

denies its exemption petition, CI seeks a waiver from the requirements of 49 U.S.C. 21103(a)(1) as it applies to employees performing covered service at its Channelview facility, for the purpose of conducting a pilot project. Both petitions may be viewed at <http://www.regulations.gov> under the docket number listed above.

#### CI's Petition for Statutory Exemption

In its petition for statutory exemption, CI seeks an exemption from the statutory requirement contained in 49 U.S.C. 21103(a)(1), limiting train employees to a total of 276 on-duty hours per calendar month, awaiting or in deadhead transportation from a duty assignment to a place of final release, and in any other mandatory service for a railroad carrier, and from 49 U.S.C. 21103(a)(4), which requires railroads to provide train employees 48 hours of rest after an employee has initiated an on-duty period on 6 consecutive days and 72 hours of rest after an employee has initiated an on-duty period on 7 consecutive days. In support of its exemption request, CI states that its Channelview facility has 15 or fewer employees covered by the HSL and that the facility is operated independently of other CI facilities. CI further explains that its employees subject to the HSL spend the majority of their on-duty time performing non-covered service (e.g., unloading grain from stationary railcars, general housekeeping duties in accordance with the Occupational Safety and Health Administration's combustible dust standards) and that covered service accounts for less than 12 percent of covered employees' monthly hours worked. CI also explains that with certain seasonal exceptions, employees at its Channelview facility generally work in two shifts that rotate every 2 weeks; from 7 a.m.–3 p.m. and from 3 p.m.–11 p.m. (extended to 3 a.m. if needed). CI asserts that the employees' current work schedules ensure safe operations by providing the employees greater control over rest periods and the scheduling of personal affairs and that the statutory restrictions of 49 U.S.C. 21103(a)(1) and 21103(a)(4) unnecessarily lower the earning potential of employees subject to the HSL as compared to other workers at the facility.

#### CI's Petition for Waiver

In its petition for waiver, in lieu of using a calendar month for measuring the on-duty hours of an employee pursuant to 49 U.S.C. 21103(a)(1), CI proposes to implement a pilot program for establishing an alternative calculation period for the 276-hour

monthly limitation. CI and its employees propose a pilot program that would divide a "calendar month" into two measuring periods or groups. The first group would calculate its time toward the 276-hour monthly limitation from the first day of each month to the last day of each month. The second group would calculate its time toward the 276-hour monthly limitation from the 15th day of a month to the 14th day of the following month. By staggering the calculation of the 276-hour monthly limitation, CI notes that the pilot program would ensure that not all employees reach the monthly limitation at the same time.

CI included with its petitions, documentation indicating that its employees supported the request for relief. (49 U.S.C. 21103(a)(1) and 21103(a)(4)). As previously stated, the requests for relief are specially limited to CI's Channelview, TX, facility and, as such, the other facilities of CI are not covered by the requests.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2010-0027) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet

at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on November 22, 2010.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0153; Notice 1]

#### Continental Tire North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Continental Tire North America, Inc., (Continental),<sup>1</sup> has determined that certain passenger car replacement tires manufactured in 2009 do not fully comply with paragraph S5.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Continental has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, dated August 10, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Continental 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 Continental'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.

Affected are approximately 17,121 size 235/45ZR17 94W Continental brand Extremecontact DWS model passenger car tires manufactured from March 2009

<sup>1</sup> Continental Tire North America, Inc. (Continental) is a replacement equipment manufacturer and importer that is incorporated in the State of Ohio.

to October 2009 at Continental's plant located in Camaçari- BA, Brasil. A total of approximately 16,325 of these tires have been delivered to Continental's customers in the United States and Canada.

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 16,325<sup>2</sup> tires that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S5.5(b) 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\* \* \*

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard;

Continental explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires incorrectly identifies the tire size code as "658R 3VR" when in fact it should be identified as "658P 3VR" in the tread

<sup>2</sup> Continental's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Continental as a replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 16,325 tires that were delivered to its customers in the United States. However, the agency cannot relieve Continental distributors 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 Continental recognized that the subject noncompliance existed. Those tires must be brought into conformance, exported, or destroyed. In addition, any of the affected tires that Continental has not delivered to its customers must be brought into compliance, exported or destroyed.

area of the tires as required by paragraph S5.5(b).

Continental also explains that while the non-compliant tires are mislabeled, all of the tires included in this petition meet or exceed the performance requirements of FMVSS No. 139.

Continental argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

Continental points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Continental additionally states that it has corrected the affected tire molds and all future production will have the correct material shown on the sidewall.

In summation, Continental believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt 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 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.

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

a. *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.

b. *By hand delivery 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 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* By logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online

instructions for submitting comments. Comments may also be faxed to 1-202-493-2251.

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

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

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:* December 29, 2010.

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

Issued on: November 19, 2010.

**Claude H. Harris,**

*Acting Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2010-0354]

#### Pipeline Safety: Information Collection Activities

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995,