

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-11778; Notice 2]

Bridgestone/Firestone North American Tire, LLC, Denial of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North American Tire, LLC (Firestone), a Delaware Limited Liability Company, has determined that approximately 754 30x9.50 R15 LT Widetrack Baja A/T tires produced in the LaVergne, Tennessee, plant are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Firestone has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h), on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on March 18, 2002, in the **Federal Register** (67 FR 12084). NHTSA received no comments.

During weeks 38, 39 and 40 of the year 2001, Firestone's LaVergne, Tennessee, plant produced a number of tires that fail to comply with the tire marking requirements of FMVSS 119 S6.5(d).

The markings on the noncompliant tires are:

Max Load 350 Kg at 1985 kPa cold
Max Load 900 Lbs at 50 PSI cold

The correct markings should have been:

Max Load 900 Kg at 350 kPa cold
Max Load 1985 Lbs at 50 PSI cold

Firestone submits that the failure of the tires to comply with FMVSS 119 S6.5 (d) should be deemed inconsequential to motor vehicle safety for the following reasons:

(1) All of the affected 30x9.50R15LT Widetrack Baja A/T tires meet all of the remaining requirements of FMVSS 119.

(2) The maximum load as stated on the tire in both English and Metric units is actually less than the actual maximum load for these tires. Therefore, it is not likely the tires would be placed in an unsafe, overload situation as a result of the marking noncompliance. In fact, if the consumer relies on the markings, the load will be significantly less than the tire is capable of carrying.

(3) While the inflation pressure is incorrect in Metric units, the English inflation units are correct. Since the English units are correct and English units are the common usage for inflation in North America, it is highly unlikely that the subject tires would be over inflated as a result of the marking noncompliance.

(4) The subject tires are correctly marked Load Range "C" and Load Index 104. By Tire and Rim Association's data, the Load Range "C" and Load Index 104 define maximum load of 1985 pounds and 900 Kgs at 50 psi and 350 kPa.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 119, paragraph S6.5, is whether a consumer who relied on the incorrect information could experience a safety problem. In the case of this noncompliance, the maximum load markings are understated, making it unlikely the tires would be overloaded by consumers following the marked maximum load values. However, while the corresponding inflation pressure value is correctly marked in English units, it is overstated by over 500 percent in Metric units. While we recognize that consumers are supposed to identify the proper inflation pressure from the tire information placard, surveys have shown that some consumers rely on the maximum load markings on the tire. A consumer who relied on the Metric markings on these tires could over-inflate the tires to unsafe levels, potentially resulting in personal injury or tire failure.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance described is inconsequential to safety. Accordingly, Firestone's application is hereby denied, and the applicant must provide notification of the noncompliance, as required by 49 U.S.C. 30118. Also, Firestone must provide a cost-free remedy for the noncompliance.

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

Issued on: August 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02-22320 Filed 8-30-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34242]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant temporary¹ overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 460.0 near Sweetwater, TX, and BNSF milepost 655.7 near Clovis, NM, a distance of approximately 221.2 miles.²

The transaction was scheduled to be consummated on August 22, 2002. The purpose of the temporary trackage rights is to allow UP to bridge its train service over BNSF lines while UP's main lines are out of service due to maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34242, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: August 23, 2002.

¹ On August 14, 2002, UP filed a petition for exemption in STB Finance Docket No. 34242 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed temporary overhead trackage rights arrangement described in the present proceeding to expire on or about November 23, 2002. That petition will be addressed by the Board in a separate decision.

² By amendment filed August 20, 2002, a representative of UP points out that there are several changes in milepost sequencing between Sweetwater and Clovis, which is why a subtraction of the two boundary mileposts does not yield the stated, and correct, 221.2 miles.