

generic material of the plies in the body of the tire as rayon when they are in fact polyester. Specifically, the tires in question were inadvertently manufactured with "TREAD 6 PLIES 2 RAYON + 2 STEEL + 2 NYLON SIDEWALL 2 PLIES 2 RAYON" marked on the sidewall. The labeling should have been "TREAD 6 PLIES 2 POLYESTER + 2 STEEL + 2 NYLON SIDEWALL 2 PLIES 2 POLYESTER."

Continental states that it discovered the mold labeling error that caused the non-compliance during a routine quality audit.

Continental makes the argument that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the safety, performance and durability of the tire and that the tires were built as designed and all other sidewall identification markings and safety information are correct.

Continental further states that it performs ongoing compliance testing to assure tire performance, and that all of the subject tires will meet or exceed the performance requirements of FMVSS No. 139. Continental also states its belief that there will be no operational impact on the performance or safety of vehicles on which these tires are mounted.

Continental also points out that NHTSA has previously granted petitions for sidewall marking noncompliances that it believes are similar to the instant noncompliance.

Continental also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Continental states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

#### NHTSA Decision

The agency agrees with Continental that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire

construction affects the strength and durability, 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 and 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 judgment, 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 ply material in a tire.

The agency also believes the noncompliance 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, since the tire sidewalls are marked correctly for the number of steel plies, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Continental has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, Continental's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

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

Issued on: March 10, 2009.

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety: Notice of Application for Special Permits

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

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before April 15, 2009.

**Address Comments To:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, Southeast, Washington DC or at <http://dms.dot.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 06, 2009.

**Delmer F. Billings,**

*Director, Office of Materials Hazardous, Special Permits and Approvals.*

Application number	Docket number	Applicant	Regulation(s) affected	Nature of special permits thereof
<b>New Special Permits</b>				
14812-N .....	.....	National Aeronautics and Space Administration (NASA), Washington, DC.	49 CFR 173.62 Packing Instruction 134.	To authorize the transportation in commerce of certain Division 1.4C cartridge power devices which are installed in a spacecraft and packaged in a non-DOT specification packaging. (mode 1).
14813-N .....	.....	Organ Recovery Systems, Des Plaines, IL.	49 CFR 175.9(e)(5) .....	To authorize the transportation of the LifePort Kidney Transporter by air without being accompanied by a person qualified to operate it. (modes 4, 5).
14814-N .....	.....	National Aeronautics and Space Administration, Houston, TX (NASA).	49 CFR 173.302a .....	To authorize the transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support the International Space Station Human Research Facility Gas Delivery System. (modes 1, 2, 3, 4, 5).
14817-N .....	.....	Questar, Inc., North Canton, OH	49 CFR 173.12(b)(2) .....	To authorize the manufacture, marking, sale and use of a corrugated fiberboard box for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b). (mode 1).
14818-N .....	.....	Fleck Controls, LLC, Chardon, OH.	49 CFR 173.302a and 173.306(g).	To authorize the transportation in commerce of non-DOT specification cylinders under the exception provided for water pump system tanks under in 49 CFR 173.306(g). (modes 1, 2, 3).
<b>New Special Permits</b>				
14822-N .....	.....	Oil Tanking Joliet LLC, Channahon, IL.	49 CFR 177.834(i)(3) .....	To authorize personnel to observe loading and unloading of cargo tanks by viewing video camera monitors in a control center instead of being physically located within 25 feet of the cargo tanks. (mode 1).
14823-N .....	.....	FedEx Ground Package System, Inc., Moon Township, PA.	49 CFR 172.202; 172.203(c), (k), (m); 172.301; 172.400; 172.302(c).	To authorize the return shipment by motor vehicle of hazardous materials that have been accepted, transported, and subsequently determined to be non-compliant with the Hazardous Materials Regulations shipping paper, marking or labeling requirements. (mode 1).

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

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

**ACTION:** List of applications for modification of special permit.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material

Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before March 31, 2009.

*Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials