Public Convenience and Necessity and allocation of seven weekly frequencies to engage in scheduled foreign air transportation of persons, property and mail between Philadelphia, Pennsylvania, and Milan, Italy, beginning April 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–32509 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4208; Notice 2]

MHT Luxury Alloys, Denial of Application for Decision of Inconsequential Noncompliance

MHT Luxury Alloys (MHT) of Torrance, California has determined that some of the rims it manufactured and marketed fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Vehicles Other Than Passenger Cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' MHT has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' 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 August 5, 1998, in the **Federal Register** (63 FR 41890). NHTSA received four comments on this application during the 30-day comment period. All four commenters recommended the denial of the application.

Paragraph S5.2 of FMVSS No. 120 states that each rim, or at the option of the manufacturer in the case of a single-piece wheel, the wheel disc shall be marked with the information listed in paragraphs (a) through (e), in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeter. These five paragraphs labeled (a) through (e) require the following labeling:

(a) A designation which indicates the source of the rim's published nominal dimensions;

(b) The rim size designation;

(c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards;

(d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol; and

(e) The month, day, and year or the month and year of manufacture.

From January 1, 1996 through November 13, 1997, MHT produced and sold approximately 13,000 rims which are not labeled with four of the five items required by the standard. However, MHT did permanently place on the center of the rim on the weather side a mark of ''MHT,'' ''NICHE,'' ''NEEPER,'' or other registered trade name of MHT Luxury Alloys, which it believes is a sufficient designation of the rim's manufacturer.

MHT supported its application for inconsequential noncompliance with the following statements:

1. Although the symbol ''DOT'' [and other labeling requirements] did not appear on the described rims, each rim did comply with all applicable motor vehicle safety standards.

2. MHT has received no complaints from consumers that (i) the rims did not comply with all applicable motor vehicle safety standards, or (ii) the rims did not contain the required labeling.

3. The subject rims were initially designed and manufactured for application on passenger vehicles. MHT's management was not aware of the labeling requirements and believed that because the rims were originally designed and manufactured for passenger vehicles, they were exempt from the labeling requirements.

4. The names ''MHT,'' ''NICHE,'' ''NEEPER,'' and other registered trade names of MHT are extremely well known in the industry and to the consumers of motor vehicle rims. MHT believes that a consumer could inquire at any store, distributor, warehouse, or manufacturer within the United States as (i) to the identity and general location of MHT, (ii) be advised that MHT is the manufacturer of rims that bear its name and its trademarks, and (iii) that MHT is located in Los Angeles County, California. MHT has consistently responded promptly and fully to any consumer inquires regarding its products.

5. Upon receipt of a National Highway Traffic Safety Administration (NHTSA) letter, dated October 6, 1997, MHT promptly ordered a marking machine to imprint each new and ''in warehouse'' rim with the required information. Since November 13, 1997, all rims distributed by MHT have been marked in compliance with S5.2.

NHTSA received comments from four individuals. One of the comments was received by NHTSA's Office of Safety Assurance, during the comment period, and was deemed relevant to the inconsequentiality decision and was placed in the docket.

The first commenter, Jesse Hsiao, urged the agency not to grant the application, because the commenter believes: (1) Without labeling, a consumer cannot determine whether the rims are to be used on a passenger car or a truck; (2) the MHT rims are specifically designed for a truck, not a passenger car; and (3) a cap marked with MHT is not sufficient, because the cap can easily pop off the wheel, or the cap may not even be placed on the wheel at the time of delivery to the customer.

The second commenter, a tire dealer located in Southern California, stated serious concerns about the future liability problems with MHT wheels and urged the agency to require MHT to recall the non-complying truck wheels. This commenter made the following statements: (1) MHT should be forced to provide evidence that its truck wheels comply with all safety standards. Truck and Sport Utility Vehicle (SUV) wheels require a much higher maximum load capacity than passenger vehicle wheels; (2) MHT's statement that it did not believe it had to mark the wheels, because the rims were originally designed for passenger cars, is dishonest and does not make sense; (3) MHT's statement that subject truck rims were initially designed for passenger vehicles is incorrect. Wheels for passenger vehicles have different offsets, different center bore, different center pad, different bolt patterns, and different load capacities, than the wheels designed for trucks and SUVs; (4) MHT's statement that their management was not aware of the labeling requirements is not true. MHT wheels are manufactured in Progressive Custom Wheels' foundry, where all wheels, except MHT's, are stamped with the appropriate labeling; (5) Many MHT truck wheels are sold without the MHT, Niche, or Neeper trade marks. MHT sells some wheels directly to new car dealers. In many cases, these wheel caps bear the car manufacturer's name (i.e. Ford, Toyota, etc.). Without the marking on the wheel, the consumers will be confused about the origin of their wheels. It will be very difficult, if not impossible, to trace the wheels to MHT; and (6) As of September 1998, MHT continued to distribute unmarked wheels.

The third commenter, Richard E. Rice, provided general comments regarding MHT's application. The commenter made the following statements: (1) Since

the MHT wheels were manufactured initially for passenger vehicles—what testing was done to determine whether the wheels could be used for truck weight capacities?; (2) Since the MHT truck wheels have no markings, the tire retail stores installing the wheels would not know whether the wheels met the weight capacity for a certain application. All the wheels that we sell, except MHT wheels, have DOT markings that show the maximum weight capacity; (3) a cap marked with MHT is not sufficient, because the cap can easily pop off the wheel, or the cap may contain only the car manufacturer's name; (4) the MHT management has been in the wheel manufacturing business for decades. The owner and MHT management ran the American Racing Wheel Company, the largest wheel manufacturing company in the United States, with contracts to make original equipment wheels for Ford and General Motors. It is inconceivable that they did not know the laws pertaining to marking their wheels. Also it is unbelievable that they would try to make anyone believe they had simply redesigned car wheels, so that they would be exempt from governing laws. Truck wheels have different offsets and bolt patterns, so they require different molds; and (5) the commenter has seen MHT wheels that cracked and failed. Many MHT customers don't know from where their wheels came or how to contact the responsible party.

The fourth commenter, who submitted information to NHTSA's Office of Safety Assurance, stated that: (1) MHT claims that it permanently placed at the center of all of its non-complying wheels a logo bearing one of the MHT's trade names. However, a variety of MHT's non-complying wheels have been and continue to be sold with logos bearing the trade name of entities other than MHT. At times, MHT non-complying truck wheels have been sold by MHT directly to car dealers bearing the logos of Toyota, Lexus, Infiniti, and other car manufacturers. For example, MHT's Neeper N–7, Pyro, and Syncro truck wheels, and MHT's Niche Prima, Gefell, and Runner truck wheels have been sold bearing Toyota logos. The latest example is the Niche Bahn M–805 truck wheel for the Lexus LX470, which has been sold at times bearing a modified Lexus logo. The commenter provided a picture indicating this issue; (2) MHT claims that since November 13, 1997, all rims distributed by MHT have been marked in compliance with 49 CFR 571.120. On May 22, 1998, MHT wrote to DOT making this claim, and further claimed to have notified all of its distributors of the non-compliance and promised to correct all non-complying wheels stocked by its distributors by marking them as required. However, MHT did not stop selling non-complying wheels or even manufacturing brand new non-complying wheels when it claimed it did. Also, the MHT distributors did not stop. For example, in late March 1998, MHT manufactured a brand new wheel, the Niche Bahn M–805 for the Lexus RX470 vehicle, and in April 1998 shipped a number of such non-complying wheels from its warehouse to Lexus car dealers. Even at the beginning of August 1998, MHT distributors were selling wheels without any markings pursuant to 49 CFR 571.120. The commenter provided pictures indicating this issue; (3) MHT claims in its application that it has received no complaints that its rims did not contain the required labeling. However, MHT has received specific complaints about the problems raised by the non-compliance. The commenter provided a letter addressed to Mr. Palmer of MHT, dated September 30, 1996, in which it is noted that MHT wheels are lacking the appropriate and required labeling; (4) MHT claims in its application that its truck rims were initially designed and manufactured for passenger vehicles, and that subsequently ''bolt patterns were modified so that the same rims that had been designed for passenger cars could be mounted on light trucks and sport utility vehicles* * *.'' However, MHT's truck wheels are specifically designed, manufactured, and marketed for trucks or sport utility vehicles. The only similarity between some of MHT's truck wheels and passenger wheels might be the ornamental design of the wheel face. Otherwise, at least the size, offset, center bore and mounting pad, and load capacity of the wheels, in addition to the bolt pattern, are significantly different between the two categories of wheels. The commenter provided pictures showing the N146 Syncro passenger car wheel and the N146 Syncro truck wheel in MHT's Concept Neeper catalog. The commenter states that it is clear that the six-lug truck wheel requires a larger center bore and mounting pad and was manufactured as a different rim and in a different mold than the corresponding passenger car wheel. If MHT indeed merely changes the bolt pattern of its passenger vehicle wheels and then sells them as truck wheels, then serious safety concerns arise; (5) Many of MHT's wheel styles are manufactured and marketed solely for trucks and sport utility vehicles. For example, MHT's Concept Neeper Style N141 Pyro and Niche Style M402 Treck wheels were designed and sold solely for trucks and sport utility vehicles. The commenter provided MHT Concept Neeper and Niche catalogs as examples; (6) MHT claims that it will be extremely difficult if not impossible to contact the great majority of consumers who have purchased or possess non-complying wheels. Many, and probably most, purchasers pay with cash and leave no record with the retail seller as to the consumer's identity. However, many purchasers acquire MHT wheels from car dealers who keep consummate and detailed records of all their transactions. A recall of a large portion of the wheels manufactured, at least those sold by car dealers, should not be difficult to implement; and (7) MHT's non-compliance results in an inability to trace rims back to MHT. The consuming public might be confused and deceived, and MHT's retailers and distributors, through no fault of their own, might be in the path of liability. The commenter urges DOT to investigate the matter further.

The purpose for the labeling requirements in FMVSS No. 120 is to provide the vehicle user with information for the safe operation of the vehicle by ensuring that the vehicle is equipped with rims of appropriate size and type designation. Without proper labeling, an individual cannot determine the rim's size and type designation. Therefore, the vehicle user cannot readily determine the proper size tire for the rim and the vehicle. Without this required information displayed on the rim, a tire too large for the rim could be mounted, resulting in a failure. If an oversize tire is not properly seated on the rim, the tire could separate from the rim on the vehicle while traveling down the highway. This presents a clear and distinct safety hazard. Also, without the knowledge of the load carrying capabilities of the wheel, the possibility of overloading exists. Overloading of a rim presents the possibility of a structural failure as the vehicle is traveling on the road. In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is hereby denied.

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

Issued: December 1, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–32510 Filed 12–7–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

Implementation of the Automated Drawback Selectivity Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document sets forth for the information of the general public the text of a document that was previously published in the *Customs Bulletin* on November 25, 1998, pursuant to section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, to provide notice of the nationwide operational implementation of an automated drawback selectivity program. Publication of that notice in the *Customs Bulletin* was a prerequisite to application of the section 622 provisions that provide for the imposition of monetary penalties for filing false drawback claims and that provide for the establishment of a drawback compliance program.

FOR FURTHER INFORMATION CONTACT: Al Morawski, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (the Act, Pub. L. 103–182, 107 Stat. 2057). Title VI of the Act set forth Customs Modernization provisions that included, in section 622, provisions regarding penalties for false drawback claims. Paragraph (a) of section 622 amended the Tariff Act of 1930 by adding section 593A (codified at 19 U.S.C. 1593a) which prescribes the actions that Customs may take (including the assessment of monetary penalties) for the filing of false drawback claims, requires Customs to establish a voluntary drawback compliance program, and requires the Secretary of the Treasury to promulgate regulations and guidelines to implement the section 593A provisions. Under paragraph (b) of section 622, the section 593A provisions apply to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by Customs, and Customs was required to publish in the *Customs Bulletin* the effective date of that selectivity program. The notice mandated by paragraph (b) of section 622 was published in the *Customs Bulletin* on November 25, 1998, and is republished here for the information of the general public.

Dated: December 2, 1998.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document that provided notice of the nationwide operational implementation of the automated drawback selectivity program, as discussed above, is reproduced below:

Department of the Treasury

United States Customs Service

[T.D. 98–88]

Implementation of the Automated Drawback Selectivity Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, this document provides notice of the nationwide operational implementation of an automated drawback selectivity program. Publication of this notice is a prerequisite to application of the section 622 provisions that provide for the imposition of monetary penalties for filing false drawback claims and that provide for the establishment of a drawback compliance program.

DATES: The automated drawback selectivity program was implemented on August 29, 1998. The liability for monetary penalties for the filing of false drawback claims applies to drawback claims filed on and after November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Al Morawski, Office of Field Operations (202–927–1082).

SUPPLEMENTARY INFORMATION:

Background

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act (the Act, Pub. L. 103–182, 107 Stat. 2057) included, in section 622, provisions regarding penalties for false drawback claims.

Paragraph (a) of section 622 amended the Tariff Act of 1930 by adding section 593A (codified at 19 U.S.C. 1593a) which (1) prescribes the actions that Customs may take, including the assessment of monetary penalties, for the filing of a false (fraudulent or negligent) drawback claim, (2) requires Customs to establish a voluntary drawback compliance program under which participants in certain circumstances may be afforded an alternative to the monetary penalty that would normally apply for filing a false drawback claim, and (3) requires the Secretary of the Treasury to promulgate regulations and guidelines to implement the section 593A provisions.

Under paragraph (b) of section 622, which concerns the effective date of the amendment made by paragraph (a), the section 593A provisions can apply only to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by Customs. Customs is required under paragraph (b) of section 622 to publish in the Customs Bulletin the effective date of the selectivity program.

Drawback Compliance Program

On March 5, 1998, Customs published in the **Federal Register** (63 FR 10970) as T.D. 98–16 a final rule document which revised the provisions within the Customs Regulations that pertain to drawback. The bulk of those drawback regulatory changes involved a revision of Part 191 of the Customs Regulations (19 CFR Part 191) in order to, among other things, reflect extensive changes to the drawback law made by section 632 of the Act. The Part 191 texts as so revised also include a Subpart S, §§ 191.191 through 191.195, which pertains to the drawback compliance program mandated by section 593A of the Tariff Act of 1930 as added by section 622 of the Act. Those Subpart S provisions are directed to procedural aspects of the drawback compliance program (such as program participation requirements, including application submission and approval standards) and therefore do not incorporate specific standards for the assessment or mitigation of penalties against program participants for filing false drawback claims. In view of the effective date limitation in paragraph (b) of section 622 of the Act, Customs has to date not accepted applications from prospective program participants or in any other way put those Subpart S provisions into operation.

Penalties and Mitigation Guidelines for False Drawback Claims

On September 29, 1998, Customs published in the **Federal Register** (63 FR 51868) a notice of proposed rulemaking which set forth proposed amendments to the Customs Regulations to set forth the procedures to be followed when false drawback claims are filed and penalties are thereby incurred. The proposed regulatory changes implement all penalty aspects of section 622 of the Act and thus include proposed mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred by drawback compliance program participants or by persons who are not participants in that program. The document also proposed an amendment to the regulatory texts adopted by T.D. 98–16 to provide more specificity regarding the grounds and procedures for removal of a participant from the drawback