

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2021–0047; Notice 2]

Cooper Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper Tire), has determined that certain Cooper CS5 Grant Touring and Cooper Evolution Tour replacement passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper Tire filed a noncompliance report dated April 28, 2021, and subsequently, Cooper Tire petitioned NHTSA on May 12, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Cooper Tire's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:**I. Overview**

Cooper Tire has determined that certain Cooper CS5 Grand Touring and Cooper Evolution Tour replacement passenger car tires do not fully comply with the requirements of paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). Cooper Tire filed a noncompliance report dated April 28, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Cooper Tire subsequently petitioned NHTSA on May 12, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Cooper Tire petition was published with a 30-day public comment period, on May 16, 2022, in the **Federal Register** (87 FR 29779). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at

<https://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2021–0047.”

II. Tires Involved

Approximately 294 Cooper CS5 Grand Touring, size 225/50R18, and Cooper Evolution Tour, size 225/60R16, replacement passenger car tires, manufactured between February 14, 2021, and March 27, 2021, are potentially involved.

III. Noncompliance

Cooper Tire explains that the subject tires were molded with an upside down and backwards serial week and year on the outboard sidewall and do not comply with the requirements set forth in paragraph S5.5.1(b) of FMVSS No. 139.

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to this petition.

- Each tire must be labeled with the tire identification number required by 49 CFR part 574, which includes the date code consisting of the week and year of manufacture, on the intended outboard sidewall of the tire.

V. Summary of Cooper Tire's Petition

The following views and arguments presented in this section, “V. Summary of Cooper Tire's Petition,” are those of Cooper Tire. They do not reflect the views of the Agency. Cooper Tire describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper Tire submitted the following reasoning:

1. The tires subject to this petition, on their outboard side only, were molded with an upside down and backwards DOT serial week and year. The serial number stampings should read: DOT U9 X3 1 LP 0721 and UP 78 1CW 1221. The outboard side, which includes the date code, was molded with the date code information oriented incorrectly upside down and backwards, which resulted in the characters being out of proper sequence.

2. Cooper contends that the 294 tires subject to this petition meet and/or exceed all performance requirements and all other labeling markings as required by FMVSS No. 139.

3. Furthermore, Cooper Tire says that is not aware of any crashes, injuries, customer complaints, or field reports associated with the subject tires involved in this petition.

4. Cooper Tire believes that the upside down and backward date code will not cause confusion for the consumer or dealer that is selecting and mounting the tire, as the error is quite obvious, and there is no logical reading or interpretation of the date code in its upside down and backward position. Cooper Tire also believes that consumers and dealers will easily be able to see the issue and correctly identify the date code.

5. Cooper believes the following NHTSA statements, taken from another petition, apply to its petition: “The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety—such as a safety recall notice.” *See* Bridgestone/Firestone, Inc., 64 FR 29,080 (May 28, 1999); *see also* Cooper Tire & Rubber Company, 68 FR 16,115 (April 2, 2003). Furthermore, Cooper feels the following NHTSA statement applies to its petition, “[t]he agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the ability of the tire manufacturer to identify the tires in the event of recall.” *See* Bridgestone/Firestone, Inc., 66 FR 45,076 (Aug. 27, 2001).

6. Cooper also stated that NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled. *See*, Bridgestone/Firestone North America Tire, LLC, 71 FR 4396 (Jan. 26, 2006) (granting petition where date code was missing because manufacturer could still identify and recall the tires); Cooper Tire & Rubber Company, 68 FR 16,115 (April 2, 2003) (granting petition where tires were labeled with wrong plant code, because “the tires have a unique DOT identification”); Bridgestone/Firestone, Inc., 66 FR 45,076 (Aug. 27, 2001) (granting petition where the date code was labeled incorrectly, because “the information included on the tire identification label and the manufacturer's tire production records is sufficient to ensure that these tires can be identified in the event of a recall”); Bridgestone/Firestone, Inc., 64 FR 29,080 (May 28, 1999) (granting petition where the wrong year was marked in date code on the tires); Cooper Tire & Rubber Company; 63 FR 29,059 (May 27, 1998) (granting petition where date code was missing where tires had a unique TIN for recall purposes); Bridgestone/Firestone, Inc., 60 FR 57,617 (Nov. 16, 1995) (granting petition where date code was out of sequence); Uniroyal Goodrich Tire Company, 59 FR 64,232 (Dec. 13, 1994)

(granting petition where week and year were mislabeled on tires).

Cooper Tire concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition requesting exemption from providing notification of the noncompliance, as required by 49 U.S.C. 30118, as well as a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.¹

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.³

NHTSA has evaluated and analyzed the merits of the inconsequential noncompliance petition submitted by Cooper Tire and agrees that, based on the information presented, is granting Cooper's request for relief from notification and remedy based on the following:

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

- *Operational Safety & Performance:* NHTSA reviewed the data Cooper provided and noted the subject tires comply with FMVSS No. 139 test criteria.

- *Traceability & Identification:* NHTSA agrees that in this case, the upside down and backwards date code in the TIN does not appear to affect the ability of the manufacturer or consumer to register or identify the affected tires in the event of a recall. After reviewing a sample,⁴ the Agency agrees that the date code is legible because this portion of the TIN is visually separated from the rest of the TIN and the font style is such that the characters are obvious even when rotated 180 degrees from nominal. The obvious error allows for an accurate reading of the full TIN if/when registering and/or recalling the tires in the future.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Cooper Tire has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Cooper Tire's petition is hereby granted, and Cooper Tire is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that Cooper Tire no longer controlled at the time it determined that the noncompliance existed. However, the grant of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper Tire notified them that the subject noncompliance existed.

⁴ A photo of the subject noncompliance can be found in Cooper Tire's petition at <https://www.regulations.gov/document/NHTSA-2021-0047-0001>.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,
Director, Office of Vehicle Safety Compliance.
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0021; Notice 2]

Mercedes-Benz USA, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Mercedes-Benz AG (MBAG) and Mercedes-Benz USA, LLC (MBUSA) (collectively, “Mercedes-Benz”) have determined that certain model year (MY) 2019 Mercedes-Benz A-Class motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 104, *Windshield Wiping and Washing Systems*. Mercedes-Benz filed a noncompliance report dated February 24, 2020. Mercedes-Benz subsequently petitioned NHTSA on March 12, 2020, and later provided supplemental material on July 9, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Mercedes-Benz's petition.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-7352, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Mercedes-Benz has determined that certain MY 2019 Mercedes-Benz A-Class motor vehicles do not fully comply with the requirements of paragraph S4.1.2 of FMVSS No. 104, *Windshield Wiping and Washing Systems* (49 CFR 571.104). Mercedes-Benz filed a noncompliance report dated February 24, 2020, pursuant to 49 CFR part 573, *Defect and noncompliance responsibility and reports*. Mercedes-Benz subsequently petitioned NHTSA on March 12, 2020, and later provided supplemental material on July 9, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C.