

petition and Mercedes is consequently obligated to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Gregory K. Rea,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0098; Notice 2]

#### Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Grant of petition.

**SUMMARY:** Continental Tire the Americas, LLC (CTA), has determined that certain Continental Tire brand T-type spare tires do not fully comply with paragraph S4.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic and Certain Specialty Tires*. CTA has filed a report dated August 25, 2015 and amended on October 1, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5310, facsimile (202) 366-5930.

**SUPPLEMENTARY INFORMATION: I. Overview:** Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CTA submitted a petition 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.

Notice of receipt of the petition was published with a 30-day public comment period, on October 29, 2015 in the **Federal Register** (80 FR 66613). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to

locate docket number “NHTSA-2015-0098.”

**II. Tires Involved:** Affected are approximately 3,627 Continental Tire brand CST 17 size T125/70R17 98M temporary spare tires sold to General Motors and also in small quantities in the replacement market. These tires were manufactured between March 18, 2012 and April 11, 2015.

**III. Noncompliance:** CTA explains that the noncompliance is that the tire size designation markings on the sidewalls of the subject tires do not contain the tire type code designator symbol from The Tire and Rim Association yearbook as required by paragraph S4.3(a) of FMVSS No. 109. Specifically, the subject tire size reads “125/70R17 98M” but should read “T125/70R17 98M” indicating the tire is a spare tire and for temporary use.

**IV. Rule Text:** Paragraph S4.3(a) of FMVSS No. 109 requires in pertinent part:

*S4.3 Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2 of this standard, each tire, except for those certified to comply with S5.5 of § 571.139, shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3(a) through (g) of this standard. On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. . . .

(a) One size designation, except that equivalent inch and metric size designations may be used; . . .

**V. Summary of CTA’s Analyses:** CTA stated that the only missing marking on the sidewalls of the affected tires is the letter “T” as part of the size designation.

CTA also stated its belief that the omission of the tire size designation markings has no impact on the operational performance or durability of these tires or on the safety of vehicles on which these tires may be mounted and that the affected tires cannot be confused with normal P-metric or metric passenger tires for the following reasons:

1. Both sidewalls of the affected tires have permanently molded letters that are ½ inch tall with the words “TEMPORARY USE ONLY.”

2. Both sidewalls of the affected tires have permanently molded letters and numerals that are ½ inch tall with the words “INFLATE TO 420KPA (60PSI),” as required by section S4.3.5 of FMVSS No. 109.

3. The affected tires are intended as spare tires for the Chevy Impala, which is equipped with four ground tires of

size P235/[ ]55R17 98W. The ground tires are significantly different in width (approximately four inches wider) and in diameter (approximately three inches larger) than the subject spare tires.

4. The affected tires also have a starting tread depth of only 3/32 inch, whereas a typical P-metric or metric passenger tire has a much deeper tread depth of approximately 10/32 inch.

CTA also noted that they are not aware of any crashes, injuries, customer complaints or field reports associated with this noncompliance.

In addition, CTA informed NHTSA that it has corrected the mold at the manufacturing plant so that no additional tires will be manufactured with the subject noncompliance and that all remaining CTA inventory of the subject tires in their possession have been scrapped.

CTA also made reference to inconsequential noncompliance petitions that NHTSA previously granted concerning noncompliances that CTA believes are similar to the subject noncompliance.

In summation, CTA believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt CTA 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.

#### NHTSA’s Decision

**NHTSA’s Analysis:** Labeling the tire size “125/70R17” instead of “T125/70R17,” violates paragraph S4.3(a) of FMVSS No. 109 because the tire is labeled with an incomplete tire size designation for temporary use tires, also referred to as spare tires.

NHTSA bases its decision on several points. First, CTS labeled the subject tires on both sidewalls with the words “TEMPORARY USE ONLY” and “INFLATE TO 420KPA (60PSI).” The maximum pressure labeled on the subject tires correlates with the pressure specified for all temporary use tires in the TRA’s tire publication. Together, these additional labels provide the user with the same information intended by the missing labels, and by spelling out the word TEMPORARY, provides that information in clear format. All other sidewall labels and safety information are correct.

Next, NHTSA agrees that the subject tires would not be confused with non-temporary tires used on vehicles for which the tires are intended because of the differences in geometry of the two types of tires. CTA indicated that the subject tires are approximately four

inches narrower and three inches smaller in diameter than the non-temporary tires that would be used on the vehicle for which the subject tires are also intended.

Finally, neither CTA nor NHTSA are aware of any crashes, injuries, customer complaints or field reports associated with the omitted labeling.

**NHTSA's Decision:** In consideration of the foregoing, NHTSA finds that CTA has met its burden of persuasion that the subject FMVSS No. 109 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, CTA's petition is hereby granted and CTA 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 CTA no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 CTA 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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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0101; Notice 2]

#### Morgan 3 Wheeler Limited, Denial of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Denial of petition.

**SUMMARY:** Morgan 3 Wheeler Limited (Morgan) has determined that certain model year (MY) 2012 and 2013 Morgan model M3W three-wheeled motorcycles do not comply with all of the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices, and associated equipment*. Specifically, the vehicles' headlamps are spaced further apart than permitted, and do not have the required "DOT" marking. Morgan has petitioned for an exemption from the recall notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" (Vehicle Safety Act) on the grounds that the noncompliances are inconsequential to motor vehicle safety. This notice announces and explains NHTSA's denial of Morgan's petition.

**FOR FURTHER INFORMATION CONTACT:** For further information on this decision contact Mike Cole, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-5930.

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Morgan has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that the noncompliances are inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on December 9, 2013 in the **Federal Register** (78 FR 73920). One comment was received from Peter C. Larsen of Liberty Motors, LLC. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: <http://www.regulations.gov/>. Follow the online search instructions to locate docket number "NHTSA-2013-0101."

*II. Vehicles involved:* Approximately 150 MY 2012 and 2013 Morgan model M3W three-wheeled motorcycles manufactured from August 1, 2012 to August 14, 2013 (subject vehicles) are affected.

*III. Noncompliances:* Morgan's petition concerns two requirements in FMVSS No. 108.<sup>1</sup> Both noncompliances involve the vehicles' headlights. Morgan states that the noncompliances are a result of a configuration error in its production line. The first noncompliance involves the spacing between the headlights. Paragraph S10.17.1.2.2 of FMVSS No. 108 specifies

that if motorcycle headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas must not be greater than 200 mm.<sup>2</sup> Morgan states in its petition that the subject motorcycles do not comply with this requirement because they are equipped with dual horizontally-mounted headlamps mounted 29 inches (737 mm) apart (lens edge to lens edge).

The second noncompliance concerns the lack of a required marking on the headlamps. Paragraph S6.5.1 of FMVSS No. 108 requires that the lens of each original equipment and replacement headlamp be marked with the symbol "DOT," either horizontally or vertically, to indicate certification under 49 U.S.C. 30115.<sup>3</sup> Morgan states in its petition that the subject vehicles do not include this marking.

*IV. Rule Text:* Paragraphs S7.9.6.2(b) and S10.17.1.2.2 of FMVSS No. 108 require in pertinent part:

Paragraph S7.9.6.2(b) (applies only to the subject vehicles manufactured before December 1, 2012).

If the system consists of two headlamps, each of which provides both an upper and lower beam, the headlamps shall be mounted either at the same height and symmetrically disposed about the vertical centerline or mounted on the vertical centerline. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas shall not be greater than 200 mm (8 in.).

Paragraph S10.17.1.2.2 (applies only to the subject vehicles manufactured after December 1, 2012).

If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas must not be greater than 200 mm.

*V. Summary of Morgan's Petition and Comments:* Morgan petitions for relief from the recall provisions of the Vehicle Safety Act with respect to both of these noncompliances. Morgan makes several arguments to support its assertion that these noncompliances are inconsequential to motor vehicle safety.

With respect to the headlamp spacing noncompliance, Morgan contends that

<sup>2</sup> In a December 2007 final rule, NHTSA rewrote and reorganized FMVSS No. 108 to provide a more straightforward and logical presentation of the regulatory requirements. 72 FR 68234, Dec. 4, 2007. Those amendments became effective on December 1, 2012. 74 FR 58214, Nov. 12, 2009. The rewrite was not intended to make any substantive changes to the standard. The subject vehicle population includes vehicles manufactured both before and after this effective date. Prior to the effective date of the reorganized standard, the headlight spacing requirement was contained in S7.9.6.2(b).

<sup>3</sup> This provision was located at S7.2(a) in the pre-rewrite version of FMVSS No. 108.