle safety. See 49 U.S.C. 30118(d). Section 30118(d) demonstrates Congress's acknowledgment that there are cases where a manufacturer has failed to comply with a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified. NHTSA has stated that the relevant consideration in evaluating an inconsequentiality petition is "whether an occupant who is affected by the noncompliance *is likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle.*" 69 FR 19897, 19900 (April 14, 2004) (emphasis added).

In the context of tires specifically, the agency has similarly stated that it "believes that one measure of inconsequentiality to motor vehicle safety is that there is no effect of the noncompliance on the operational safety of vehicles on which the tires are mounted. Another measure of inconsequentiality ... is the safety of people working in the tire retread, repair and recycling industries." See 72 FR 18210 (April 17, 2017) (granting petition for determination of inconsequential noncompliance with respect to Goodyear tires marked with the incorrect number of plies).

We believe the labeling noncompliance at issue here is inconsequential to motor vehicle safety. The subject Falken tires were manufactured as designed and meet or exceed all applicable FMVSS No. 119 performance standards. Furthermore, all of the sidewall markings related to tire service (load capacity, corresponding inflation pressure, etc.) are correct and the tires correctly show that they contain steel plies. SRI does not believe the mislabeling of these tires presents a safety concern for consumers or retreading and recycling personnel. As noted above, the affected tire mold has been corrected and tires produced on and after June 17, 2017, are marked with the correct number of plies.

NHTSA has previously granted petitions involving similar noncompliances. In the most recent of these, the agency explained:

"Although tire construction affects the strength and durability of tires, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire."

See 72 FR 18210 (April 17, 2017).

Regarding potential safety risks to the tire service industry, the agency concluded that a misstatement of the number of plies "will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, because the sidewall markings indicate that some steel plies exist in the tire sidewall, this potential safety concern does not exist." *Id.* As noted above, the markings on the subject tires correctly indicate that they contain steel plies (although the number is misstated as 5 instead of 4).

NHTSA also granted similar petitions involving tires manufactured by Cooper Tire and Goodyear (Dunlop). See 74 FR 10804 (March 12, 2009) (granting petition submitted by Goodyear where tires were labeled "Tread 3 Polyester + 2 Steel," whereas the correct marking should have been "Tread 2 Polyester + 2 Steel+ 2 Polyester"); and 82 FR 17075 (April 7, 2017) (granting petition submitted by Cooper Tire & Rubber Company where tires were marked "TREAD 1 PLY NYLON + 2 PLY STEEL + 2 PLY POLYESTER," whereas the correct marking should have been "TREAD 1 PLY NYLON+ 2 PLY STEEL+ 1 PLY POLYESTER."

SRI is not aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the subject condition.

SRI concluded by expressing the belief 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.

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, any decision on this petition only applies to the subject tires that SRI no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment 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 SRI 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)

Jeffrey M. Giuseppe,

Director,

Office of Vehicle Safety Compliance.

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