The Goodyear Tire & Rubber Company

Akron, Ohio 44316 – 0001

March 8, 2022

Dr. Stephen Ridella, Director
Office of Defects Investigation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: NEF 106RR
PE17-009

Dear Dr. Ridella:

The Goodyear Tire & Rubber Company ("Goodyear") is in receipt of your February 22, 2022 letter (the "Letter"), in which you request that Goodyear conduct a voluntary safety recall of size 275/70R22.5 tires from its G159 commercial tire line that were installed on Class A motorhomes (the "Subject Tire" or "Subject Tires"). Goodyear has carefully analyzed the information and data provided in your Letter, as well as other available information that Goodyear has collected and provided to your office during the pendency of this investigation over the past four years. Following that analysis, Goodyear has concluded that the Subject Tire does not contain a defect, and respectfully declines your request.

Goodyear's conclusion is the product of thousands of person-hours devoted to preparing for and participating in the investigation, and its analysis has leveraged decades of engineering, quality, legal and regulatory expertise.

Goodyear's conclusion also is informed by several critical points of context absent from your Letter. First, the Subject Tire was a multipurpose all-position rib-type tire suitable for steer, drive and trailer positions, and was designed using proven tire casings and proven tread compounds that had performed well in the field for many years prior to the introduction of the Subject Tire. It was held to, and passed, Goodyear's rigorous suite of release testing, which exceeds applicable DOT certification requirements, and was fully qualified for operation at highway speeds. No Subject Tire inspected by Goodyear engineers ever revealed or even suggested a defect of any kind.

Second, while your Letter recognizes that the Subject Tire is no longer in production, you assume that some of the Subject Tires may still be in use because of the unique circumstances of

RV service. Every available data point suggests that the Subject Tire has likely been *out of the market* for years. The last Subject Tire was manufactured nearly 20 years ago (in January 2003), and many Subject Tires were produced years before that, beginning in 1996. Goodyear has received only six adjustment claims on Subject Tires in the last decade. The last property damage claim on a Subject Tire dates back to 2015. The last personal injury claim on any Subject Tire dates back to 2009, and that claim involved a Subject Tire in a non-RV application. The last personal injury claim involving a Subject Tire in an RV application was received by Goodyear in 2007, more than 14 years ago. Nor has Goodyear been contacted by a single consumer, retailer or manufacturer possessing a Subject Tire following the significant publicity generated by the opening of this investigation in 2017.

With this context in mind, and following a comprehensive analysis of your Letter, Goodyear notes that under the National Traffic and Motor Vehicle Safety Act (now codified as Chapter 301 of Title 49, United States Code) (the "Safety Act"), a safety-related defect can be found in a product's manufacturing, design or performance. Your Letter does not suggest the existence of either a manufacturing or design defect.

Instead, the Agency posits a defect in the Subject Tire's performance based on elevated claim rates. As a preliminary matter, NHTSA repeatedly has recognized that tires in the RV application are prone to both underinflation and overloading, and are not maintained with the regularity of commercial truck fleets. NHTSA has historically and consistently treated these issues as the responsibility of the RV manufacturers who specify the tire inflation pressure and load carrying requirements of their vehicles and who should be selecting tires that are suitable for these vehicle requirements. NHTSA has never treated these issues as the responsibility of the tire manufacturer, except in the rare cases when the tires themselves are found to contain a defect in design or manufacturing. Moreover, as Goodyear has pointed out in prior meetings with the Agency, NHTSA's calculations are based on significant methodological errors that overstate those claim rates. Even if those errors in the claim calculations could be overlooked—though they should not be—the calculations are unremarkable. Claim rates alone do not—and, as a matter of law, cannot—tell the whole story. As NHTSA has explained, "not every tire failure is the result of a defect in the tire. Tires may fail for a variety of reasons, such as improper maintenance and impact damage from road hazards." Denial of Motor Vehicle Recall Petition (Firestone Steeltex, DP06-001), 72 F.R. 6038 (Feb. 8, 2007) ("Firestone DP Denial").

* * *

Accordingly, while Goodyear appreciates your staff's work in connection with this investigation, it disagrees with their conclusion that the Subject Tire contains a defect relating to motor vehicle safety. Nor does it concur with the suggestion that a safety recall could have any

practical impact in replacing these tires in the market. As such, Goodyear cannot agree to your request to conduct a voluntary safety recall of the Subject Tire based on a Goodyear decision that the tire contains a safety-related defect. Our reasoning summarized above is spelled out more fully below. If, however, after reviewing this response and the other information contained in the record of this investigation, NHTSA makes a final decision that the Subject Tires contain a safety related defect and orders Goodyear to give notification to owners of the agency's decision, Goodyear intends to obey any such order.

I. NHTSA Bears the Burden of Establishing a Safety-Related Defect Supported By More Than an Elevated Claim Rate

Before addressing the substance of our reasoning, Goodyear provides the legal context in which it considers your request.

In order to support a recall order, NHTSA bears the burden of proof "on the two elements required by the [Safety] Act: 1) that a 'defect' exists and 2) that the defect is 'related to motor vehicle safety.'" *U.S. v. General Motors*, 561 F.2d 923, 928 (*Pitman Arms*) (D.C. Cir. 1977). NHTSA's precedents in the context of defect decision proceedings and defect petitions confirm NHTSA's two-part burden in this regard. *See* Administrator's Check Valve Decision at 2 (ODI Case #161, Jan. 27, 1977) (describing that "two fundamental issues needed to be addressed in order to make a final determination as required by statute: does a defect exist, and if it does, does the defect relate to motor vehicle safety"); Firestone DP Denial, 72 F.R. at 6038 ("Were NHTSA to issue an order directing the recall of tires under that section, the agency would have the burden of demonstrating the existence of the defect and that the defect is safety-related.").

The case law interpreting the Safety Act emphasizes that "commonsense limitations" are relevant to determining the meaning of its terms, including the term "defect." *U.S. v. General Motors (Wheels)*, 518 F.2d 420, 435-36 (D.C. Cir. 1975). In meeting its burden, this "commonsense" approach requires NHTSA to rely on more than just an elevated claim rate to establish a defect. As the *Wheels* Court explained: "The District Court's decision that a large number of failures, regardless of cause, constituted irrebuttable proof of a 'defect,' ignores these commonsense limitations and must be rejected as incompatible with the discernible legislative intention." 518 F.2d at 436. "[M]anufacturers are not required to design vehicles or components that never fail." *Id.* The cause of a failure is thus critical because "a manufacturer is not required to remedy even a large number of failures if their cause is a factor like age, wear, or unanticipated abuse." *United States v. General Motors (X-Cars)*, 656 F. Supp. 1555, 1578 (D.D.C. 1987). In that regard, "a commonsense approach would not find defective a wheel that collapsed under a load, say, four times that specified and, say, twice the load that might be projected as a use (or technical over-use) that could be deemed a realistic expectation." *Wheels*, 518 F.2d at 436.

As discussed below, NHTSA's precedents likewise reflect the same commonsense approach embodied in the federal case law cited above. *See* Firestone DP Denial, 72 F.R. at 6038.

With these principles in mind, Goodyear turns to the three theoretical bases of a defect determination.

II. NHTSA Has Not Established A Performance Defect in the Subject Tire.

NHTSA's recall request proceeds from the premise that there is a safety defect in the performance of the Subject Tire when used on Class A motorhomes. As discussed below, this request is not only at odds with decades of NHTSA precedent, but it also is unsupported by the data provided by Goodyear and, more broadly, the record in this investigation.

A. RV Tires Frequently Are Overloaded, Underinflated, and/or Improperly Maintained.

The RV sector is a challenging environment for any tire. Although it was not well known in the mid-1990s when the Subject Tire was first produced, it is now well known that RV tires may not be maintained properly, especially with respect to proper tire inflation pressure. Given the size of the tires, RV owners may have difficulty locating a pump that can refill the air to the recommended inflation pressure, and may thus drive the vehicle with one or more tires in an underinflated condition for an extended period of time. It is now also well known that RVs may be prone to overloading with accessories or design options, sometimes with the knowledge of the RV manufacturer and sometimes not. These issues were reasonably foreseeable by the RV manufacturers and should have been taken into account when they specified the tires. Operating an RV with a tire in either an underinflated or an overloaded condition contributes to an increased risk of tire failure. The issue for this investigation is where the legal responsibility lies for addressing these foreseeable risks.

B. Recalls Related to Owner Overloading and Underinflation Have Always Been the Responsibility of the RV Manufacturers.

The RV manufacturer—not the tire manufacturer—bears the responsibility to anticipate reasonably foreseeable owner overloading and underinflation of tires, as reflected in numerous NHTSA investigations and other recall proceedings. This allocation of responsibility makes sense because the RV manufacturers are uniquely familiar with their customers' use of their product and, with that knowledge, they specified the tires that would be used in their vehicles based on Goodyear engineering data. The RV manufacturers also specified the recommended inflation level for each tire, based on the load carrying capabilities of each tire and the load carrying requirements of their vehicles. As NHTSA knows, personnel from both Goodyear and its RV manufacturer customers have made clear that tire specification was the exclusive province of the RV manufacturer, and that Goodyear was not consulted as part of this process. Contemporaneous

documentation from both Fleetwood and Monaco also confirm that they, not Goodyear, specified the tires to be used in their respective RVs. And, this was true with other RV manufacturers that selected the Subject Tire for their products.

The RV manufacturers' exclusive role in specifying the tires suitable for the load carrying requirements for each axle, and their general familiarity with the RV sector and its consumers, leads naturally to their responsibility for safety recalls related to failures resulting from owner misuse (including underinflation and overloading). Two major RV manufacturers initiated three vehicle campaigns implicating improper specification and customer misuse of the Subject Tire:

- **Fleetwood, 99V-277 (Oct. 1999):** Beginning in late 1998, Goodyear began discussions with Fleetwood concerning the use of certain G159 tires, including the Subject Tire, on Fleetwood motorhomes. Though the tires continued to meet specified performance requirements, Goodyear had obtained data from A 'Weigh We Go' that up to 38% of motorhomes were overloaded at rated inflation pressures or underinflated. This data prompted Goodyear to suggest that Fleetwood use a larger tire, a 275/80R22.5 tire, where Fleetwood had chosen to use the smaller Subject Tire. Goodyear noted that "[p]oor tire management (inflation pressure), coupled with the end users pursuit for ride comfort (low inflation pressure), appear to be the culprits relative to tire issues."

  Consistent with Goodyear's observation, in October 1999, Fleetwood initiated a recall of 3,745 MY 1996 through 2000 motorhomes, noting in its Defect Information Report that tire failures could result in certain vehicles "when built with disproportionate front axle weight distribution, fully equipped, loaded with cargo, and operated with improper tire pressures." The remedy proposed by Fleetwood, and subsequently audited twice by NHTSA, was to replace existing front tires with tires with increased load capacity. For certain recalled models originally fitted with the front Subject Tire, those front Tires were replaced with the larger 275/80R22.5 tire. For other models originally equipped with smaller front tires, **the Subject Tire was the replacement tire.** In more than half of the recalled motorhome models, use of the larger replacement tires required Fleetwood to physically expand the vehicle wheel well by sawing off part of the wheel well wall. Compatibility of a selected tire within the physical dimensions of the vehicle is knowledge unique to the RV manufacturers, further underscoring their responsibility for specifying the tires and, consequently, for recalling tires that were improperly specified.

  NHTSA audited this Fleetwood recall on two occasions (RQ00-001 and RQ02-001) without finding any problems with the remedies, and cited the recall favorably in the closing report of the subsequent Country Coach investigation (EA05-011). NHTSA's prior acquiescence in the use of the Subject Tire as a replacement tire for numerous models of Class A motorhomes in this recall is inconsistent with its current posture, assumed 20 years

later, that the Subject Tire contains a defect and should be recalled. Moreover, the successful performance of the Subject Tire when installed as a recall remedy on some Fleetwood Class A motorhomes in this recall defeats NHTSA's allegation that the Subject Tire was inherently incompatible with Class A motorhome installations.

To this point, since there is no reason to believe that the Fleetwood owners stopped overloading or underinflating their tires after this recall, the successful use of the Subject Tire as the recall remedy for the Fleetwood RVs originally equipped with smaller tires proves that the Subject Tire was robust enough to handle reasonably foreseeable overloading or underinflating by Class A motorhome owners. The field failures were not occurring due to any defect in the Subject Tires; the field failures were occurring because the RV manufacturers specified an inadequate or unrealistic tire pressure and load carrying capacity for their vehicles. Fleetwood acknowledged this fact and issued a ***vehicle*** recall to address these inadequate or unrealistic specifications.

Fleetwood achieved a 99% completion rate in this recall campaign. This is particularly meaningful in the context of the current recall request, since 29% of the claims regarding the Subject Tire were related to Fleetwood vehicles. As such, one of the major sources of claims related to the Subject Tire already has been addressed in a safety recall, with many of the Subject Tires already replaced.

- **Monaco, 00V-331 (Oct. 2000)**: Monaco issued an FMVSS 120 noncompliance recall pursuant to which applicable certification labels were replaced with new labels containing corrected recommended tire inflation data for tires manufactured by Bridgestone, Goodyear and Michelin. Monaco's Part 577 owner notification letter says that certain Monaco ***vehicles*** contained the wrong recommended inflation pressure, and the remedy was to issue a new tire information label with different recommended inflation pressures. The owner notification letter (which was presumably approved by NHTSA staff under 49 C.F.R. § 577.5(a)) warns the motorhome owner of the safety risks of driving with "under/over inflated tires," and reminds owners that 'it is important that your tire psi is always high enough to handle the actual load on the tire." Monaco never suggested that there was any defect in any of the Bridgestone, Goodyear or Michelin tires involved in this vehicle recall.

- **Monaco, Service Campaign – NHTSA ID 635528 (June 2002):** For reasons similar to those underlying the 1999 Fleetwood recall, and following consultation with Goodyear on its observations regarding owner underinflation and overloading, Monaco replaced the Subject Tires with larger 295/80R22.5 G391 tires. In the service bulletin accompanying the campaign, Goodyear acknowledged the potential for underinflation and overloading, describing that the higher aspect ratio of the replacement tire "will allow customers to operate at a lower inflation pressure that will give a more comfortable ride while

maintaining tire loading that is within the operating range of the tire." Goodyear Bulletin PSB #2002-20 (July 10, 2002). Although NHTSA was aware of this service campaign at the time, and assigned it a NHTSA ID number, the agency did not ask Goodyear (or Monaco, to Goodyear's knowledge) to reissue the Bulletin as a safety recall.

According to Goodyear's records, 64% of the Subject Tires implicated by this campaign were replaced. As 40% of the claims received by Goodyear on the Subject Tires related to Monaco vehicles, this is additional evidence that many of the Subject Tires that NHTSA believes should be recalled now already have been remedied.

For several reasons, these three campaigns have particular relevance in the context of your request that Goodyear initiate a safety recall now. Goodyear has not argued "the actions by Monaco and Fleetwood addressed any safety risk presented by the tire." Letter, p. 7. This mischaracterizes Goodyear's position. Goodyear has cited to these three campaigns as evidence that NHTSA has historically looked to the RV manufacturers to address safety hazards created by their decisions to specify tires for vehicles with inadequate tire reserve loads. We have pointed out, and continue to believe, that the prior Fleetwood and Monaco campaigns addressed the tire reserve load mismatch affecting many of the Subject Tires as originally specified by the RV OEMs. To the extent additional Subject Tires remained in the field installed on RVs that had inadequate tire reserve loads, those RV OEMs should have responded with vehicle recalls.

More fundamentally, these Fleetwood and Monaco campaigns illustrate the primary role of the RV manufacturers in recalling their vehicles to account for owner misuse, and is not unique to Goodyear's tires. The primacy of the RV manufacturers in conducting these types of recalls is further reflected in a number of the Agency's precedents, establishing that NHTSA consistently has looked to the RV manufacturers to address failures attributable to tire overloading and underinflation. The following campaigns and investigations evidence this unmistakable pattern.

- **Newmar Corporation, 04V-037 (Jan. 2004):** Newmar conducted a safety improvement campaign (not a recall) to replace 255/80R22.5 Michelin tires with 275/70R22.5 Michelin tires equipped on Dutch Star and Kountry Star motor homes. According to the Part 573 report submitted by Newmar, the campaign was in response to front tire failures caused by fatigued reinforcement cords that "appear[ed] to be a result of overloading and/or underinflation," despite literature provided to owners warning against these conditions. Prior to initiation of the campaign, Newmar requested a meeting with NHTSA and Michelin representatives to discuss the underlying failures. Despite the relatively high number of failures it noted, Newmar clarified that it "had not identified a defect in these vehicles or tires."

NHTSA's docket indicates: "THIS ACTION IS DEEMED A SAFETY IMPROVEMENT CAMPAIGN AND IS NOT BEING CONDUCTED UNDER THE SAFETY ACT."

- **Country Coach, EA05-011 (closed Dec. 2006):** NHTSA opened an investigation involving failures of Toyo 275/70R22.5 tires on Class A Country Coach motorhomes. In response to the investigation, Country Coach filed a Defect Information Report (06V-262) alleging the Toyo tires to be defective. Though the filing of the DIR allowed NHTSA to close the investigation because Country Coach agreed to conduct a safety recall, NHTSA did not agree with Country Coach's reasoning that the tires were defective. EA05-011 Closing Report at 5. Instead, ODI explained its belief, after vehicle inspections and tire testing, that the failures were caused by, *inter alia*, vehicle design, exposure of the tires to the elements, and "under-inflated tires, due in large part to poor communication, misinformation and/or lack of owner's interest or motivation." *Id.* at 16. The Closing Report details NHTSA's significant concerns with tires installed in motorhome applications. *Id.* at 6. In the course of this investigation, NHTSA sought peer performance information from three other tire manufacturers, including Goodyear. Goodyear responded to NHTSA on May 30, 2006. Goodyear's response included the requested performance data for the Subject Tire, as well as other tires.

- **Blue Bird, RQ08-004 (closed Nov. 2008)**: Blue Bird filed a Defect Information Report (07V-586) in connection with front tire failures of certain Michelin tires on Wanderlodge motorhomes. The DIR initially identified axle overloading, and was amended to include "insufficient front tire inflation pressure as an additional defect." ODI opened its investigation in response to concerns with Blue Bird's remedy plan, which Blue Bird later supplemented. The NHTSA docket for this investigation indicates that "ODI REMAINS GENERALLY CONCERNED ABOUT FRONT TIRES INSTALLED IN MOTOR HOMES BECAUSE ODI'S EXPERIENCE HAS SHOWN THAT MOTOR HOME OWNERS ARE FREQUENTLY UNABLE OR UNWILLING TO MAINTAIN HIGH INFLATION PRESSURES IN THEIR TIRES."

  In conjunction with its closing of the investigation, ODI issued a Closing Report generally critical of RV OEMs for recommending inflation pressures that approach maximum allowable pressure. It explained its "concern that front tires selected and installed by motor home manufacturers frequently lack a sufficient capacity margin ('safety factor') to support a loaded and moving vehicle when inflated to the tire pressures that operators of these vehicles commonly maintain." Closing Report at 4. Accordingly, ODI recommended that "**motor home manufacturers** should select components (e.g., tires…) and establish maintenance requirements appropriate to 'real world' practices of owners/operators." *Id.* at 11 (emphasis added).

- **Ford, EA08-007 (closed Mar. 31, 2009):** NHTSA opened this investigation into allegations of oscillation and shimmying associated with a loss of vehicle control, and attributed to front tire performance. ODI closed the investigation without requiring a recall, noting that "owners typically do not maintain their tires at the pressures recommended by Ford on the tire label." ODI noted that the shimmying also could occur as a result of reduced tire pressure because some owners were "intentionally setting the tire pressures low to enhance ride quality." Closing Report at 13.

- **Michelin, PE14-031 (closed Feb. 27, 2015):** NHTSA opened this investigation of steer axle tire failures on auto haulers. Michelin was able to explain each incident as being caused by, *inter alia,* inappropriate load, inflation pressure and/or speed, as well as road hazard and impact damage. As part of the investigation, NHTSA conducted inspections of auto haulers, finding that 55% had an overloaded tire based on actual load and inflation pressure. Volvo—not Michelin—conducted a small recall to install speed governors on certain trucks capable of speeds over 65 mph, because the tires on those trucks were not rated for higher speeds.

- **Blue Bird, PE15-035 (closed Mar. 2, 2016):** NHTSA opened the investigation to assess whether the recall remedy applied in Recall 07V-586 (referenced above) was adequate. NHTSA acknowledged in the opening resume that motor home owners "might be unwilling or unable to maintain high inflation pressure in their tires." Opening Resume at 2. The investigation was closed when Blue Bird agreed to conduct a service campaign (not a safety recall) to replace the front wheels on the motor homes.

- **Michelin, DP17-001 (denied Aug. 28, 2018):** This defect petition was brought by a bus fleet operator as a result of certain sidewall blowouts. NHTSA determined that the failures resulted from tire overloading by the fleets operating the buses. NHTSA also noted that Michelin had discontinued the tire, observing that "a limited number of subject tires are believed to still be in service." Closing Resume at 3.

In Table 1.0 of the Letter, NHTSA points to four field campaigns to support the notion that "[m]anufacturers have also previously filed recalls because a tire was not suitable for a particular application for which it was sold." Only one of those four campaigns—the Product Service Bulletin issued by Goodyear *in support of* a Monaco service campaign (discussed above)—relates to RV applications. And, contrary to NHTSA's suggestion, that Monaco service campaign was not conducted as a safety recall. Two of the other campaigns cited by NHTSA, 04T-003 and 04T-018, also were conducted as non-recall, safety improvement campaigns, and their respective dockets contain identical language indicating as much: "THIS IS NOT A SAFETY RECALL IN ACCORDANCE WITH THE SAFETY ACT. HOWEVER, IT IS DEEMED A SAFETY

IMPROVEMENT CAMPAIGN BY THE AGENCY." Indeed, in the documentation submitted to NHTSA as part of safety campaign 04T-003, Bridgestone/Firestone affirmed its belief that the tires involved "are not defective and are safe and perform well under normal operating conditions." Firestone noted further that "there has not been a strong severity trend on this application" (i.e., Ford sport utility vehicles). Similarly, in documentation submitted to NHTSA announcing safety campaign 04T-018, Bridgestone/Firestone was clear that it "strongly believe[d] the tires are not defective and are safe."

The fact that three of the four campaigns cited in NHTSA's Letter were service campaigns or non-recall safety improvement campaigns confirms that Goodyear could not have known in 2002 or any other relevant time period that NHTSA would expect a safety recall in accordance with the Safety Act to address issues of tire performance due to unsuitable vehicle applications.

Finally, two of the campaigns, 04T-018 and 16T-002, involve replacement tires, not tires installed as original equipment on any vehicle, let alone on motorhomes. Taken together, the campaigns discussed above, and those listed in Table 1.0, underscore that in safety recalls of original equipment tires in RV applications to address performance issues caused by overloading or underinflation, responsibility always has been assumed by the RV manufacturer.

NHTSA's attempt to impose responsibility for recalling the Subject Tires on Goodyear is thus a sharp and inappropriate departure from over 20 years of practice. Indeed, as recently as this year, NHTSA's docket features a number of vehicle recalls of defective tires—without companion recalls from the tire manufacturers. It is particularly inappropriate in these circumstances, where Goodyear supported earlier tire recalls by its RV manufacturer customers (even though it played no role in specifying tires for those manufacturers), and where the Subject Tire was used and accepted as a replacement tire for a Class A motorhome in a prior safety recall. If NHTSA felt that an additional recall or different remedy was required under these facts, that request should have been made years ago, with the involvement of the RV manufacturers, consistent with NHTSA's longstanding practice. It is not reasonable for NHTSA to attempt to do so now, more than a decade after both Monaco and Fleetwood have ceased operating, and after the Subject Tires are effectively out of the market.

C. NHTSA's Request is Inconsistent with the Facts and with NHTSA's Own Conduct.

The Letter alleges that Goodyear has violated the Safety Act because it did not make a determination that the Subject Tire contained a safety related defect in 2002, at the time of the Monaco service campaign. But as discussed extensively above, NHTSA has consistently looked to the RV manufacturers to address safety issues associated with overloading and underinflating tires on RVs and other large vehicles. Tire overloading and underinflating is a direct function of

the RV manufacturers' specifications for load carrying capacity and tire inflation, choices that were not made by Goodyear. It is now well documented that many RV manufacturers were specifying tire pressures that did not take into account likely consumer behavior, and were not specifying adequate margins for load carrying capacity. But NHTSA has consistently held the RV manufacturers responsible for those specifications, and expected RV manufacturers to conduct ***vehicle*** recalls to respond to them, even when the remedy for the safety defect was a larger size tire.

Based on NHTSA's own precedents and activity in this area as recently as 2018, Goodyear could not have known that NHTSA would interpret the Safety Act in 2022 to require Goodyear, rather than the RV manufacturers, to conduct a safety recall here, particularly where there is no evidence of an actual defect in the tire. NHTSA was aware of Goodyear's participation in the Fleetwood and Monaco campaigns between 1999 and 2002, and never suggested that these campaigns should be anything other than a safety recall to address safety defects ***in the vehicles***. NHTSA was aware of the performance differences in the Subject Tire in 2006 when it sought peer tire information in connection with the Country Coach investigation in 2006. In 2013, an ODI engineer reached out to Goodyear by email to request production numbers for the Subject Tire, noting that "[b]ack in December 2012 several blogs posted articles on this tire which has prompted ODI to conduct standard screening." Goodyear complied with the request and heard nothing further from the "standard screening." Indeed, nothing in the past two decades could have suggested to Goodyear that NHTSA interpreted the Safety Act to require Goodyear to conduct a safety recall for the Subject Tire.

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012). "When an executive agency changes which behavior violates its regulations, it must provide notice that it has done so before faulting any of those it regulates for engaging in the newly verboten behavior." *Citizens United v.* [redacted] (2d Cir. 2018) (citing *FCC v. Fox Television Stations*).

Here, NHTSA's consistent message for more than two decades to the RV industry and the tire companies that supply tires to that industry has been that overloading and underinflation are problems caused by the RV manufacturers' inadequate specifications for inflation pressure and load carrying capacity, and constitute ***vehicle-based*** safety defects. Goodyear did not have fair notice that NHTSA believed differently with respect to the Subject Tire in 2002 or any other time until now.

To be clear, Goodyear is well aware of its obligations under the Safety Act to determine the presence of a safety defect ***in a tire***, and to conduct a prompt recall to remedy the defect. Goodyear has conducted numerous such tire safety recall campaigns over the years. Here,

however, the safety defects were the insufficient tire pressure specifications and unrealistic tire load carrying capacity specifications made by the RV manufacturers when the RVs were manufactured. NHTSA has always treated such issues as vehicle defects, not tire defects, even when the defects manifest as tire failures, absent a design or manufacturing defect in the tire itself.

D. The Claims Rates Calculated by NHTSA Do Not Support the Existence of a Performance Defect.

As shown above, the RV OEM and tire industries' collective familiarity with the frequent underinflation and overloading common to RV uses has grown significantly since the introduction of the Subject Tire in 1996, and certainly culminating with NHTSA's issuance of the closing reports in the Country Coach and Blue Bird investigations in 2006 and 2008. The development of this understanding is particularly meaningful in light of NHTSA's recognition that "not every tire failure is the result of a defect in the tire." Firestone DP Denial, 72 F.R. at 6038. As NHTSA has pointed out, "[t]ires may fail for a variety of reasons, such as improper maintenance and impact damage from road hazards." *Id.* The development of the industries' understanding of tire underinflation and overloading, confirmed by Goodyear's forensic review of nearly all of the Subject Tires involved in the death/injury claims received by the company, explains the elevated claims rates on which NHTSA relies.

Having pinpointed the external cause of these failures, NHTSA's recall request is left supported only by what it contends is an elevated claim rate. But a claim rate alone is not adequate evidence of a defect in a tire case, as *Wheels* makes clear. Even if it could be adequate evidence on different facts, NHTSA's claim rate calculations are erroneous and unreliable, as Goodyear has pointed out in prior discussions with the Agency. Given Goodyear's prior feedback on the problems with those calculations, Goodyear is surprised to see them as a basis for your recall request. In any event, they are not a viable basis of any recall request, let alone one in a case where there is no suggestion or evidence of any manufacturing or design problem.

The claim rate calculations for the Subject Tire provided by NHTSA (shown in Figure 2.0 of your Letter) are based on claim counts and production volumes Goodyear provided to NHTSA as part of its May 2018 submission. After reviewing NHTSA's calculations last year, Goodyear pointed out that the number of claims (i.e., the numerator) used to derive its claim rate was overstated for at least two reasons:

- First, NHTSA's claim total treated multiple alleged injured parties involved in the same incident as separate incidents. For purposes of the claim rate calculation, each incident should have been counted only once.
- Second, Goodyear noted that NHTSA's methodology also treated entries for other, non-failing tires associated with the vehicle in the claim as distinct claims, even

though the additional tires did not fail and were not the basis of a separate claim. Again, for purposes of the claim rate calculation, only one tire failure should have been counted per incident.

NHTSA's treatment of Goodyear claim information elsewhere in your Letter reflects a similar misunderstanding of the underlying data. For example, in what appear to be statements taken entirely from plaintiff's counsel in litigation NHTSA suggests that "[a]lleged defects in the G159 tire were at the center of 41 lawsuits involving 98 deaths and injuries filed between 1999 and 2016." Letter, p. 5. There are a number of inaccuracies in this assertion. First, not all of these matters involved motorhome applications, and use of the Subject Tire in non-RV applications is irrelevant to this recall request. Second, NHTSA's reference to 98 deaths and injuries inaccurately overstates the number of fatalities and injuries actually reflected in those lawsuits. Third, not all of these matters involved injuries; many of them reflected property damage claims only. And fourth, NHTSA's date references are not correct. As stated above, the last personal injury claim on any Subject Tire dates back to 2009—and that claim involved a Subject Tire in a non-RV application. The last personal injury claim involving a Subject Tire in an RV application was received by Goodyear in 2007. NHTSA's statement that failures of the Subject Tire on Class A motorhomes resulted in lawsuits involving deaths and injuries filed up until 2016 is simply inaccurate.

Given NHTSA's fundamental reliance on its inaccurate calculation of a failure rate in the Subject Tires to support its recall request, mistakes of this frequency and nature are significant.

E. The Time to Failure of the Subject Tires Was Consistent with the Comparable Peer Tires.

NHTSA asserted that the Subject Tires failed "much earlier" in their service lives than the peer tires chosen by NHTSA for comparison. This is not true. The data shows relatively consistent times to failure for all of the peer tires. The majority of the peer tire lines experienced more than half of their failures in the first five years of the tire life, and all of them experienced more than half of their failures in the first six years of the tire life.

The average age of the Subject Tires involved in incidents was nearly four years old. The average age of the Subject Tires involved in fatal incidents was more than five years old. Goodyear does not consider a four-to-five year old tire to be "early" in its service life. In 2000, Congress adopted the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act which, among other things, extended the time period in which a tire manufacturer must provide a free remedy for a safety defect in a tire from three years to five years. Consistent with that action, NHTSA adopted a five-year reporting requirement for tire manufacturers in the Early Warning Reporting (EWR) rules that were enacted in 2002. Incidents involving tires older than five years old are not reported in EWR because those failures do not provide any "early warning" that the

tires might have a safety defect. They are simply too old to serve that purpose. And, failures of tires nearing that five year threshold cannot accurately be deemed "early" in their service life.

F. The Subject Tire Was Fully Qualified for Highway Speed.

There is no question as to the highway speed capability of the Subject Tire. Goodyear's experienced tire engineers used Goodyear's own high speed test (designated "W84") in the 1990s to support the 75 mph speed rating, and Goodyear engineers continue to support that speed rating. This is not in dispute. However, NHTSA says it believes there is a safety defect in the performance of the Subject Tire because it experienced tread separations at highway speeds. It states that high speeds and poor tire maintenance caused an increase in the tire temperature that negatively impacted performance. NHTSA's blanket statements around tire temperatures are inaccurate.

NHTSA's theory reflects a misunderstanding of the data. The W84 is not a temperature test at all—it is a high speed durability test. Indeed, the current W84 test parameters no longer even require operators to record temperature readings. The W84 test is a particularly inappropriate point of reference because it is an accelerated test involving severe stresses on the test tire, applied through use of a 67" diameter curved road wheel. Indeed, the entire point of the test is to induce tire failure through severe stresses that are not present in real world flat road surfaces.

There is broad consensus that the stresses associated with the laboratory road wheel are not indicative of real world operating conditions. During the 2010 rulemaking process associated with proposed amendments to FMVSS 119, NHTSA remarked:

> NHTSA is aware that a tire operated on a curved road-wheel, **compared to a tire operated on a flat road surface, experiences higher centerline and belt edge temperatures** due to several factors, *e.g.*, severe reverse curvature at the tire contact patch; distortion of the tire contact patch shape; and over-deflection of the tire sidewall. Notice of Proposed Rulemaking, Federal Motor Vehicle Safety Standards; New Pneumatic Tires for Motor Vehicles With a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles, 75 F.R. 60036, 60058 (Sept. 29, 2010).

NHTSA argues that Goodyear engineers made certain statements in a 1988 document that somehow support NHTSA's temperature theory. In reality, they are referring to a book published in 1988 by someone who worked at Goodyear that includes some general discussion about heat in tires. NHTSA's argument seems to ignore the agency's remarks from the 2010 rulemaking process around the difference between performance on a curved road-wheel and performance on a flat road surface. But that observation, even if credited, does not support the use of the W84 temperature readings as a basis to suggest a defect in the Subject Tire. Belt coat reversion begins to occur at

temperatures well above the 194°F mark cited in that publication. Consistent with that, Goodyear's engineers, with decades of experience, discount that publication's conclusion, noting that "medium commercial truck tires with extended highway use are often exposed to prolonged operating temperatures in excess of 194°F."

Further, NHTSA's discussion of the 2007 testimony of a Goodyear engineer (the same engineer that acknowledged the "significant" differences between roadwheel and highway conditions) is taken out of context and inaccurate. The context of that testimony makes clear that the engineer was discussing temperatures reached in the W84 test environment, which, in the words of the same engineer, are "an extremely severe set of test conditions." And the engineer's testimony centered on temperatures of *250°F*—not 200°F, as your Letter states.

Even if the temperatures reflected in the W84 testing referenced in NHTSA's Letter were a meaningful indicia of temperatures that the Subject Tires would experience in real world conditions—and they are not, as discussed below—the data reveals no discernable correlation between recorded temperatures and claim rates. Goodyear analyzed claim rates associated with the Subject Tire and a number of other tires, including a number of other tires in the G159 line. For each tire analyzed, Goodyear compared the associated claim rate and an observed temperature taken during a W84 test for that particular tire. For the purposes of establishing a meaningful comparison, the temperature data for each tire was taken at the 50-mph step of the W84 test. The temperature readings were as follows:

Tire	Temp. at 50-mph step
G159 275/70R22.5 (L.R. H)	243 °F
G159 12R22.5 (L.R. H)	250 °F
G159 295/75R22.5 (L.R. G)[1] (Test Sample 1)	243 °F
G159 295/75R22.5 (L.R. G) (Test Sample 2)	215 °F
G159 11R22.5 (L.R. G)	251 °F

Though we dispute the accuracy of the claim rate calculations reflected in Figure 2.0 of your Letter for the reasons described in Section II.D above, solely for the purpose of comparison, the table above shows temperature readings associated with several of the tires included in that Figure. A review of these temperatures and the corresponding claim rates shown in Figure 2.0 illustrates that there is no correlation between temperature and the claim rates:

[1] As documented in Goodyear's 2006 Peer Inquiry response, the G159 295/75R22.5 was produced in high volume. This tire was installed on Class 7 and 8 trucks (i.e., greater than 26,001 lbs. GVWR) for years, and even under NHTSA's flawed calculations in Figure 2.0 of your Letter, the claim rate associated with that tire is unremarkable. Yet one of the test samples for that larger tire shows temperature readings at the same temperature reflected for the Subject Tire, further underscoring that temperature readings in high speed testing are unrelated to a tire's claim rate.

- The Subject Tire (the first entry in the table) shows a recorded temperature of 243°F following the 50-mph step on the W84.

- The claim rates shown in Figure 2.0 associated with the four other tires listed above are essentially indistinguishable from one another. Of those four other tires, two (the G159 12R22.5 & 11R22.5) showed slightly higher temperature readings (251°F and 250°F) than the Subject Tire at the same 50-mph W84 temperature step. But both show significantly lower claim profiles in Figure 2.0 of your Letter.

- One of the other four tires listed above, a 295/75R22.5 G159 tire, exhibited the same temperature (243°F) as the Subject Tire at the 50-mph step. Despite showing the same temperature reading, it had also shows a significantly lower claim profile than the Subject Tire in Figure 2.0 of your Letter.

- The other tire included in table above also has a lower claim rate in Figure 2.0, but also shows a temperature at the 50-mph step that is significantly lower (215°F) than the temperature associated with the Subject Tire. Moreover, this lower temperature data point is a second reading on a 295/75R22.5 G159 tire that previously measured higher than the Subject Tire, highlighting the potential for wide variation in temperature readings—even in the same tire—that can result from the W84 test.

G. Goodyear Did Not Hamper NHTSA's Ability to Obtain Information Regarding the Subject Tires.

NHTSA casts aspersions on what it describes as Goodyear's "penchant for secrecy" (Letter, p. 5), suggesting that Goodyear's use of routine confidentiality clauses and protective orders somehow prohibited the Agency from obtaining information regarding the Subject Tires. Goodyear must address this inaccurate and unfair characterization. As NHTSA has acknowledged, "[i]t is well-established that confidentiality provisions, protective orders, and the sealing of cases are appropriate litigation tools in some circumstances." NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation, 81 F.R. 13026, 13027 (Mar. 11, 2016). To be clear, consumers involved in crashes are always free to notify NHTSA about the facts and circumstances of a crash, and no settlement agreement can change that. Moreover, Goodyear rejects NHTSA's suggestion that the Subject Tire's age somehow undermines the good faith basis of Goodyear's assertion of its confidentiality rights in litigation related to those tires. The fact is that many of the documents discuss processes that continue to be used to design new tires, as well as to assess products no longer in production. The age of the Subject Tire or of these documents does not make Goodyear's confidentiality

assertions any less valid. Indeed, that these processes have withstood the test of time only underscores their inherent and competitive value.

Moreover, the information that NHTSA suggests was not made available—including information from the lawsuits referenced on page 5 of your Letter—was subject to confidentiality provisions that predated NHTSA's Enforcement Guidance Bulletin 2015-01, which addressed the Agency's recommended best practices regarding protective orders and settlements in civil litigation. The final version of that Enforcement Guidance Bulletin was published in March 2016, after which Goodyear promptly initiated practices to comply with the NHTSA Guidance Bulletin in all settlements executed thereafter.

Goodyear must also note that NHTSA has other sources of information about crashes involving deaths and injuries.[2] Goodyear located all but one of the fatal incidents involving Subject Tires installed on Class A motorhomes in NHTSA's Fatality Analysis Reporting System (FARS) or the Early Warning Reporting database, or both. And, as discussed above, Goodyear provided information in 2006 in response to a NHTSA request for data in connection with an investigation of tire failures on Country Coach motorhomes, and provided a production number update again in 2013 in response to an informal request from ODI that was conducting "standard screening" of the Subject Tire based on "several blogs" that "posted articles on this tire." NHTSA cannot reasonably claim that it was unaware of the incidents involving the Subject Tire prior to 2017.

Goodyear has responded completely to any information request that was posed, including the Peer Inquiry in 2006 and the informal "screening" inquiry from ODI in 2013, as well as the comprehensive Information Request in 2018. Goodyear has complied with the Early Warning Reporting rules with respect to each reportable death or injury associated with the Subject Tire. The fact that many of the death/injury incidents occurred after the vehicle had experienced several years in service meant that the incidents were not reportable under the terms of Part 579 (the EWR rules). As NHTSA knows, the EWR rules do not require reporting of information other than death/injury incidents for commercial tires such as the Subject Tire, and do not require reporting of any death/injury incident involving tires that were produced more than five years before the earliest production year in the reporting period at the time of the notice of the death/injury incident.

Finally, Goodyear notes that it discontinued the Subject Tire in January 2003, before it had received a single claim with a fatality in an incident involving the Subject Tire. (Goodyear was aware of a fatal crash in a Fleetwood in 1999, but no claim was ever filed with Goodyear and

[2] In addition to reporting several injury incidents under TREAD/EWR as required by the rules, Goodyear also reported a fatal incident involving the Subject Tires under TREAD/EWR in the 2d Quarter of 2004. Goodyear later learned that the incident was not fatal. Nevertheless, it was initially flagged as a fatality. It appears that NHTSA never followed up to request further information.

Goodyear has never had much information about it.) By the time the Subject Tire was discontinued, Goodyear was only aware of several minor injuries and a single claim of a serious injury in a crash involving a Gulfstream built on a Spartan chassis.

III. NHTSA Has No Other Defect Theory.

Having failed to establish a performance defect in the Subject Tire, under the Safety Act, NHTSA would need to posit the existence of a manufacturing or design defect to trigger any obligation on Goodyear's part to initiate a safety recall. But as discussed below, NHTSA does not even attempt to make either showing.

A. NHTSA Does Not Suggest a Manufacturing Defect Exists in the Subject Tire.

NHTSA does not contend, and never has suggested, that there is any manufacturing defect in the Subject Tire. Nor could it. Based on Goodyear's records, roughly 94% of Subject Tires for which an adjustment claim was made from 1996 through May 2018 were physically inspected by a Goodyear engineer or product specialist.

Similarly, Goodyear's analysis of death, injury and property damage claims involving a Subject Tire included, where the tire was available, forensic inspections. Through those inspections, Goodyear was able to identify independent, external failure causes for each Subject Tire, included impact damage and punctures, as well as failures attributed to improper maintenance, including overloading and underinflation.

Goodyear records demonstrating these inspections were provided to the Agency as part of our May 2018 submission. None of those inspections revealed any manufacturing defect.

B. NHTSA Does Not Suggest a Design Defect Exists in the Subject Tire.

Similarly, NHTSA does not argue that a design defect exists in the Subject Tires. Nonetheless, NHTSA suggests, without any specificity, that "available information raises serious concerns as to whether the [Subject Tire] can be safely operated at speeds above 65 mph." Letter, p. 2. NHTSA provides no insight as to what "available information" it might be considering. This opaque reference does not substantiate any "serious concern," particularly in light of the evidence showing that the Subject Tire operated safely when used within proper operating parameters.

To the extent that this is meant as a reference to Goodyear's marketing materials, or the internal temperatures in the Subject Tire, neither are evidence of a defect. As we have explained, the Subject Tire is an all-position, rib-type tire suitable for steer, drive and trailer position. It was designed for multipurpose application, including both long haul operations and regional pickup and delivery, encompassing applications ranging from coast-to-coast service on interstate

highways to regional haul uses, including local and regional delivery vehicles. The Subject Tire was held to the same quality standards applicable to all long haul tires in Goodyear's product portfolio. The Subject Tire was at all times fully qualified for operation at highway speeds. Goodyear's marketing strategies cannot undermine the undisputed fact that the Subject Tire was held to those same quality standards, and that it passed the same rigorous suite of release testing prior to introduction in the market.

Finally, NHTSA's suggestion that it was not provided documentation regarding the temperatures that the Subject Tires were "designed to withstand" does not support any inference of a design defect. *Id.* As NHTSA knows, tires are speed-rated, not temperature-rated, and Goodyear provided documentation of the basis of its speed rating of the Subject Tires. And as discussed above, more than 25 years after production of that tire began, and 18 years after production ceased, Goodyear's leading engineers continue to stand by the basis of that speed rating.

* * *

For the reasons stated in this letter, Goodyear has determined that the Subject Tires do not contain a defect as that term has been construed by both NHTSA and the courts. Goodyear thus respectfully declines ODI's request for a safety recall of the Subject Tires. While we know of no evidence to suggest that any Subject Tires are in the field, in an effort to address the Agency's concern, Goodyear remains willing to undertake a field campaign to try to retrieve any Subject Tires that might still remain in the field, if any. Consistent with this position, if NHTSA makes a final decision that the Subject Tires contain a safety related defect and orders Goodyear to give notification to owners of the agency's decision, Goodyear intends to obey any such order.

Sincerely,

[redacted]

Mark Cherveny
Manager Global Regulations, Standards & Compliance