

because the construction date is not expected until 2026 or later.

### Scoping and Public Review

The project team developed an Agency Coordination Plan and a Public Involvement Plan. These plans will guide CDOT through the scoping and public review process. The Public Involvement Plan and the Agency Coordination Plan are attached to the NOI Additional Information Document.

CDOT and FHWA identified agencies with jurisdiction over resources within the study area. On June 8, 2023, FHWA and CDOT conducted an agency coordination meeting. After the meeting agencies were formally contacted by FHWA through the United States Postal Service and email to determine Cooperating and Participating Agency status. Another agency coordination meeting was held on November 1, 2023. Additional meetings with Cooperating and Participating Agencies will be held throughout the environmental review process. The Agency Coordination Plan and Public Involvement Plan included within the NOI Additional Information Document describes how the public and agencies will continue to be engaged during EIS development.

The project held a public open house on October 10, 2023, at the Eagle Pointe Recreation Center (Commerce City), to present the draft purpose and need and the draft proposed alternatives to the public. The public open house had 81 participants sign in to the event; attendees were highly engaged and provided detailed comments and thoughts. Participants were a mixture of local residents, commuters, interested groups, agency staff, and elected officials. A summary of the October public open house is available on the project website. Agencies were briefed on the public open house and input received at the November 1, 2023, agency coordination meeting.

In December 2023, CDOT hosted community “listening sessions” to gather additional feedback from area residents. The listening sessions were held at community locations in the study area; all included Spanish and English-speaking staff. CDOT has also conducted numerous one-on-one meetings with stakeholders.

Additional public and agency meetings are planned before the Draft EIS is published, and the Draft EIS will be available for public and agency review and comment prior to the Public Hearing.

### Request for Identification of Potential Alternatives, Information, and Analyses Relative to the Proposed Action

To ensure that a full range of issues related to the study are addressed and all potential issues are identified, FHWA and CDOT invite comments and suggestions from the public and all federal, state, tribal, and local agencies. FHWA and CDOT request comments and suggestions on potential alternatives and impacts, and the identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. Specifically, agencies and the public are asked to identify and submit potential alternatives for consideration and any information, such as anticipated significant issues or environmental impacts and analyses relevant to the proposed action, will be considered by the Lead and Cooperating agencies in developing the Draft EIS. Comments must be received by September 19, 2024. Any information presented herein, including the preliminary purpose and need, preliminary range of alternatives and identification of impacts may be revised after consideration of the comments. The purpose of this request is to bring relevant comments, information, and analyses to the Lead Agencies’ attention, as early in the process as possible, to enable the agencies to make maximum use of this information in decision making.

There are several methods to submit comments as described in the **ADDRESSES** section of this notice. Any questions concerning this proposed action, including comments relevant to alternatives, information, and analyses, should be directed to FHWA or CDOT at the physical addresses, email addresses, or phone numbers provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Authority:* 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 139; 23 CFR part 771.

**John M. Cater,**

*Division Administrator, Lakewood, Colorado, Federal Highway Administration.*

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### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0052; Notice 1]

#### Toyo Tire Holdings of Americas, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Receipt of petition.

**SUMMARY:** Toyo Tire Holdings of Americas, Inc. (Toyo Tire) has determined that certain Proxes ST III passenger tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Toyo Tire filed a noncompliance report dated July 19, 2023, and subsequently petitioned NHTSA (the “Agency”) on August 17, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Toyo Tire’s petition.

**DATES:** Send comments on or before September 19, 2024.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If

comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

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

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Toyo Tire determined that certain Proxes ST III passenger tires do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Toyo Tire filed a noncompliance report dated July 19, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Toyo Tire petitioned NHTSA on August 17, 2023, 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*.

This notice of receipt of Toyo Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent

any agency decision or another exercise of judgment concerning the merits of the petition.

*II. Tires Involved:* Approximately 232 Toyo Proxes ST III passenger tires, manufactured between May 21, 2023, and May 27, 2023, were reported by the manufacturer.

*III. Noncompliance:* Toyo Tire explains that the noncompliance is due to a mold error causing the subject tires to contain a tire identification number (TIN) with a three-digit date code rather than a four-digit date code as required by paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR part 574. Specifically, the subject tires were marked with an incorrect date code of “213” rather than the compliant four-digit date code, “2123.”

*IV. Rule Requirements:* Paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR 574.5(b)(3) include the requirements relevant to this petition. Each tire (manufactured on or after September 1, 2009) must be labeled with the TIN, as required by 49 CFR part 574, on the intended outboard sidewall of the tire. The date code, consisting of four numerical symbols, is the final group of the TIN and must identify the tire's week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using “01” for the first full calendar week in each year, “02” for the second full calendar week, and so on. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture.

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

Toyo Tire states that, except for the subject noncompliance, the affected tires comply with the performance and labeling requirements of FMVSS No. 139 and the requirements of 49 CFR part 574. Toyo Tire also says that it is not aware of any complaints or injuries related to the subject tires.

Toyo Tire summarizes NHTSA's regulatory history for tire labeling requirements and the purpose of these requirements, specifically relating to the date code. Toyo Tire asserts that the TIN date code “primarily serves to facilitate identification of tires in the event the tires need to be recalled for a noncompliance that is consequential to

safety or for a safety related defect.” Toyo Tire also notes NHTSA's view that the date code offers consumers valuable information regarding the actual age of the tire.

Toyo Tire argues that the incorrect date code on the subject tires would not hinder the identification and notification process in the event of a recall. Toyo Tire explains that the date code accurately indicates the week of the subject tires' manufacture but is missing a character indicating the year of manufacture. Toyo Tire says that despite being noncompliant, these TINs uniquely identify the tires, enabling consumers to accurately identify them in the event of a recall.

Toyo Tire contends that prior Agency decisions on petitions for inconsequential noncompliance involving “incorrect date codes, missing date codes, misplaced date codes, and inverted date codes” were granted because NHTSA found that the noncompliance did not inhibit the identification of the affected tires. Toyo Tire offers the following as examples:

1. Bridgestone/Firestone, Inc., (Toyo Tire incorrectly cites Cooper Tire & Rubber Co.) Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4396 (Jan. 26, 2006). In that decision, the agency agreed that the missing date code was inconsequential because a consumer notification of a recall of the tires could be accomplished by referring to the noncompliant TIN.

2. Bridgestone/Firestone, Inc., Grant of Application for Decision of Inconsequential Noncompliance, 60 FR 57617 (Nov. 16, 1995). In this decision NHTSA agreed that placing the date code at the beginning of the TIN rather than at the end was inconsequential in this case because enough information exists on the tires to trace the tires back to their plant of manufacture should a future recall be required. Additionally, any recall notification letter would explain the transposed marking so that owners could properly identify the tires.

3. Yokohama Tire Corp., Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 33333 (Jun. 8, 2006). In this decision, NHTSA agreed that exceeding the spacing limit for the date code in the TIN was inconsequential to safety in this case because correct information is present, and it is therefore likely to achieve the safety purposes of the requirement.

4. Cooper Tire & Rubber Co., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 43708 (Jul. 5, 2016). In this decision, the affected tires contained an inverted date code and NHTSA agreed with the petitioner that

the error was inconsequential to safety because it is not likely to be misidentified.

Toyo Tire believes that the granting of its petition would align with NHTSA's decisions on these prior petitions because the date code on the subject tires provides adequate information for consumers to properly identify the tires and for the tires to be properly traced to the manufacturing plant. Toyo Tire says that it has also updated its website to accept a 12-digit TIN, allowing consumers to register the tires with the incorrectly marked date code.

Toyo Tire says that the subject tires contain a unique 12-digit TIN, as opposed to the standard 13 digits for properly labeled tires, ensuring that there will be no duplication in the future. Toyo Tire explains that the mislabeling occurred at the manufacturing plant during a period when a manual process was temporarily being used to enter codes into a new piece of equipment used for stamping the TIN plates. Toyo Tire says that it has since corrected this issue by implementing an automated process that directly transmits the codes to the stamping equipment. Additionally, Toyo Tire says that it has revised its quality inspection process to ensure that the date code is verified by two people each time a new plate is installed into a mold. Toyo Tire notes that in the aforementioned 2016 Cooper Tire decision 81 FR 43708, the nature of the labeling error did not prevent the correct identification of the affected tires. Similarly, Toyo Tire contends that the subject noncompliance is inconsequential to motor vehicle safety because the affected tires otherwise comply with the marking and performance requirements of FMVSS No. 139, and the primary purpose of the TIN markings is fulfilled.

Next, Toyo Tire argues that the incorrectly marked date code on the subject tires is unlikely to mislead consumers as to the age of the tire. According to Toyo Tire, NHTSA's secondary purpose in adopting the four-digit date code was to prevent confusing consumers with respect to the actual age of the tire. Expanding the date code from three digits to four would result in more accurate date codes, simplifying the process for prospective consumers to determine the age of the tires they are considering purchasing.

Toyo Tire then cites NHTSA's tire aging work published in March 2014 and states that NHTSA found that adding a tire aging requirement to FMVSS No. 139 was unnecessary.

Overall, Toyo Tire says that NHTSA's safety concerns regarding tire aging

were attenuated based on the improved standards in FMVSS No. 139 and mandatory tire-pressure monitoring systems. Furthermore, Toyo Tire asserts that the data that raised aging concerns primarily came from states in the Sun Belt Region and, as a result, NHTSA shifted its focus toward consumer awareness programs. Based on this focus, Toyo Tire says NHTSA's determinations on inconsequentiality petitions concerning the date code have distinguished between noncompliances where mislabeling would not mislead consumers about the actual age of the tires and those where mislabeling would lead consumers to believe the tires were newer than they actually are. Toyo Tire provides NHTSA's decision on another petition by Cooper Tire (86 FR 47726; Aug. 26, 2021) as an example, in which the affected tires contained the date code "1723" rather than the correct date code "2317". Toyo Tire states this petition was denied due to concerns that dealers may store tires for multiple years before selling them, leading to potential confusion for consumers regarding the tires' actual age.

Additionally, while steps to identify the mislabeling were acknowledged, Toyo Tire says NHTSA determined that these actions did not negate the safety risk caused by the incorrect date code as tires may not be registered or may change hands subsequent to registration. In its rationale, Toyo Tire says that NHTSA specifically differentiated this case from a 1998 petition by Cooper Tire where NHTSA determined that the absence of a date code on the affected tires was inconsequential to vehicle safety. In that case, Toyo Tire says NHTSA found that the missing date code did not mislead consumers about the age of the tire. Conversely, NHTSA granted a petition by Michelin North America (MNA) where the date code was mislabeled as "0126" rather than "0216." (81 FR 76412; Nov. 2, 2016). Toyo Tire believes that the subject noncompliance will not impact customers' ability to identify the subject tires in the event of a recall because Toyo Tire is accepting registration cards and internet registrations for the mislabeled tires, and they are prepared to address inquiries from customers regarding the subject tires. Toyo Tire believes these points support a grant of its petition.

Toyo Tire argues that the three-digit date code on the subject tires does not have the misleading effect found in NHTSA's 2021 denial of the Cooper Tire petition. Unlike the mislabeling in the denied Cooper Tire petition, the three-digit date in the subject tires would not

mislead purchasers as to the age of the tire. The missing digit causes the date code to not conform to a compliant four-digit date code and cannot be interpreted as a future date code. Toyo Tire contends that because NHTSA discontinued the use of three-digit date codes over 20 years ago, any confusion regarding the date code is more likely to suggest that the tire is significantly older than it actually is. Toyo Tire further explains that the mislabeled date code on the subject tires would indicate that the tires were manufactured in the 21st week of 1993, over 30 years ago. Overall, Toyo Tire believes that consumers will readily notice the incorrect date code if they consult online sources to interpret it.

Toyo Tire adds that while NHTSA did not express concerns about tire aging in the MNA decision (81 FR 76412; Nov. 2, 2016), the impact of the mislabeling in that case is comparable to the subject noncompliance. Toyo Tire says that other possible interpretations of the subject noncompliance would be that the tires were manufactured in 2013 (based on the last two digits, "13") or in 2021 (based on the first two digits, "21"). Since the actual year of manufacture for the subject tires is 2023, either of these interpretations would again suggest that the tires are older than they actually are and would not pose a risk of the consumer using the subject tire beyond its maximum service life. Toyo Tire notes that, in contrast, Cooper Tire's petition was denied because the tires would appear newer than their actual age.

Toyo Tire says that it recognizes the possibility that the mislabeled date code on the subject tires could be mistaken as indicating the year of manufacture as "2033," "2043," "2053," etc. However, Toyo Tire considers this risk remote, given these years are far in the future. Toyo Tire believes that the risk is comparable to the mislabeled date code in MNA's petition (81 FR 76412, Nov. 2, 2016), which NHTSA deemed inconsequential to motor vehicle safety. Further, Toyo Tire believes that the subject noncompliance poses an even lesser risk than MNA's noncompliance because the three-digit date code is more likely to indicate an error. Therefore, Toyo Tire is confident that consumers will not be misled into believing that the subject tires are newer than their actual date of manufacture, and the subject noncompliance does not create a risk that the tire would be used beyond the maximum service life.

Toyo Tire concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be

exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

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, any decision on this petition only applies to the subject tires that Toyo Tire no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire 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 Toyo Tire notified them that the subject noncompliance existed. (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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