

NOV 19 2003

Mr. Harold van der Meijden  
Toyo Tire (USA) Corporation  
6261 Katella Avenue  
Suite 2B  
Cypress, CA 90630

Dear Mr. van der Meijden:

This is in reply to your telefaxed note of August 29, 2003, to Taylor Vinson of the Office of Chief Counsel and your e-mail of September 2, 2003, to Jonathan White of the Office of Defects Investigation (ODI) asking for a clarification of certain provisions of the early warning reporting (EWR) regulation, 49 CFR Part 579 Subpart C, and certain provisions of ODI's EWR Compendium that track the EWR regulation.

In your fax to Mr. Vinson, you advised that Toyo Tire Corporation (Toyo), in its warranty provisions, handles claims for "early ride" complaints and warrants projected mileages on certain tire lines. You assert that tires subject to such claims do not have a failure condition other than they did not meet the subjective expectancy for comfort or warranted mileage projections. You would like to know whether these types of claims have to be reported under component code 98 (other) for ride disturbances or 71 (tread) for mileage, respectively?

Also in your fax, you cited the preamble to the final rule, 67 FR 45822 at 45853 (July 10, 2000), where we stated that we did not think warranty claims that merely concern "cosmetic, ride or wear concerns or did not concern a failure would be useful to early detection of safety-related tire defects." You stated that it was your understanding that "claims with no failure condition fall into the category of tires that would not be useful in the early detection of safety-related tire defects."

We concur with your understanding that you do not have to report warranty adjustments that do not involve the component categories specified in 49 CFR 579.26(c). As we explained in our response to the Rubber Manufacturers Association's (RMA) August 26, 2002 Petition for Reconsideration, "we adhere to our view that we do not want to receive data on warranty adjustments that do not relate to one or more of the four identified component categories." 68 FR 35132 at 35137 (June 11, 2003).

I now address your questions raised in your e-mail to Mr. White regarding the EWR Compendium. At the outset, we note that the EWR Compendium is not an interpretation of Part 579 or the terms used therein, but merely is intended to assist manufacturers in submitting information to NHTSA pursuant to the requirements of the EWR regulation. In addition, the Compendium was updated on September 18, 2003, after your e-mail to Mr. White. In the future, any interpretive questions that you may have concerning substantive reporting regulations should be sent to the Office of Chief Counsel.

Your first question concerns Section IV A of the Compendium. You stated that:

Section IV A. Note reads: "For tires that are produced or imported in quantities less than 15,000 annually..., the manufacturer need only report information on incidents involving deaths." Toyo interprets the term "tires" to mean all those products within a complete tire line with various SKU's whose production or importation is less than 15,000 units annually.

Your understanding is incorrect. We refer you to the introductory paragraph of Section 579.26 for clarification. See 49 CFR 579.26, as amended at 68 FR 35132. That section states:

For each group of tires with the same SKU, plant where manufactured, and year for which the volume produced or imported is less than 15,000, or are deep tread, winter-type snow tires, space saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need only report information on incidents involving a death or injury, as specified in paragraph (b) of this section.

We note that the regulation refers in part to groups of tires with the same SKU. Therefore, if a tire line has SKUs, if fewer than 15,000 tires with a given SKU are produced (or expected to be produced) in a given year, only incidents involving a death or injury have to be reported.

Second, in connection with Compendium Section IV B.1 Reporting Production Data, you state:

"g.) Manufacturing Plant - code as appearing within the TIN per 574.5 and 574.6, and..." Referencing the Federal Register/ Vol. 68, No. 112 / Wednesday, June 11, 2003 / Rules and Regulations - page 35144/Section 579.26 Reporting requirements for manufacturers of tires states: "For purposes of this section, the two-character DOT alphanumeric code for production plants located in the United States assigned by NHTSA in accordance with 574.5(a) and 574.6(b) of this chapter may be used to identify plant where manufactured. If the plant is located outside the

United States, the full plant name must be provided". Toyo's interpretation is since many of our tires are produced in foreign plants for distribution and sale in the United States, we must report the full plant name in our data. What is the requirement criteria for the "plant name" that will be noted in the Plant Code field of the template?

Pursuant to 49 CFR 571.109 and 571.119, every tire manufactured for use on the roads and offered for sale in the United States must have a Tire Information Number (TIN) in accordance with 49 CFR Part 574. However, if the tire is manufactured outside of the United States, the TIN need not include the plant name. If a tire that is the subject of an EWR report has a TIN that does not include the plant name of a foreign plant, the manufacturer is required to type in the name of the plant where it is manufactured, up to 25 characters. In typing the name of the plant, the manufacturer may either abbreviate or truncate the name of the plant to fit within the 25 character limitation so long as it uses the same abbreviation or truncation in all EWR reports, including future ones. This approach will satisfy 49 CFR 579.26. When a manufacturer provides the plant name in this manner, it indicates to NHTSA that the tire is manufactured in a foreign plant. We also note that manufacturers are allowed to provide the country of origin (and date of importation), rather than plant and date of manufacture, when the TIN is unknown. See Letter from Jacqueline Glassman, Chief Counsel, NHTSA, to Ann Wilson, Senior Vice President, RMA, of October 10, 2003, at 3.

Third, in connection with Compendium Section IV B. 3, you stated:

Reporting Numbers of Warranty Adjustments (including Extended Warranty and Good Will) reads: "A warranty adjustment need not be reported when: c.) The claim/adjustment is denied". Toyo's interpretation is that any claim that fails to meet the adjustability requirements that are explicitly stated in the applicable warranty, and is therefore denied to the dealer or consumer, need not be reported.

We concur in your understanding that you would not have to report a warranty claim/adjustment that is denied in its entirety. In applying the EWR definition of warranty adjustment, a tire manufacturer would only report warranty adjustments when it paid or provided other reimbursement to a consumer pursuant to a warranty program offered by a manufacturer or goodwill. See 49 CFR 579.4, as amended at 68 FR 35132 at 35142. Therefore, under the circumstances suggested in your e-mail, Toyo would not have to report any claim that was denied because it failed to meet the "adjustability" requirements that are explicitly stated in the applicable warranty.

Fourth, in connection with Compendium Section IV B. 4, you stated:

Reporting Claims and Notices of Death and Injury reads: "A manufacturer need not file a report for a claim or notice of death and injury when: b.) The claim alleges one or more deaths in a foreign country involving a tire that is identical or substantially similar to one offered for sale in the United States". This seems to contradict the statement on page 16 (paragraph 2): "Similar reporting is also required when a claim alleging or proving that one or more deaths in a foreign country was caused by a defect in a tire that was identical or substantially similar to one offered for sale in the United States". Toyo's interpretation is that we will need to report on any identical or substantially similar tire involved with a foreign death if it meets minimal specificity requirements.

In connection with the Section IV B. 4, the Compendium (Version 1.0) inadvertently left out the word "not" in the sentence you reference. The Compendium should have read:

A manufacturer need not file a report for a claim or notice of death and injury when:

b.) The claim alleges one or more deaths in a foreign country involving a tire that is **not** identical or substantially similar to one offered for sale in the United States.

This omission has been corrected in "Version 2.0" of the Compendium.

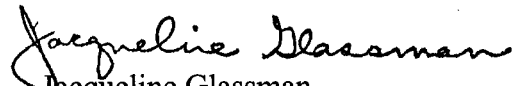
Lastly, in connection with one-time historical reporting section in the Compendium you wrote:

Section V One-Time Historical Reporting Requirements B. What To Report: reads: "Historical data concerning production totals, number of warranty adjustments for the preceding 12 quarters (July 1, 2000 through June 30, 2003) covering production year 1998 and later tires (see 579.28(c))". Referencing the Federal Register/ Vol. 68, No. 112 / Wednesday, June 11, 2003 / Rules and Regulations - page 35148/Section 579.28 Due date of reports and other miscellaneous provisions. (c) (iii) reads: "Each manufacturer of tires covered by 579.26 of this part shall file separate reports covering the number of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from July 1, 2000 to June 30, 2003, for tires manufactured from July 1, 2000 to June 30, 2003". Toyo interprets this to mean that the production data for the one-time historical report should only include production numbers for the 3rd and 4th quarters of 1998 to June 30, 2003 and not the entire calendar production for 1998.

We do not agree with your understanding. The historical reports are expected to provide a baseline so that we will be able to compare current rates to historical rates. In order for NHTSA to evaluate the EWR information, we need annual production for the five previous years. Our intent is for tire manufacturers to provide annual production for all of 1998 until 2003 is complete and we have first quarter 2004 production. See 49 CFR 579.28, as amended at 68 FR 35132 at 35148. Therefore, when reporting for each quarter from July 1, 2000 to June 30, 2003, for tires manufactured from July 1, 1998 to June 30, 2003, a manufacturer should include the total annual production of tires produced from the beginning of each calendar year included in the report until the close of the quarter that is the subject of the report.

If you have any questions, you may phone Andrew DiMarsico of my staff at (202) 366-5263.

Sincerely,

  
Jacqueline Glassman  
Chief Counsel