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**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-25525; Notice 2]

#### Fulmer Helmets, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Fulmer Helmets, Inc. (Fulmer) has determined that certain helmets it produced in 2001 through 2006 do not comply with S5.2 of 49 CFR 571.218, Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Fulmer 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 the petition was published, with a 30 day comment period, on August 8, 2006 in the **Federal Register** (71 FR 45106). NHTSA received no comments.

Affected are a total of approximately 32,052 helmets which Fulmer certified as complying with FMVSS No. 218. These consist of approximately 26,762 Modular Motorcycle Helmets AF-M produced between January 2002 and April 2006, and approximately 5,290 Modular Snowmobile Helmets SN-M produced between November 2001 and November 2005. S5.2 of FMVSS No. 218, Penetration, requires that "when a penetration test is conducted in accordance with S7.2, the striker shall not contact the surface of the test headform." When this test was conducted on the subject helmets, the striker contacted the surface of the test headform. Fulmer has corrected the problem that caused these errors so that they will not be repeated in future production.

Fulmer believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Fulmer states that it asked Harry Hurt, "a leading expert in helmet testing and motorcycle crash research \* \* \* [whose] experience is more than 50 years," to review the test results. Fulmer further states,

[Harry Hurt's] opinion is that the noncompliance on the penetration test is inconsequential because the helmets performed exceptionally well on all impact attenuation tests. In his experience, there has never been any correlation between the penetration test and accident performance, and damage like the penetration test is never seen in crash involved motorcycle helmets.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. The petitioner has not provided sufficient arguments or data to meet its burden of persuasion.

Fulmer asserts that the noncompliance is inconsequential to motor vehicle safety based on the opinion of Hugh H. (Harry) Hurt, Jr., President of the Head Protection Research Laboratory. Mr. Hurt contends that "there has never been any correlation between the penetration test and accident performance." While Mr. Hurt may have significant research experience related to motorcycle helmets, his statement alone is insufficient to justify that the failure of the Fulmer AF-M and SN-M helmets to meet S5.2 of the standard is inconsequential to motor vehicle safety.

The agency adopted the penetration performance requirement from ANSI Z90.1-1971. This performance requirement was adopted by the Standards Committee Z90 which included representatives from various consumer groups, helmet manufacturers, testing organizations, and government organizations.

Since its adoption, NHTSA has reviewed the relationship of the penetration test to motor vehicle safety. The agency requested comments on the merits of the penetration performance test in 1988 (53 FR 11280) but received no comments regarding the elimination of this performance requirement, or proving or disproving the benefits. In 1997, a study was commissioned to evaluate upgrading FMVSS No. 218 ("Feasibility Study of Upgrading FMVSS No. 218, Motorcycle Helmets," D.R. Thom, H.H. Hurt, T.A. Smith, J.V. Ouelelet, Head Protection Research Laboratory, University of Southern California, DTNH22-97-P-02001). The study considered potential areas for FMVSS No. 218 to be upgraded, including the penetration test. With regard to the latter, the authors, including Mr. Hurt, stated that "[t]he advantage [of the FMVSS No. 218 penetration test] is that the test is very severe, simple, repeatable, and absolutely denies qualification to an inferior helmet." (pg. 11) The study (at pages 1 and 54) recommended that the agency retain the penetration tests.

These reviews provide ample support for the value of the penetration test within FMVSS No. 218.

At an independent test lab, NHTSA conducted FMVSS No. 218 compliance tests on eight of the subject Fulmer AF-M motorcycle helmets. Six of the eight helmets failed the penetration requirement of S5.2, representing a 75 percent failure rate of the sample set. NHTSA believes that the rate of noncompliance presents a safety concern, and the arguments presented by the petitioner have not alleviated this concern.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Fulmer's petition is hereby denied.

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

Issued on: December 18, 2006.

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2006-25981; Notice 2]

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

Michelin North America, Inc. (Michelin) has determined that certain tires it imported in 2005 and 2006 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 October 12, 2006, in the **Federal Register** (71 FR 60230). NHTSA received no comments.

Affected are a total of approximately 6,189 11R24.5 Load Range H BFGoodrich DR444 tires produced between November 20, 2005 and July 22, 2006. S6.5(d) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "[t]he maximum